GENERAL CONDITIONS OF THE CONTRACT

The contract consists of a purchase order and these general conditions, including the Annex on security measures. If there is any conflict between different provisions in the contract, the following rules must be applied:

(a) the provisions set out in the purchase order take precedence over those set out in the general conditions;

(b) the provisions set out in the general conditions take precedence over those set out in the tender specifications;

(c) the provisions set out in the tender specifications take precedence over those set out in the contractor's tender.

All documents issued by the contractor (end-user agreements, general terms and conditions, etc.), with the exception of its tender, are held inapplicable, unless explicitly mentioned in the special conditions of the contract. In all circumstances, in the event of contradiction between the contract and documents issued by the contractor, the contract prevails, regardless of any provision to the contrary in the contractor's documents.

1. DEFINITIONS

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

'Back Office': the internal system(s) used by the parties to process electronic invoices;

'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*, that any of the parties has identified in writing as confidential. It cannot 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 for reasons involving family, emotional life, political or national affinity, economic interest, or any other shared interest with the contracting authority or any third party related to the subject-matter of the contract;

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

'EDI message' (electronic data interchange): a message created and exchanged through the electronic transfer, from computer to computer, of commercial and administrative data using an agreed standard;

'e-PRIOR': the service-oriented communication platform that provides a series of web services and allows the exchange of standardised electronic messages and documents between the parties. This is done either through web services, with a machine-to-machine connection between the parties' *back office* systems (*EDI messages*), or through a web application (the s*upplier portal*). The platform may be used to exchange electronic documents (e-documents) such as electronic invoices between the parties. Technical specifications (i.e. the *interface control document*), details on access and user manuals are available on the following website: http://ec.europa.eu/dgs/informatics/supplier_portal/documentation/documentation_en.htm

'Force majeure': any unforeseeable, exceptional 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 or on the part of the subcontractors and must prove to be inevitable despite their exercising due diligence. 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 post or email, which provides the sender with compelling evidence that the message was delivered to the specified recipient;

'Fraud': any intentional act or omission affecting the Union's financial interests relating to the use or presentation of false, incorrect or incomplete statements or documents or to non-disclosure of information in violation of a specific obligation;

'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 Union's budget;

'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/services by the contractor to the contracting authority;

'Personnel': persons employed directly or indirectly or contracted by the contractor to perform the 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 *performance of the contract*;

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

'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 person who has the power to represent the contractor or to take decisions on its behalf;

'Result': any intended outcome of *the performance of the contract*, whatever its form or nature, which is delivered and finally or partially approved by the contracting authority. A *result* may be further defined in the contract as a deliverable. A *result* may, in addition to materials produced by the contractor or at its request, also include *pre-existing materials*;

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

'Supplier portal': the *e-PRIOR* portal, which allows the contractor to exchange electronic business documents, such as invoices, through a graphical user interface; its main features can be found in the supplier portal overview document available on the following website: http://ec.europa.eu/dgs/informatics/supplier_portal/doc/um_supplier_portal_overview.pdf

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 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. The contract must be interpreted as if it had contained the substitute provision as from its entry into force.

4. PERFORMANCE OF THE CONTRACT (SUPPLIES AND SERVICES)

Delivery of supplies

4.1. The requested dates of delivery and the site to which the delivery is to be made are specified in the purchase order. The contracting authority reserves the right to change the address within a reasonable time before delivery.

The contracting authority must be *notified* of the exact date of delivery within the period indicated in the purchase order. All deliveries must be made to the agreed place of delivery during the hours indicated in the purchase order.

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

4.2. Each delivery must be accompanied by a consignment note in duplicate, duly signed and dated by the contractor or its carrier, stating the purchase order number and particulars of the supplies delivered. One copy of the consignment note must be countersigned by the contracting authority and returned to the contractor or to its carrier.

4.3. Signature of the consignment note by the contracting authority is simply an acknowledgment of the fact that the delivery has taken place and in no way implies conformity of the supplies with the purchase order.

Conformity of the supplies delivered must be evidenced by the signature of a certificate to that effect by the contracting authority no later than one month after the date of delivery, unless otherwise specified in the purchase order.

Conformity must be declared only where the conditions laid down in the purchase order are satisfied and the supplies conform to the tender specifications.

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

4.4. The supplies delivered by the contractor to the contracting authority must be in conformity with the purchase order in respect of quantity, quality, price and packaging.

The supplies delivered must:

(a) correspond to the description given in the contractor's tender and possess the characteristics of the supplies provided by the contractor to the contracting authority as a sample or model;

(b) be fit for any specific purpose required of them by the contracting authority and made known to the contractor at the time of conclusion of the contract and accepted by the contractor;

(c) be fit for the purposes for which supplies of the same type are normally used;

(d) 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 the contractor's tender;

(e) 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.

4.5. The contractor is liable to the contracting authority for any lack of conformity which exists at the time the supplies are verified.

In the event of lack of conformity, without prejudice to Article 15 on liquidated damages applicable to the total price of the supplies concerned, the contracting authority is entitled:

(a) either to have the supplies brought into conformity, free of charge, by repair or replacement;

(b) or to have an appropriate reduction made in the price.

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 the contracting authority.

The term 'free of charge' in point (a) refers to the costs incurred to bring the supplies into conformity, particularly the cost of postage, labour and materials.

4.6. If required by the purchase order, the contractor must assemble the supplies delivered within a period of one month unless otherwise specified in the purchase order.

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 was provided for by the purchase order and the supplies were installed by the contractor or under its responsibility. This applies equally if the product was to be installed by the contracting authority and was incorrectly installed owing to a shortcoming in the installation instructions.

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

Unless otherwise specified in the purchase order, pallets must be considered as one-way packaging and do not need to be returned. Each box must be clearly labelled with the following information:

- name of contracting authority and address for delivery;
- name of contractor;
- description of contents;
- date of delivery;

- number and date of purchase order.

4.8. The supplies must be guaranteed 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, and 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.

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.

Services

4.9. The contractor must provide services of a high quality standard, 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.

4.10. The contractor must comply with the minimum requirements provided for in 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/EU[1].

4.11. If the contractor fails to provide the service in accordance with the contract ('unperformed obligations') or if it fails to provide the service in accordance with the expected quality levels specified in the tender specifications ('low-quality delivery'), the contracting authority may reduce or recover payments proportionally to the seriousness of the unperformed obligations or low-quality delivery. This includes in particular cases where the contracting authority cannot approve a *result*, report or deliverable as defined in the purchase order after the contractor has submitted the required additional information, correction or new version. A reduction in price may be imposed, together with liquidated damages under the conditions of Article 15.

[1] OJ L 94, 28.3.2014, p. 65.

4.12. The contracting authority must *formally notify* the contractor of its intention to reduce payment 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 contracting authority, taking into account the relevant observations, must *notify* the contractor:

(a) of the withdrawal of its intention to reduce payment; or

(b) of its final decision to reduce payment and the corresponding amount.

4.13. Any reduction in price does not affect the contractor's actual or potential liability or the contracting authority's rights under Article 17.

4.14. The contractor has sole responsibility for complying with any legal obligations incumbent on it, notably those resulting from tax and workplace safety legislation.

4.15. Contractors who are natural persons are required to provide proof of their status as a self-employed person. For that purpose they must submit supporting documents concerning their social security cover and value added tax (VAT) status.

4.16. The contractor has sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the contract under Belgian laws and regulations.

4.17. All periods specified in the contract are calculated in calendar days, unless otherwise specified.

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

4.19. The contract must be performed in such a way as to exclude the possibility of the contractor or its *personnel* executing tasks under conditions identical to the working conditions of a person employed by the contracting authority. The contractor or its *personnel* must not be incorporated into the contracting authority's administrative organisation.

4.20. In the framework of its employment or service relationships with its *personnel* the contractor must indicate that

- *personnel* executing the tasks assigned to the contractor may not receive orders directly from the contracting authority;

- the contracting authority may not under any circumstances be considered to be the *personnel's* employer and the said *personnel* must undertake not to invoke in respect of the contracting authority any right arising from the contractual relationship between the contracting authority and the contractor.

4.21. 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 services, as the case may be on the basis of the selection criteria set out in the tender specifications.

4.22. At the contracting authority'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 on the premises of the contracting authority.

The contractor bears the cost of replacing its *personnel* and is responsible for any delay in providing the services resulting from the replacement of *personnel*.

4.23. The contractor must record and report to the contracting authority any problem that affects its ability to provide the services. The report must describe the problem, state when it started and what action the contractor is taking to resolve it.

5. COMMUNICATION BETWEEN THE PARTIES

5.1. Form and means of communication

Any communication of information, notices or documents under the purchase order must:

(a) be made in writing in paper or electronic format in the language of the purchase order;

(b) bear the purchase order number;

(c) be made using the relevant communication details set out in the purchase order; and

(d) be sent by post or email.

If a party requests written confirmation of an email 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 purchase order refers to the date when the communication was sent.

An email is deemed to have been received by the receiving party on the day of dispatch of that email, provided that it is sent to the email address indicated in the purchase order. 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 post. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.

Post sent to the contracting authority is deemed to have been received by the contracting authority on the date on which the department responsible referred to in the purchase order registers it.

Formal notifications 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 has been delivered to the specified recipient.

5.3. Submission of financial documents via *e-PRIOR* and validity of these documents

5.3.1. For communication of financial documents the parties agree that the contractor will either use the *supplier portal* or take the necessary measures to use EDI.

5.3.2. The parties hereby agree that any financial document and related attachments exchanged through the *supplier portal* or through a direct connection established between the contractor and the contracting authority's *back offices* will have the same legal effects as paper invoices and will be admissible as evidence in legal proceedings.

5.3.3. The contracting authority must take the necessary measures to implement and maintain electronic systems that enable the *supplier portal* to be used effectively. The electronic systems are specified in the Supplier Portal Overview[2] and e-Invoicing User Manual[3].

5.3.4. Should a direct connection be established between the contractor and the contracting authority's *back offices* to allow electronic transfer of financial documents, both parties must take the measures necessary on their side to implement and maintain electronic systems that enable EDI to be used effectively. The electronic systems are specified in the *interface control document*[4].

5.3.5. If communication via the *supplier portal* or the EDI communication, as appropriate, is hindered by factors beyond the control of one party, it must notify the other immediately and the parties must take the necessary measures to restore this communication.

5.3.6. If it is impossible to have the *supplier portal* or the EDI communication restored within a period of two working days, the contracting authority will notify the contractor that an alternative messaging form will be used, i.e. paper messaging or email, until the *supplier portal* or EDI communication, as appropriate, is restored.

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[2] Please see http://ec.europa.eu/dgs/informatics/supplier_portal/doc/um_supplier_portal_overview.pdf

[3] Please see http://ec.europa.eu/dgs/informatics/supplier_portal/doc/um_sp_e-invoicing.pdf

[4] The document is available for consultation at https://circabc.europa.eu/w/browse/5290b7b0-8ca8-454b-87eb-0ac990362861

5.3.7. If it is impossible for the contractor to have the communication restored within a period of two working days, the contractor will notify the contracting authority that an alternative messaging form will be used, i.e. paper messaging or email, until the *supplier portal* or EDI communication, as appropriate, is restored.

5.3.8. The contractor must be notified of changes in the *interface control document*. When such a change requires adaptations by the contractor, then the contractor will have a period of six months to implement this change. This period can be shortened upon mutual agreement of the parties. This period of six months does not apply to urgent measures required by the security policy for the information systems of the contracting authority to ensure the integrity, confidentiality and non-repudiation of information and the availability of *ePRIOR*.

5.4. Validity and acceptance of electronic invoices

5.4.1. The parties agree that an invoice, sent via the *supplier portal*, qualifies as an electronic invoice.

5.4.2. Similarly, should a direct connection be established between the contractor and the contracting authority's *back offices* to allow electronic transfer of financial documents, the parties agree that a financial document, sent as mentioned in the *interface control document*, qualifies as an *EDI message*.

5.4.3. Where a financial document is dispatched through the *supplier portal*, it is deemed to have been legally issued or sent when the contractor is able to successfully submit the financial document without any error messages. The PDF and XML documents generated in relation to the financial document are to be considered as proof of receipt by the contracting authority.

5.4.4. Where a financial document is dispatched using a direct connection established between the contractor and the contracting authority's *back offices*, the financial document is deemed to have been legally issued or sent when its status is 'received' as defined in the *interface control document*.

5.5. Storage of electronic invoices and safety measures

5.5.1. When using the *supplier portal*, the contractor must, for each electronic invoice, download the PDF and XML message as applicable within one year of submission, and store them securely together with the related attachments, if any, in accordance with the time limits and specifications prescribed by the applicable legislative requirements. After the end of the one-year period copies of the financial documents will no longer be available for automatic download from the system.

5.5.2. All *EDI messages* exchanged by the parties must be stored by each party, unaltered and securely, in accordance with the time limits and specifications prescribed by the applicable legislative requirements.

5.5.3. When using a direct connection for the electronic transfer of financial documents, the parties must take the necessary measures to implement and maintain safety measures and procedures in order to adequately prevent messages from incurring any delays, being corrupted as to content or form, or being lost.

5.5.4. In all cases the parties must strive to prevent third parties from obtaining unauthorised access to messages.

5.5.5. If the use of safety measures and procedures leads to the rejection of or detection of one or more errors in an *EDI message*, the receiver must inform the sender thereof as soon as possible, but at the latest within two calendar days.

6. LIABILITY

6.1. The contracting authority 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 *performance of the contract*.

6.2. 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 the contracting authority with evidence of insurance cover.

6.3. The contractor is liable for any loss or damage caused to the contracting authority during or as a consequence of *performance of the contract*, including in the event of subcontracting, but only 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 or of its *personnel* or subcontractors, the contractor is liable for the whole amount of the damage or loss.

6.4. If a third party brings any action against the contracting authority in connection with the *performance of the contract*, including any action for alleged breach of intellectual property rights, the contractor must assist the contracting authority in the legal proceedings, including by intervening in support of the contracting authority upon request.

If the contracting authority's liability towards the third party is established and if such liability is caused by the contractor during or as a consequence of the *performance of the contract*, Article 6.3 applies.

6.5. If the contractor is composed of two or more economic operators (i.e. which submitted a joint tender), they are all jointly and severally liable to the contracting authority for the *performance of the contract*.

6.6. The contracting authority 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 the contracting authority.

7. CONFLICTS 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 contracting authority 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.

The contracting authority 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.

7.3. 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 *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

8.1. The contracting authority 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* and identified in writing as confidential.

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* 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 contracting authority and the contractor during the *performance 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 means other 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 natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the *performance of the contract*, a commitment that they will comply with this Article. At the request of the contracting authority, the contractor must provide documentary evidence of this commitment.

9. PROCESSING OF PERSONAL DATA

9.1. Any personal data included in the contract must be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Such data must be processed by the data controller solely for the purposes of the performance, management and monitoring of the contract. This does not affect its possible transmission to bodies entrusted with monitoring or inspection tasks in application of Union law.

9.2. The contractor has the right to access its personal data and the right to rectify any such data. The contractor should address any queries concerning the processing of its personal data to the data controller.

9.3. The contractor has right of recourse at any time to the European Data Protection Supervisor.

9.4. If the contract requires the contractor to process any personal data, the contractor may act only under the supervision of the data 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 data subjects may exercise their rights.

9.5. The contractor must grant *personnel* access to the data to the extent strictly necessary for the performance, management and monitoring of the contract.

9.6. The contractor must adopt appropriate technical and organisational security measures, giving due regard to the risks inherent in the processing and to the nature of the personal data concerned, in order to:

(a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:

(i) unauthorised reading, copying, alteration or removal of storage media;

(ii) unauthorised data inputting, as well as any unauthorised disclosure, alteration or erasure of stored personal data;

(iii) unauthorised use of data processing systems by means of data transmission facilities;

(b) ensure that authorised users of a data processing system can access only the personal data to which their access right refers;

(c) record which personal data have been communicated, when and to whom;

(d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting authority;

(e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;

(f) design its organisational structure in such a way that it meets data protection requirements.

9.7. Any request from a third party to the contract [be it a private person or any public authority]for disclosure of personal data held by the contractor or to which the contractor has access must be immediately communicated to the contracting authority.

9.8. An infringement by the contractor or its *personnel* of the provisions defined in this Article constitutes a breach of contract entitling the contracting authority to terminate the contract with immediate effect at the contractor's expense and will render the latter liable for damages, with interest, for any resulting loss.

10. SUBCONTRACTING

10.1. 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 the contracting authority.

10.2. Even if the contracting authority authorises subcontracting, the contractor remains bound by its contractual obligations and is solely responsible for the *performance of the contract*.

10.3. The contractor must ensure that the subcontract does not affect the rights of the contracting authority under the contract, particularly those under Articles 8, 13 and 21.

10.4. The contracting authority may request that the contractor replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article 17.1.

11. AMENDMENTS

11.1. Any amendment to the contract must be made in writing before all contractual obligations have been fulfilled.

11.2. An 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.

12. ASSIGNMENT

12.1. The contractor must not assign the rights and obligations arising from the contract, including claims for payments or factoring, without prior written authorisation from the contracting authority. In such cases, the contractor must provide the contracting authority with the identity of the intended assignee.

12.2. Any right or obligation assigned by the contractor without authorisation is not enforceable against the contracting authority.

13. INTELLECTUAL PROPERTY RIGHTS

13.1. Ownership of the rights in the results

The Union irrevocably acquires worldwide ownership of the *results* and of all intellectual property rights under the contract. 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 to all technological solutions and information created or produced by the contractor or by its subcontractor in *performance of the contract*. The contracting authority may exploit and use the acquired rights as stipulated in the contract. The Union acquires all the rights from the moment the contracting authority approves the *results* delivered by the contractor. Such delivery and approval are deemed to constitute an effective assignment of rights from the contractor to the Union.

The payment of the price includes any fees payable to the contractor in relation to the acquisition of ownership of rights by the Union including for all forms of exploitation and of use of the *results*.

13.2. Licensing rights on pre-existing materials

The Union 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 Union, which may use the *pre-existing materials* for all the modes of exploitation set out in the contract. All *pre-existing rights* are licensed to the Union from the moment the *results* are delivered and approved by the contracting authority.

The licensing of *pre-existing rights* to the Union 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 Union, including for all forms of exploitation and of use of the *results*.

Where *performance of the contract* requires that the contractor use *pre-existing materials* belonging to the contracting authority, the contracting authority may request that the contractor sign 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. Modes of exploitation

The Union acquires the rights to the results for the following modes of exploitation:

(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 wired 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 right also includes communication 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 or 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 reutilisation of all or a substantial part of the contents of the database by the distribution of copies, by renting, by online or other forms of transmission;

(h) where the *results* are or include patentable subject-matter: the right to register them as a patent and to further exploit such a 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 that 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 contracting authority, subject to their signing of adequate confidentiality undertakings where necessary;

(k) where the *results* are documents: the right to store and archive the *results* in line with the document management rules applicable to the contracting authority, 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 Union or by subcontractors which result from the contract and from the intention of the parties;

(ii) the rights to decompile or disassemble the software;

(m) to the extent that the contractor may invoke moral rights, the right for the contracting authority, except where otherwise provided in the contract, to publish the *results* with or without mentioning the name(s) of the *creator*(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 Union on all parts of the *results*, irrespective of whether they are created by the contractor or consist of *pre-existing materials*.

Where *pre-existing materials* are inserted in the *results*, the contracting authority 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 cost to the contracting authority. In such a case, the contractor must inform the contracting authority before making such a choice and the contracting authority 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 contracting authority may envisage within the limits set in the contract, the *results* 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 the contracting authority with this list or declaration, 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 contracting authority, the contractor must provide evidence that it has ownership of, or the right to use, all the listed *pre-existing rights*, except for the rights owned or licensed by the Union. The contracting authority may request this evidence even after the end of the contract.

This evidence may refer, for example, to rights to: parts of other documents, images, graphs, fonts, 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 or 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 *result*, 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 contracting authority;

(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 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 contracting authority. The contractor must take the necessary measures to obtain such consent in accordance with the applicable legal provisions.

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 as set out in Article 13.3, with the following disclaimer: '© — year — European Union. All rights reserved. Certain parts are licensed under conditions to the EU', or with any other equivalent disclaimer as the contracting authority 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 Union funding and disclaimer

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

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*.

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, the contracting authority may claim liquidated damages for each day of delay using the following formula:

0.3 x (*V/d)* where *V* is the price of the relevant purchase or deliverable or *result* or, failing that, the amount specified in the purchase order;

d is the duration specified for delivery of the relevant purchase or deliverable or *result* or, failing that, the duration of *performance of the contract* specified in the purchase order, expressed in days.

15.2. Procedure

The contracting authority must *formally notify* the contractor of its intention to apply liquidated damages 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 contracting authority, taking into account the relevant observations, must *notify* the contractor:

(a) of the withdrawal of its intention to apply liquidated damages; or

(b) of 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 this Article is not a penalty and represents a reasonable estimate of fair compensation for the damage incurred due to failure to provide the services within the applicable time limits set out 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 contracting authority's rights under Article 17.

16. SUSPENSION OF THE PERFORMANCE OF THE CONTRACT

16.1. Suspension by the contractor

If the contractor is affected by *force majeure*, it may suspend the *performance of the contract*. The contractor must immediately *notify* the contracting authority of 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* the contracting authority as soon as it is able to resume *performance of the contract*, unless the contracting authority has already terminated the contract.

16.2. Suspension by the contracting authority

The contracting authority may suspend the *performance of the contract* or any part of it:

(a) if the procedure for awarding the contract or the performance of the contract proves to have been subject to *substantial errors, irregularities or fraud*;

(b) in order to verify whether the presumed *substantial errors, irregularities or fraud* actually occurred.

The contracting authority must *formally notify* the contractor of the suspension. Suspension takes effect on the date of *formal notification*, or at a later date if the *formal notification* so provides.

The contracting authority must *notify* the contractor as soon as possible whether:

(a) it is lifting the suspension; or

(b) it intends to terminate the contract under point (f) or (j) of Article 17.1.

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

17. TERMINATION OF THE CONTRACT

17.1. Grounds for termination by the contracting authority

The contracting authority may terminate the contract in the following circumstances:

(a) if provision of the services under the contract has not actually started within 15 days of the scheduled date and the contracting authority considers the new date proposed, if any, unacceptable, taking into account Article 11.2;

(b) if the contractor is unable, through its own fault, to obtain any permit or licence required for *performance of the contract*;

(c) if the contractor does not perform the contract in accordance with the tender specifications or is in breach of another substantial contractual obligation;

(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 106(1) of the Financial Regulation[5];

(e) if the contractor or any *related person* is subject to any of the situations provided for in points (c) to (f) of Article 106(1) or to Article 106(2) of the Financial Regulation;

(f) if the procedure for awarding the contract or the *performance of the contract* proves to have been subject to *substantial errors*, *irregularities* or *fraud*;

(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;

(i) 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;

(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.

17.2. Grounds for termination by the contractor

The contractor may terminate the contract if:

(a) it has evidence that the contracting authority has committed *substantial errors*, *irregularities* or *fraud* in the procedure for awarding the contract or the *performance of the contract*;

(b) the contracting authority 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 tender specifications.

17.3. 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 30 days following the date of receipt to submit observations, including the measures it has taken 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.

[5] Regulation (EU, Euratom) No 966/2012 on the financial rules applicable to the general budget of the Union, as amended: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32012R0966

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) and (g) to (i) of Article 17.1 and in Article 17.2, 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 17.1, 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 contracting authority and regardless of the grounds for termination, the contractor must provide all necessary assistance, including information, documents and files, to allow the contracting authority 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. 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, unless 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.

17.4. Effects of termination

The contractor is liable for damage incurred by the contracting authority as a result of the termination of the contract, including the cost of appointing another contractor to provide or complete the services, unless the damage was caused by the situation specified in point (j) of Article 17.1 or in Article 17.2. The contracting authority 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 17.2.

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 contracting authority may terminate the contract with each member of the group separately on the basis of points (d), (e) or (g) of Article 17.1, under the conditions set out in Article 11.2.

18. INVOICES AND VALUE ADDED TAX

Invoices must contain the contractor's (or leader's in the case of a joint tender) 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 (or leader in the case of a joint tender) for VAT purposes and must specify separately amounts not including VAT and amounts including VAT.

The contracting authority is exempt from all taxes and duties, including VAT, in accordance with Articles 3 and 4 of the Protocol on the privileges and immunities of the European Union.

The contractor (or leader in the case of a joint tender) must complete the necessary formalities with the relevant authorities to ensure that the services required for *performance of the contract* are exempt from taxes and duties, including VAT.

19. PAYMENTS

19.1. Time limit for payments

Payments must be made within 30 days of receipt of the invoice.

19.2. Date of payment

Payments are deemed to be effected on the date when they are debited to the contracting authority's account.

19.3. Currency

Payments are made in euros or in the currency provided for in the purchase order.

19.4. Conversion

The contracting authority 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.
http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm

19.5. Costs of transfer

The costs of the transfer are borne as follows:

(a) the contracting authority 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.

19.6. Payment of the balance

The contractor (or leader in the case of a joint tender) must send an invoice for payment of the balance within 60 days of the end of the period of provision of the services, as provided for in the purchase order or in the tender specifications.

Payment of the invoice and approval of documents do 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.

19.7. Suspension of the time allowed for payment

The contracting authority may suspend the payment periods specified in the purchase order 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 contracting authority 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 contracting authority has observations on the documents or deliverables submitted with the invoice.

The contracting authority must *notify* the contractor (or leader in the case of a joint tender) as soon as possible of any such suspension, giving the reasons for it.

Suspension takes effect on the date the contracting authority sends 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 that the contracting authority 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, the contracting authority reserves the right to terminate the contract in accordance with point (c) of Article 17.1.

19.8. Interest on late payment

On expiry of the payment periods specified in the purchase order, 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 as provided for in Article 19.7 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 19.2.

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 if it requests it within two months of receiving late payment.

20. RECOVERY

20.1. If an amount is to be recovered under the terms of the contract, the contractor must repay the contracting authority the amount in question.

20.2. Recovery procedure

Before recovery, the contracting authority 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, the contracting authority decides to pursue the recovery procedure, it must confirm recovery via a debit note, which is sent to the contractor by *formal notification* and which specifies 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 contracting authority may, after informing the contractor in writing, recover the amounts due:

(a) by offsetting them against any amounts owed to the contractor by the Union or by the European Atomic Energy Community;

(b) by calling in a financial guarantee if the contractor has submitted one to the contracting authority;

(c) by taking legal action.

20.3. Interest on late payment

If the contractor does not honour the obligation to pay the amount due by the date set by the contracting authority in the debit note, the amount due bears interest at the rate indicated in Article 19.8. 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 contracting authority receives the full amount owed.

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

20.4. 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). The contracting authority first claims the full amount from the leader of the group.

If the leader does not pay by the due date and if the amount cannot be offset in accordance with point (a) of Article 20.2, the contracting authority may claim the full amount from any other member of the group by *notifying* it of the debit note already sent to the leader under Article 20.2.

21. CHECKS AND AUDITS

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

Such checks and audits may be initiated at any moment during *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 contracting authority. Audits are carried out on a confidential basis.

21.2. 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.

21.3. The contractor must grant the contracting authority's staff and outside *personnel* authorised by the contracting authority 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.

21.4. On the basis of the findings made during the audit, a provisional report is drawn up. The contracting authority 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.

On the basis of the final audit findings, the contracting authority may recover all or part of the payments made in accordance with Article 21 and may take any other measures which it considers necessary.

21.5. In accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud 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 European Anti-Fraud Office, 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 provision of the services and up to five years starting from the payment of the balance.

21.6. The Court of Auditors has the same rights as the contracting authority, particularly right of access, for the purpose of checks and audits.

SECURITY MEASURES

Section 1 – ACCESS TO SECRETARIAT PREMISES

A. Access passes

Anyone requiring access to the contracting authority's premises must first be accredited by the Accreditation Service. Accreditation is the process of granting the appropriate access pass for access to certain parts of the building once it has been ascertained that the person in question is entitled to enter.

The competent official from the requesting department concerned within the contracting authority will request access passes for *personnel* contracted by the contracting authority.

To this end, the contractor must:

(1) at least five working days before the scheduled start of the contract, send the designated department of the contracting authority a list of the names and full identities of members of the contractor's *personnel* who will work on the contracting authority's premises, together with the registration numbers of the vehicles which must have access to the site in order to perform the contract. Any communication relating to access to the contracting authority's premises and access passes should be sent to the email address of the contact person mentioned on the purchase order;

(2) notify the designated department of the contracting authority, at least three working days in advance, of any projected changes to the team(s) working for the contracting authority;

(3) notify the members of the contractor's *personnel*: that security staff of the contracting authority are authorised to check the identity of any person wishing to gain entrance to the premises of the contracting authority and, if need be, deny that person access; that the contractor's *personnel*, and the vehicles which they use, may be subject to security checks on entering or leaving the contracting authority's premises; and that security staff are entitled to temporarily confiscate prohibited objects that pose a risk to security;

(4) take all necessary measures to protect people and property from any risks arising from performance of the contract.

Should the contractor's *personnel* need to enter secured areas they must have the prior authorisation of the service in charge of the secured area concerned. Details are laid down in Council Decision 2013/488/EU of 23 September 2013 on the security rules for protecting EU classified information (OJ L 274, 15.10.2013, p.1).

Access passes are issued to the holder in person on production of:

(a) proof of identity, i.e. a document bearing a photograph, such as a national identity card or passport. Other documents, such as a credit card or a driving licence, will not be accepted as proof of identity;

(b) an extract from police records certifying good conduct (*extrait de casier judiciaire/uittreksel strafregister*) obtained from the holder's local police station within the previous two months.

Access passes are strictly personal and are the individual responsibility of their holder. Passes may not be given to other members of the contract team or other third parties. Breaches may lead to measures such as refusal of entry or withdrawal of certain access rights.

Access passes must be worn visibly at all times on the contracting authority's premises.

If an access pass is lost or stolen it must be reported to the Security Office immediately, and in the case of a permanent pass also to the police. The holder must apply for a new access pass. Upon recovery of a lost or stolen permanent access pass, it must be returned to the Accreditation Service even if it has expired.

B. Vehicles

Contractors' vehicles may only use the entrance at Chaussée d'Etterbeek/Etterbeeksesteenweg 70 for the Justus Lipsius (JL) building, and Chaussée d'Etterbeek/Etterbeeksesteenweg 52 for the Lex building.

Holders of a permanent pass may park their vehicles in the JL service car park provided that:

- the vehicle in question is registered with the Accreditation Service;
- the pass is programmed to allow automatic access to the service car park;
- the sticker issued by the Accreditation Service is placed on the inside of the vehicle's windscreen, on the left-hand side.

All occupants of a vehicle, and not just the driver, must present their individual permanent access passes to the security guard. Passengers without a permanent pass will be refused access at the car park entrance and will be required to enter the building by a pedestrian entrance, where they will have to undergo an electronic security check.

Drivers with *ad hoc* authorisation may park their vehicles on the access ramp to the loading bay at JL but must put the cone issued at the guard's lodge on the roof of the vehicle.

Parking spaces are available on a 'first come, first served' basis.

Additional security checks are carried out on all vehicles and passengers at the JL car park entrance while summit arrangements are in place.

Belgium's highway code applies to driving on the internal access-ways of the site and in the car park. Vehicles driving in the car parks must have their headlights on. Parked vehicles must be locked and engines must be switched off.

Headroom in the car parks is generally limited to 2.05 m. Drivers wishing to enter the car park with a higher vehicle must first consult the contracting authority's Accreditation Service.

Persons with reduced mobility may request a reserved parking space via the Health and Safety Department (service.prevention@consilium.europa.eu). This option is also open to people with temporarily reduced mobility.

Please inform the Health and Safety Department should you wish to park an LPG vehicle.

In the event of an accident, an accident report form ('incident report', available from the Security Office) must be completed by the parties involved. Anyone whose vehicle causes damage to the contracting authority's property will be held liable for repair costs. The Security Office must be notified (tel. 7851 or 8909) and an accident report form completed for the insurance companies. The contracting authority declines liability for any loss resulting in particular from accidents, theft or damage, whatever the reason or cause, occurring in the car park.

Subcontractors

Where the contractor has concluded subcontracting arrangements in accordance with the contract, the provisions of this Annex will apply *mutatis mutandis* to the subcontractor(s) and their *personnel*.

Section 2 – CCTV

For the safety and security of its staff, visitors, buildings, assets and information, and for logistical reasons, the contracting authority operates a video protection system on parts of its premises. Further details on the contracting authority's video systems are available in 'The General Secretariat of the Council's Policy on Use of Video Systems', approved by the Secretary-General on 16 June 2011, which is available on the Council website at http://www.consilium.europa.eu/en/general-secretariat/corporate-policies/pdf/video-en_pdf/