



MINISTRY OF FINANCE

**General Terms of Public Procurement
in service contracts**

JYSE 2009 SERVICES

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Introduction

On 22 December 1993, the Ministry of Trade and Industry approved General Terms of Public Procurement (JYSE 1994) in accordance with the Decree on Public Procurement (1416/93). As their name suggests, the terms have been used not only in central government but also in local government and other public procurement units. Since then, the General Terms of Public Procurement have not been changed or updated. The Decree on Public Procurement (1416/93), which had formed the basis for the approval of the terms, was repealed when the new Act on Public Procurement (348/2007) came into force on 1 June 2007.

As part of the general guidance on procurement activity and the development thereof, the Ministry of Finance established a working group on the General Terms of Public Procurement, whose task was to update and renew the General Terms of Public Procurement introduced in 1994. The working group ended up with a solution by which separate terms of contract were prepared for services and supplies: JYSE 2009 SUPPLIES AND JYSE 2009 SERVICES. The working group recommends that procurement units assess when preparing an invitation to tender whether the procurement in question mainly involves supplies or services and then select the terms of procurement that best suit the contract.

An objective in preparing the revised JYSE 2009 SUPPLIES and JYSE 2009 SERVICES has been to ensure that they apply as widely as possible to different types of procurement. The General Terms of Public Procurement cannot comprehensively specify terms of contract for all types of procurement and all procurement situations. The applicability and usability of the JYSE 2009 must be decided on a case-by-case basis. The working group recommends, however, that procurement units incorporate the JYSE 2009 SUPPLIES or JYSE 2009 SERVICES in their entirety into procurement contracts. The contracting parties shall have the opportunity to agree individual terms of contract in a manner differing from the JYSE 2009. Procurement units must specify in their invitations to tender the extent to which they possibly deviate from the JYSE 2009.

The General Terms of Public Procurement 1994 and other general terms of agreement used in the public sector have been used as a basis for preparing the JYSE 2009. The latest General Terms of Government IT Procurement (JIT 2007) have been widely utilised, particularly in preparing the JYSE 2009 SERVICES. By utilising the JIT 2007, the working group has endeavoured to standardise procedures and operating practices in IT service procurement and other service procurement.

In addition, the General Conditions for Building Contracts (YSE 1998) and the General Conditions for Consulting (KSE 1995) as well as other terms and conditions in general use have been utilised as background material in the preparation of the JYSE 2009.

Issues to be observed in applying the JYSE 2009

Value-added tax

In offers the price shall generally be stated exclusive of value-added tax (VAT 0%). The price shall accordingly be stated exclusive of value-added tax also in procurement contracts. This shall have no impact on the obligation to pay value-added tax. The supplier and service provider shall have the right to invoice from the customer the value-added tax associated with the supplies or service.

Advance payment and security

The making of possible advance payments should be agreed separately. The JYSE 2009 includes provisions on the lodging of security for any advance payment made.

Use of index clauses

In those sectors in which the use of an index clause is permitted and where there is a desire to use such a clause, the use of index clauses should be agreed separately.

Sale of Goods Act

The sale of movable property is regulated in the Sale of Goods Act (355/1987). Insofar as the terms of the JYSE 2009 SUPPLIES do not otherwise separately prescribe, the provisions of the Sale of Goods Act shall be applied.

International trade

The Finnish Sale of Goods Act shall be applied to supply contracts made on the basis of terms of the JYSE 2009 SUPPLIES. According to the JYSE 2009, contractual disputes relating to supply and service contracts shall be resolved in Finland in the Court of First Instance. In the JYSE 2009 it is expressly stated that the connecting factor rules of Finnish law shall not be applied to procurement contracts based on the JYSE 2009. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not be applied to procurement contracts made on the basis of these JYSE 2009 SUPPLIES. These terms and their use should be assessed on a case-by-case basis in international trade.

Options

The term option in the JYSE 2009 means a purchase option for additional supplies or services made in a procurement notice or an invitation to tender, or an option relating to the extension of the contract period. When submitting a tender in a competitive tender, the supplier is committed to the terms stated in the invitation to tender, such as a possible option. The use of an option is solely at the discretion of the customer. If the customer decides to order from a supplier or service provider additional supplies or services mentioned in a pro-

curement notice or an invitation to tender, or decides to extend the contract period exercising an option period mentioned in the competitive tender documents, the supplier or service provider shall be obliged to supply the supplies or services in questions.

Service levels and personnel

In the invitation to tender or contract, the procurement unit should specify carefully the service to be procured and its quality, including possible service level requirements. In addition, the procurement unit should in some cases specify the training and competence requirements set for personnel to be used in providing the service.

Minimum delivery and invoicing charges

In accordance with Paragraph 6.4 of the JYSE 2009 SUPPLIES, the supplier shall have no right to levy minimum delivery or invoicing charges. Therefore suppliers should take into consideration in the price of supplies costs arising from possible small deliveries. The procurement unit should on a case-by-case basis consider whether minimum delivery charges should be permitted in certain sectors. Paragraph 10.4 of the JYSE 2009 SERVICES applies only to invoicing charges.

Guarantee

According to the JYSE 2009 SUPPLIES, the guarantee shall be 24 months, if not otherwise agreed. Another guarantee period may be agreed, however, and in many cases it shall be justified to agree a shorter or longer guarantee period. In the JYSE 2009 SERVICES there is no term or condition relating to guarantees. If the service provided must include a guarantee, the contracting parties should agree on this separately in the service contract.

Security for guarantee period

If the contract requires a guarantee period, this should be agreed separately. The JYSE 2009 contains specifications relating to this.

Deliveries in emergencies

The JYSE 2009 has no specific terms and conditions on deliveries in emergencies. Some supply and service contracts may contain, if necessary, a separate contract on how the delivery of supplies or services shall be arranged in various crises and emergencies.

Damages

According to the JYSE 2009, only direct losses shall be compensated, if the losses have not been caused wilfully or through gross negligence, a violation of confidentiality or an infringement of intellectual property rights. No upper limit for damages has been set in the JYSE 2009. In some procurement contracts it might be appropriate to agree separately a maximum amount of damages with the supplier or service provider.

Defect notification and claim period

The JYSE 2009 states that any defect should be notified to the supplier or service provider within a reasonable time of the defect being detected, without making more detailed time specifications for submitting a claim. Procurement units will buy via contracts based on the JYSE 2009 very different types of supplies and services whose reasonable claim periods differ significantly from each other. If the contracting parties consider it necessary to agree more specific claim periods, these should be agreed separately.

Price and price adjustments

In the previous JYSE 1994, a price adjustment was possible only in such procurement contracts in which the price was linked to some basis for price adjustment. In the JYSE 2009 a more flexible price adjustment mechanism has been adopted. The key revisions relating to this are specified below.

In the JYSE 2009, the basis for determining the price is that the price is fixed, if not otherwise agreed. The price must accordingly be fixed throughout the entire contract period including possible option years.

In a contract in which the prices are fixed only for a set period, price negotiations will be required during the contract period. Paragraph 6.8 of the JYSE 2009 SUPPLIES and Paragraph 10.7 of the JYSE SERVICES shall, on the initiative of the supplier or service provider, apply to the price adjustment negotiations. When a price has been fixed for only a set period, the supplier or service provider can adjust prices after this in the ways specified in the JYSE 2009.

If the customer considers that it cannot accept the supplier's or service provider's price adjustment, and the contracting parties cannot unanimously agree on another price in price adjustment negotiations held after the price adjustment notification, the customer must give notice of terminating the contract. In other cases the price adjustments shall come into force automatically on the date notified by the supplier or service provider. The right to give notice rests only with the customer, as outlined in Paragraph 6.8 of the JYSE 2009 SUPPLIES and Paragraph 10.7 of the JYSE 2009 SERVICES.

The right to make a price adjustment proposal rests only with the customer, as outlined in Paragraph 6.9 of the JYSE 2009 SUPPLIES and Paragraph 10.8 of the JYSE 2009 SERVICES. The customer has no unilateral right to adjust prices without the approval of the supplier or service provider; the supplier or service provider shall determine the price level. If the supplier or service provider considers that it cannot accept the customer's price adjustment proposal, and the contracting parties cannot unanimously agree on another price in price adjustment negotiations, and the customer considers that it cannot continue the contract at the prevailing prices, the customer must give notice of terminating the contract. If the customer gives notice of terminating the contract, the contract shall continue using the prices that were valid before the customer's price adjustment proposal or if the contracting parties reach agreement on another price in the price adjustment negotiations, the contract shall continue using the prices thus agreed by the contracting parties.

The customer and supplier may, in accordance with the JYSE 2009, both propose price adjustments once in a 12-month period and at the earliest 12 months after the entry into force of the procurement contract. If prices must be adjusted more often than once in a 12-month period, the procurement unit must take this into consideration in its invitation to tender and state the procedure that deviates from the JYSE 2009.

In accordance with Paragraph 6.11 of the JYSE 2009 SUPPLIES and Paragraph 10.10 of the JYSE 2009 SERVICES, the supplier or service provider shall be obliged to continue delivering the supplies or services after notice of termination, if the customer so requires. If notice of termination is made on the basis of Paragraph 6.8 of the JYSE 2009 SUPPLIES or Paragraph 10.7 of the JYSE 2009 SERVICES, the prices of the supplier's or service provider's price adjustment notification shall be adhered to, or if notice of termination is made on the basis of Paragraph 6.9 of the JYSE 2009 SUPPLIES or Paragraph 10.8 of the JYSE 2009 SERVICES, the prices that were valid at the time when notice of termination was made shall be adhered to.

General Terms of Public Procurement in service contracts (JYSE 2009 SERVICES)

1 Scope

- 1.1 The following General Terms of Public Procurement shall be adhered to in service contracts, if not otherwise agreed.

2 Definitions

- 2.1 **Subcontractor**
A company or other operator in a contractual relationship with the actual service provider or its subcontractor, which delivers supplies or services to the actual service provider or its subcontractor.
- 2.2 **Procurement contract**
A contract between the customer and the service provider for the provision of services in accordance with the terms of contract.
- 2.3 **Change**
Change or additional work agreed to in the original scope or content of the service.
- 2.4 **Service**
Service plus related supplies and documents.
- 2.5 **Service provider**
Company or other operator which has undertaken to provide a service as well as to deliver related supplies and documents to the customer.
- 2.6 **End result of the service**
Report, plan, research results or other performance arising as the end result of the service provision.
- 2.7 **Contractual penalty**
A penalty separately agreed by the contracting parties which the service provider is obliged to pay to the customer in cases of breach of contract separately specified by the contracting parties. The customer shall have the right to the contractual penalty

without having to demonstrate the losses that would arise to the customer from the service provider's breach of contract. The term contractual penalty here does not mean, however, a delay penalty according to Paragraph 13.2.

- 2.8 Customer
The procurement unit performing the procurement.
- 2.9 Delay penalty
A penalty that the service provider is obliged to pay to the customer in the event of the service provider's delay. The customer shall have the right to the delay penalty without having to demonstrate the losses that would rise to the customer from the service provider's delay.

3 Contact persons

- 3.1 Both contracting parties shall nominate a contact person whose task is to supervise and monitor the implementation of the contract and to communicate on issues relating to the implementation of the contract. If not otherwise agreed, the contact person has no right to change the contract. A contracting party must without delay and in writing inform the contact person of the other contracting party about a change of contact person.

4 Subcontracting

- 4.1 The service provider may commission a subcontractor to perform its contractual obligations. The service provider shall be responsible for the work of the subcontractor as if it were its own. The service provider shall also be responsible for ensuring that the subcontractor fulfils the service provider's contractual obligations. The service provider must notify for the customer's approval the main subcontractors used by the service provider in providing the service. For good cause the customer may refuse to approve a subcontractor.

5 Service quality and defects in the service

- 5.1 The service must correspond to that which has been agreed throughout the entire contract period.
- 5.2 The service must fulfil the regulations of the European Union's mandatory legislation and of Finnish laws and decrees as well as regulations issued by the authorities.
- 5.3 The service provider shall provide the services prudently, with care and with such expertise that can reasonably be assumed from an expert, experienced service provider.

- 5.4 The service shall be provided in the Finnish language, if not otherwise agreed.
- 5.5 If the service deviates from that presented above, it shall be deemed to be defective.
- 5.6 If the service has a defect, the customer must inform the service provider about the defect within a reasonable period of the defect being detected and about when the defect was detected.
- 5.7 If the service has a defect, the service provider must remove the defect without delay. The service provider may be released from liability by demonstrating that the defect did not arise from a factor within the service provider's responsibility. The customer shall have the right instead of a repair to demand a price reduction.

6 Monitoring service quality

- 6.1 The service provider shall monitor the implementation of the service and service quality and shall report to the customer factors relating to the provision of the service in the agreed way. The service provider shall undertake to develop the service it provides during the contract period. If the customer so requires, the service provider must monitor the service quality with the aid of a customer feedback system.
- 6.2 The customer shall perform quality monitoring in accordance with its own needs. The service provider must supply the information requested by the customer for quality monitoring by the agreed deadline.
- 6.3 The customer and service provider shall meet at agreed intervals in service monitoring meetings. The contracting parties shall process matters relating, for example, to service implementation, quality, claims, customer feedback and future service needs.
- 6.4 The customer shall have the right during the contract period to inspect and at its own cost commission through an independent third party an inspection to investigate whether the service complies with requirements and the service provider has operated in accordance with the contract. The customer or the customer's representative shall have the right to access premises in which the service is provided as well as to interview personnel involved in providing the service and to familiarise itself with those documents of the service provider in respect of which familiarisation is necessary to evaluate the minimum requirements set for operations and the quality of the service content. The customer shall have the right to inspect only such information that relates to the fulfilment of the contractual obligations of the contract in question.
- 6.5 The customer must notify in advance its intention to make an inspection visit. The service provider shall have the right with good cause to reschedule an inspection visit for up to fourteen (14) days beyond the date proposed by the customer.
- 6.6 The service provider shall have the right to demand that the person performing the inspection sign a confidentiality agreement relating to the inspection. The confidentiality agreement shall not prevent the reporting of the results of the inspection to the customer.

7 Service provider's other obligations and responsibilities

- 7.1 The service provider shall undertake to cooperate with possible other service providers providing services to the customer at any given time such that the overall service configuration functions as flexibly and efficiently as possible for the customer. The service providers' cooperation must be arranged such that the service providers' business or professional secrets are not divulged. If cooperation gives rise to other than minor costs to the service provider, the contracting parties must agree on the sharing of costs before initiating activity that gives rise to additional costs.
- 7.2 The service provider shall maintain documentation relating to services. The service documentation shall include, for example, service process descriptions, manuals and instructions as well as material within the service provider's maintenance responsibility required for providing and developing the service. If not otherwise agreed, the service documentation must be in the Finnish language.
- 7.3 The service provider shall be responsible for the service it provides to the customer. The service provider shall be responsible for losses arising to the customer from the service it provides. In cases where the customer is liable for damages in respect a third party, cases of loss shall be handled such that the customer settles claims in accordance with its own procedures. If losses have arisen in the above-mentioned case as a result of a supplier neglecting its contractual obligations, the customer shall have the right to present a claim for compensation to the service provider. The customer shall also have the right to present a claim for compensation in the event that other losses arise to the customer from the neglect of contractual obligations.
- 7.4 The service provider must maintain a list of cases of loss in which losses have arisen to the customer or a third party. The service provider shall be obliged to notify the customer of such losses.

8 Personnel to be used in service provision

- 8.1 The service provider shall use individuals possessing suitable competence and experience for providing the service. The service provider shall immediately and without payment exchange an individual who lacks sufficient expertise or if there is other good cause to exchange the individual.
- 8.2 The service provider must avoid changes of personnel used for providing the service that may adversely affect service quality. Any new individual must fulfil the education and experience requirements possibly set for service personnel in the invitation to tender or contract.
- 8.3 The service provider or its personnel shall not be in an employment or public office relationship with the customer when handling tasks according to the contract.
- 8.4 The personnel used in providing the service, when working on the customer's premises, must comply with the customer's instructions and regulations relating to security, data protection and general behaviour as well as other instructions and regulations. The customer must notify the service provider in advance about all procedural obligations intended for the compliance of

personnel used in providing the service. The service provider shall retain work management and supervision responsibility for its own personnel, if no personnel hire or transfer of work management and supervision responsibility has been separately agreed.

- 8.5 If between the contracting parties there takes place a transfer of business in which personnel in the customer's employment transfer to the service provider's employment or the invitation to tender requires that personnel transfer to the service provider's employment on their former terms of employment, statutory provisions on the transfer of business shall be applied to the transferring personnel.

9 Customer's obligation to cooperate

- 9.1 The customer shall be responsible for ensuring that the tasks within the customer's responsibility are performed in accordance with the contract.
- 9.2 The customer must give the service provider sufficient and correct information for the provision of the service.
- 9.3 The customer must ensure that the service provider's personnel can access when necessary the customer's premises or equipment as agreed.

10 Price

- 10.1 The price shall be fixed, if not otherwise agreed. The price shall not include value-added tax.
- 10.2 The service provider shall invoice in accordance with the prevailing Value-Added Tax Act.
- 10.3 If not otherwise agreed, the price shall include the service in accordance with the contract, any indirect taxes and fees, excluding value-added tax, payable by the service provider and applicable at the deadline for tenders, travel and accommodation costs, daily allowances, overtime compensation and documentation relating to the service.
- 10.4 If not otherwise agreed, the service provider shall not be entitled to levy invoicing charges.
- 10.5 Any advance payment shall be considered a fixed part of the contract price.
- 10.6 The service provider shall have the right to take into consideration in the price reasonable direct costs arising from new public fees decreed by the authorities or increases of existing fees that take place after the submission of the tender, provided that they

were not known about when making the tender and that the service provider can demonstrate grounds for the price change. Accordingly the price of the service shall change from the date when the above-mentioned changes come into force. The service provider shall also have the above-mentioned right when the price is fixed.

- 10.7 If the price is not fixed, the service provider shall have the right during the contract period to adjust the price corresponding to the general cost trend of the service. The service provider must deliver a price adjustment notification in writing at least two (2) months before the price adjustment comes into force. The service provider must present to the customer an appropriate explanation of the cost trend and the reasons for the price adjustment. If no unanimity is reached on the price adjustment, the customer shall have the right to give notice of terminating the contract from the time that the price adjustment comes into force. The giving of notice must be made in writing before the new prices come into force. If the customer does not give notice of terminating the contract, the contract shall continue using the new prices notified by the service provider or other prices agreed together by the contracting partners in price adjustment negotiations.
- 10.8 If the price is not fixed, the customer shall have the right during the contract period to propose a price adjustment corresponding to the general cost trend of the supplies. If no unanimity is reached on the price adjustment and the customer considers that it cannot continue the contract under the prevailing prices, the customer shall have the right to terminate the contract with a notice period of two (2) months. Notice of termination must be made in writing. If the customer does not give notice of terminating the contract, the contract shall continue using the prices prevailing before the price adjustment proposal or using other prices agreed together by the contracting partners in price adjustment negotiations after the price adjustment proposal.
- 10.9 If not otherwise agreed, the contracting parties may propose price adjustments in the ways described in Paragraphs 10.7 and 10.8 at the earliest twelve (12) months after the contract came into force and at intervals of not less than twelve (12) months.
- 10.10 In the event of the customer giving notice of terminating the contract on the grounds presented in this section, the service provider shall be obliged if the customer so wishes to deliver the supplies at the prevailing prices, if the notice of termination has been made on the basis of Paragraph 10.8, or according to the prices notified by the service provider in the price adjustment notification, if the notice of termination has been made on the basis of Paragraph 10.7, until the time notified by the customer, however at most six (6) months from the ending of the contract.

11 Terms of payment

- 11.1 Payments shall be paid against an invoice. If not otherwise agreed, the invoice shall be due for payment twenty-one (21) days from the arrival of an acceptable invoice.

- 11.2 Invoicing shall take place using an electronic invoice if the customer and the service provider have electronic invoicing capability.
- 11.3 If not otherwise agreed, the service provider shall be entitled to invoice agreed payments when the service has been performed. Regular payments shall be invoiced at agreed invoicing periods in arrears. Invoices must include an itemisation of the grounds for invoicing.
- 11.4 If the customer does not pay an invoice by the due date, the service provider shall have the right to charge interest on arrears and reasonable collection costs.
- 11.5 The service provider shall have the right to cease fulfilling its contractual obligations if a clear and uncontested payment is delayed for more than thirty (30) days and the delayed payment is substantial. The service provider must notify the customer in writing of such a cessation at least fifteen (15) days before implementing it. Notification can be made immediately in the case of neglect.
- 11.6 The customer shall have the right on the grounds of a defect to withhold payment of the price of the service. The customer cannot, however, withhold a sum that evidently exceeds that to which the customer is entitled on the grounds of a defect. If, owing to a defective service, a replacement service has been acquired, the customer shall have the right to withhold costs arising from this from unpaid sums. The customer shall also have the right to withhold from unpaid sums a delay penalty in accordance with the contract or other possible contractual penalty or guarantee period security.

12 Security

- 12.1 If the customer is required under the contract to make an advance payment, the service provider must before making the advance payment post security to the satisfaction of the customer at least fifteen (15) per cent greater than the advance payment. The security must be valid for at least one month beyond the time when the service which is the subject of the advance payment has been performed. In the event of a delay on the part of the service provider in fulfilling its obligations, the service provider must extend the validity of the security.
- 12.2 If security for the guarantee period has been agreed, the service provider must before the guarantee period begins post security to the customer's satisfaction which must be at least ten (10) per cent of the contract price, excluding value-added tax, or in terms of a continuous service its imputed price for a twelve (12) month period. The security must be valid for at least one month beyond the expiry date of the guarantee period.
- 12.3 If security for the performance period of the service has been agreed, the service provider must post security to the customer's satisfaction which must be at least fifteen (15) per cent of the contract price, excluding value-added tax, or in terms of a continuous service its imputed price for a twelve (12) month period. The security must be valid for at least one month beyond the end of the period that the service is provided.

- 12.4 A bank deposit made in the customer's name or an absolute suretyship granted by a sound financial or insurance institution or other security acceptable to the customer shall primarily be accepted as security.
- 12.5 The service provider shall be responsible for all costs arising from acquiring the security.

13 Delay

- 13.1 If a contracting party perceives that it will be delayed in its obligations or considers a delay to be probable, the delaying party must immediately and in writing notify the other party of the delay and its impact on the fulfilment of the contract. In the event of a delay on the part of the service provider, the service provider must notify the customer of a new service performance date as soon as possible.
- 13.2 If the delivery is delayed for a reason caused by the service provider, the customer shall have the right to a delay penalty. If not otherwise agreed, the delay penalty shall be in magnitude one (1) per cent of the value, excluding value-added tax, of the delayed service or part thereof for every beginning seven (7) day period by which the service provider exceeds the agreed service performance date. The delay penalty shall be charged for a maximum of ten (10) weeks. The customer shall have the right to deduct the delay penalty from payments made to the service provider.
- 13.3 A delay in providing information or service documentation required under the contract shall be equivalent to a delay of the service.
- 13.4 If the customer has made an advance payment and the service is delayed for a reason caused by the service provider, the supplier shall be obliged to pay for the delay period annual interest according to the Interest Act for that part of the advance payment corresponding to the value of the delayed service. The customer shall have the right to deduct the interest from payments made to the service provider.

14 Force majeure

- 14.1 Force majeure is deemed to be an unusual and relevant event, occurring after the signing of the contract and preventing the fulfilment of the contract, which the contracting parties had no reason to take into account when signing the contract and which is beyond the control of the contracting parties, and whose consequences cannot be prevented without unreasonable additional cost or waste of time. Such an event may be war, rebellion, internal unrest, expropriation or confiscation for public needs, import or export ban, natural catastrophe, interruption of public transport or energy distribution, industrial action, fire or other corresponding event of unusual and significant impact beyond the control of the contracting parties.

- 14.2 A delay of a subcontractor shall be deemed to be force majeure only in the case that the delay of the subcontractor results from an obstacle referred to in Paragraph 14.1 and the subcontract cannot be performed elsewhere without unreasonable waste of time or cost.
- 14.3 If the fulfilment of a contractual obligation is delayed due to force majeure, the period for fulfilling the contractual obligation shall be extended for as long as is reasonable considering all the circumstances influencing the case.
- 14.4 Each contracting party must notify the other contracting party immediately about the occurrence of force majeure and also when force majeure ceases, after which the contracting parties must agree on its impact on the delivery.
- 14.5 Each contracting party can cancel the contract completely or partly if the fulfilment of the contract due to the continuation of force majeure is delayed by more than four (4) months.

15 Insurance

- 15.1 The service provider must have statutory and other insurance necessary for the provision of the service. The insurance must be valid for the entire contract period.
- 15.2 If not otherwise agreed, the service provider must acquire for its operations liability insurance, which must be sufficient in relation to the risks associated with providing the service. The service provider must on request deliver to the customer a certificate of the existence of the liability insurance before the signing of the contract.

16 Damages

- 16.1 The customer and the service provider shall have the right to receive damages for direct losses arising from the other contracting party's breach of contract.
- 16.2 If the contract is cancelled for a reason caused by the service provider on the basis of Section 18 and losses arise to the customer from this, the customer shall have the right to damages for losses arising from the premature ending of the contract.
- 16.3 The customer shall have the right to receive damages for delay or other losses arising from the service provider's breach of contract insofar as the amount of losses exceeds any delay penalty payable to the customer and any other contractual penalty separately agreed by the contracting parties.
- 16.4 A contracting party shall additionally have the right to compensation for indirect losses if the other contracting party has caused the losses wilfully or through gross negligence, violated confidentiality obligations or infringed intellectual property rights.

17 Price reduction and cancellation of the contract

- 17.1 If the service has been defective, the customer shall have the right to demand a price reduction from the service provider.
- 17.2 Each contracting party may cancel the contract completely or partly if the other contracting party has substantially violated its contractual obligations or it is evident that a substantial breach of contract will take place. If the breach of contract is reparable, the other party may cancel the contract only if the breach occurs repeatedly or the party responsible for the breach has not remedied the breach in reasonable time of being notified in writing of the breach by the other party.
- 17.3 A substantial breach of contract shall be deemed to be, for example, a service that does correspond to that agreed and the defect is not a minor one and the defect despite the customer's reminder is not remedied without delay or if in view of the nature of the contract the provision of the service is substantially delayed or the delays or defects occur repeatedly.
- 17.4 If the customer has made an advance payment, the service provider shall on the cancellation of the contract pay back to the customer the advance payment it received plus interest calculated according to the Interest Act from the date the advance payment was made to the repayment date.

18 Termination of the contract in special situations

- 18.1 The customer shall have the right to give notice of terminating the contract immediately, if the customer demonstrates that it would not have entered into the contract with the service provider if the customer had when making the procurement decision been aware of actual circumstances relating to the service provider. By these circumstances is meant the exclusion criteria listed in Sections 53 and 54 of the Act on Public Procurement (348/2007). Accordingly the service provider shall have the right to receive full payment for services provided up to the time the contract is terminated, but shall not be entitled to other compensation as a result of the termination of the contract.
- 18.2 The customer shall have the right to give notice of terminating the contract with immediate effect, if the service provider's financial or other circumstances are perceived to have changed substantially so that it cannot be assumed that the service provider will fulfil its contractual obligations and the service provider gives no reliable explanation about the fulfilment of its obligations. Before giving notice of termination, the customer must notify the service provider about the threat of termination and give the service provider an opportunity to provide an explanation within a reasonable period.

19 Intellectual property rights

- 19.1 If not otherwise agreed, intellectual property rights to the end results or documentation of the service shall not be transferred to the customer. All material that the customer and service provider transfers before or after the signing of the contract to the other party shall remain the property of the transferor of the material. The customer shall, however, have an irrevocable right of use to the end results of the service as well as to other material transferred to it by the service provider for a purpose related to the use of service in accordance with the contract. Right of use shall include the right to use, copy and make or commission changes. When it makes and commissions changes to material transferred by the service provider, the customer must ensure that none of the service provider's business or professional secrets are divulged. The customer shall have the right to transfer material to the party whom the customer's tasks are transferred.
- 19.2 The service provider shall be responsible for ensuring that services or related material provided by the service provider do not, when they are used, violate a third party's patent, copyright or other intellectual property rights which are valid in Finland.
- 19.3 If any claims are presented against the customer concerning intellectual property rights relating to the services or related material, the service provider shall be obliged to meet these claims on the customer's behalf and at its own expense. The service provider shall be responsible to the customer for ensuring that no legal costs, damages, other compensation payable to a third party or other liabilities towards a third party are incurred by the customer through claims or obligations arising from intellectual property rights relating to the services or related material.

20 Confidentiality and processing of personal data

- 20.1 The contracting parties shall each ensure on their own part that, when the service is provided, confidentiality, obligation to observe confidentiality, data protection and valid statutes passed on the disclosure of confidential information are adhered to. In addition, the service provider must adhere to instructions given by the customer in handling and archiving documents and data.
- 20.2 If the service provider provides statutory or other equivalent tasks that are the customer's responsibility, valid statutes on public administration relating to confidentiality such as the Act of the Openness of Government Activities must be adhered to in service provision.
- 20.3 The customer shall act as the controller (register keeper) referred to in the Personal Data Act (523/1999). On the termination of the commission relationship, personal data files relating to the commission relationship in the service provider's possession shall be transferred to the customer.

- 20.4 The service provider shall be responsible for ensuring that no private or family secrets that come to its knowledge when the service is provided or otherwise in activities under the contract are divulged without permission.
- 20.5 The service provider shall not without the customer's consent transfer confidential information or personal data to third parties.
- 20.6 The service provider shall be responsible for ensuring that the subcontractors it uses adhere to these provisions relating to confidentiality.
- 20.7 The service provider must make clear the content of the obligation to maintain secrecy to personnel providing the service.
- 20.8 If the customer so requires, the service provider must prepare a list of the service provider's or its subcontractor's personnel participating in the provision of the service who have access to the customer's material or sensitive information relating to the customer or a third party. The list must be continuously updated.
- 20.9 The contracting parties shall undertake to keep secret such confidential material and information that they receive from each other and which under law must be kept secret, and to undertake not to use them for purposes other than in accordance with the contract.
- 20.10 The transfer of information to an authority or other party on the basis of an obligatory official order shall not be deemed a violation of the obligation to maintain secrecy.
- 20.11 The service provider shall not use the contract or the customer's name in marketing without the customer's consent. If not otherwise agreed, the service provider can, however, use the contract as reference information when making tenders to procurement units referred to in the Act on Public Procurement.

21 Monitoring of service provider's financial situation

- 21.1 If a contract is covered by the Act on the Contractor's Obligations and Liability When Work is Contracted Out (1233/2006), the service provider must supply to the customer during the contract period, at twelve (12) month intervals, a certificate of tax payment or a tax liability certificate or a statement that a payment plan, approved by the tax recipient, has been made regarding tax liability as well as a certificate on the taking out of pension insurance and the payment of pension insurance premiums or a statement that a payment plan, approved by the premium recipient, has been made regarding outstanding pension insurance premiums.

- 21.2 The customer shall have the right to cancel the contract if the service provider does not supply the said certificates or statements within the prescribed period. Before the cancellation of the contract, the customer must make a claim in writing to the service provider about the neglect and notify the service provider about the threat of cancelling the contract unless the neglect is rectified within a reasonable period demanded by the customer.

22 Transfer of the contract, changes and options

- 22.1 The service provider shall not have the right without the customer's consent to transfer, even partially, the contract to a third party. The customer shall have the right to transfer the contract to such a third party to whom the customer's tasks are transferred fully or partially.
- 22.2 Changes to the contract must be made in writing. Changes made in electronic form shall be deemed changes in writing to the contract.
- 22.3 Changes relating to the service and their impact on the performance date of the service or price must be agreed in writing before measures are initiated.
- 22.4 If the contract includes an option and the terms and conditions for exercising this option are not precisely specified, the exercise of the option shall be at the customer's discretion.

23 Duty to help and assist should the service provider change

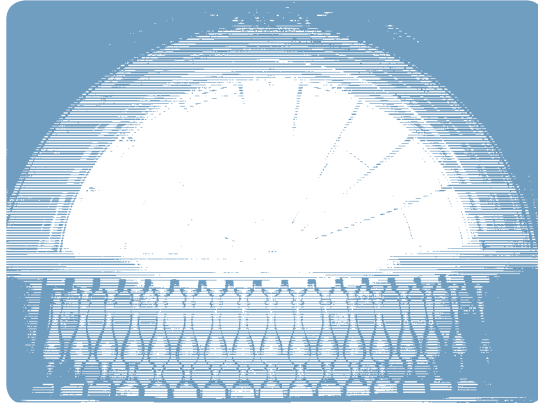
- 23.1 If not otherwise agreed, in the event of a change of service provider the service provider shall be obliged to help and assist the customer in transferring the contractual obligations to the new service provider or to be handled by the customer itself. The service provider shall have the right to charge for additional work arising from this in accordance with its price list.
- 23.2 The duty to help and assist shall begin before the termination of the contract, when notice of termination has been given or the contract has been cancelled or when the customer notifies that it is initiating a contract that applies to services under the contract. The obligation shall continue at most until twelve (12) months have expired since the termination of the contract.

24 Settlement of disputes and applicable law

- 24.1 Issues relating to the contract shall be resolved primarily through negotiations between the contracting parties.
- 24.2 If a dispute cannot be resolved through negotiation, they shall be submitted for resolution in Court of First Instance in the customer's domicile.
- 24.3 The laws of Finland shall be applied to the contract. The connecting factor rules of Finnish law shall not, however, be applied to the contract.

25 Order of validity of contract documents

- 25.1 The contract documents shall complement each other. If contract documents are conflict with each other, they shall be adhered to in the following order of validity, if not otherwise agreed:
1. Contract
 2. Invitation to Tender
 3. General terms of Public Procurement (JYSE 2009)
 4. Tender



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