



MINISTRY OF FINANCE

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

**JYSE 2009 SUPPLIES**

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# Contents

<b>Introduction</b> .....	3
Issues to be observed in applying the JYSE 2009 .....	4
<b>General Terms of Public Procurement in supply contracts (JYSE 2009 SUPPLIES)</b> ..	8
1    Scope .....	8
2    Definitions .....	8
3    Contact persons .....	9
4    Subcontracting .....	9
5    Properties of supplies, and defects .....	9
6    Price .....	10
7    Terms of payment .....	12
8    Security .....	12
9    Handover of supplies and transfer of risk .....	13
10   Acceptance inspections and delivery control .....	13
11   Guarantee .....	14
12   Delay .....	15
13   Force majeure .....	15
14   Damages .....	16
15   Price reduction and cancellation of the contract .....	16
16   Termination of the contract in special situations .....	17
17   Intellectual property rights .....	17
18   Confidentiality .....	18
19   Transfer of the contract, changes and options .....	18
20   Duty to help and assist should the supplier change .....	19
21   Settlement of disputes and applicable law .....	19
22   Order of validity of contract documents .....	19

## Introduction

On 23 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 The Decree on Public Procurement (1416/93), which had formed the basis for the approval of the terms, was repealed when the new Act on Public Procurement (348/2007) came into force on 1 June 2007.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

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### 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, an index clause 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 procurement 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 generally 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 agreement 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.

## 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 on the basis of contracts that include 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 way 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 Para-

graph 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 supply contracts (JYSE 2009 SUPPLIES)

## 1 Scope

- 1.1 The following General Terms of Public Procurement shall be adhered to in supply contracts, if not otherwise agreed.
- 1.2 Insofar as these General Terms of Public Procurement or competitive tender documents do not otherwise prescribe, the provisions of the Finnish Sale of Goods Act (355/1987) shall be adhered to.

## 2 Definitions

- 2.1 **Subcontractor**  
A company or other operator in a contractual relationship with the actual supplier or its subcontractor, which delivers supplies or services to the actual supplier or its subcontractor.
- 2.2 **Procurement contract**  
A contract between the customer and the supplier for the delivery of supplies in accordance with the terms of contract.
- 2.3 **Handover**  
The moment when the supplies have been handed over to the customer in accordance with the delivery terms.
- 2.4 **Change**  
Change or additional work agreed to in the original scope or content of the delivery.
- 2.5 **Contractual penalty**  
A penalty separately agreed by the contracting parties which the supplier 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 supplier's breach of contract. The term contractual penalty here does not mean a delay penalty according to Paragraph 12.2.



- 2.6 **Supplies**  
The supplies included in the delivery as well as related services and documents.
- 2.7 **Customer**  
The procurement unit performing the procurement.
- 2.8 **Supplier**  
The company or other operator which has committed to deliver the supplies as well as related services and documents to the customer.
- 2.9 **Risk**  
Liability for the destruction, disappearance, deterioration or diminution of the supplies beyond the contracting party's control.
- 2.10 **Delay penalty**  
A penalty that the supplier is obliged to pay to the customer in the event of the supplier's delay. The customer shall have the right to the delay penalty without having to demonstrate the damage that would rise to the customer from the supplier'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 supplier may commission a subcontractor to perform its contractual obligations. The supplier shall be responsible for the work of the subcontractor as if it were its own.

The supplier shall also be responsible for ensuring that the subcontractor fulfils the supplier's contractual obligations. The supplier must notify for the customer's approval the main subcontractors used by the supplier in the delivery. For good cause the customer may refuse to approve a subcontractor.

### **5 Properties of supplies, and defects**

- 5.1 The supplies must correspond in terms of type, quantity, quality and other properties to that which has been agreed.
- 5.2 If not otherwise agreed, the supplies must be suitable for the purpose for which such supplies are generally used or be suitable for the special purpose for which the sup-

plies are intended to be used if the supplier has been made aware of this purpose. The supplies must correspond in terms of quality at least to possible samples and model items delivered to the customer in advance.

- 5.3 The supplies 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 with respect to, for example, structure, equipment, work and fire safety, and electricity safety.
- 5.4 If the supplies deviate for that presented above, they shall be deemed to be defective.
- 5.5 The defectiveness of the supplies shall be assessed based on what the supplies are like in terms of their properties when risk is transferred to the customer. The supplier shall be responsible for a defect that the supplies have at this time, even though the defect is detected later.
- 5.6 If the supplies have a defect, the customer must inform the supplier about the defect within a reasonable period of the defect being detected and about when the defect was detected.
- 5.7 If the supplies have a defect, the supplier shall investigate at its own cost the cause of the defect and remove the defect without delay. The supplier may be released from liability by demonstrating that the defect did not arise from a factor within the supplier's responsibility. The supplier shall accordingly be entitled to charge for investigating and remedying the defect in accordance with an agreed valid price list, if not otherwise agreed.
- 5.8 If there is observed in the supplies a defect that prevents the supplies being taken into their intended use, the customer shall be entitled to withhold payment of the purchase price until the supplier has removed the defect.
- 5.9 The supplies must be accompanied by all certificates, permits and other documents to be acquired by the supplier and which are needed for the use of the supplies.
- 5.10 The supplier must deliver to the customer drawings and instructions and other information and documents included in the contract which needed for the installation, repair, maintenance and use of the supplies. The information and documents must be in the Finnish language unless the customer has approved the delivery of these documents in another language.
- 5.11 The supplier shall guarantee the availability of maintenance and spare parts for machines and equipment at reasonable prices and terms in the prevailing circumstances. If not otherwise agreed, maintenance and spare parts must be available for a period corresponding to the general useful life of the supplies.
- 5.12 The supplier may, with the consent of the customer, replace the supplies specified in the contract with other supplies. The replacement supplies must fulfil the requirements stipulated in the contract and they must correspond with the original supplies in terms of their properties. The supplier must deliver replacement supplies at a price corresponding to that of the original supplies.

## 6 Price

- 6.1 The price shall be fixed, if not otherwise agreed. The price shall not include value-added tax.
- 6.2 The supplier shall invoice in accordance with the prevailing Value-Added Tax Act.
- 6.3 If not otherwise agreed, the price shall include the supplies in accordance with the contract, any indirect taxes and fees, excluding value-added tax, payable by the supplier and applicable at the deadline for tenders, travel and accommodation costs, daily allowances and overtime compensation, packaging costs, documents included in the delivery, and maintenance and operating manuals.
- 6.4 If not otherwise agreed, the supplier shall not be entitled to levy minimum delivery or invoicing charges.
- 6.5 Any advance payment shall be considered a fixed part of the contract price.
- 6.6 The supplier 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 supplier can demonstrate grounds for the price change. Accordingly the price of the supplies shall change from the date when the above-mentioned changes come into force. The supplier shall also have the above-mentioned right when the price is fixed.
- 6.7 If the price is determined according to a pricelist of the supplier, importer, manufacturer or other corresponding operator and this pricelist changes during the contract period so that the price according to the pricing practice on the delivery date would be for the customer lower than the tender or order price, the supplier shall apply in invoicing the pricing according to the delivery date. If the supplier offers to the market the products ordered by the customer at a reduced price, the reduced price shall be applied until the sale or campaign has ended.
- 6.8 If the price is not fixed, the supplier shall have the right during the contract period to adjust the price to correspond with the general cost trend of the supplies. The supplier must deliver a price adjustment notification in writing at least two (2) months before the price adjustment comes into force. The supplier 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 supplier or other prices agreed together by the contracting partners in price adjustment negotiations.
- 6.9 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.

- 6.10 If not otherwise agreed, the contracting parties may propose price adjustments in the ways described in Paragraphs 6.9 and 6.8 at the earliest twelve (12) months after the contract came into force and at intervals of not less than twelve (12) months. If the supplier offers to the market the products ordered by the customer at a reduced price, the reduced price shall be applied until the sale or campaign has ended.
- 6.11 In the event of the customer giving notice of terminating the contract on the grounds presented in this section, the supplier 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 6.9, or according to the prices notified by the supplier in the price adjustment notification, if the notice of termination has been made on the basis of Paragraph 6.8, until the time notified by the customer, however at most six (6) months from the ending of the contract.

## **7 Terms of payment**

- 7.1 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.
- 7.2 Invoicing shall take place using an electronic invoice if the customer and the supplier have electronic invoicing capability.
- 7.3 If not otherwise agreed, the supplier shall be entitled to invoice agreed payments when the customer has approved the delivery, or part thereof, which is the subject of the invoice. Regular payments shall be invoiced at agreed invoicing periods in arrears. Invoices must include an itemisation of the grounds for invoicing.
- 7.4 If the customer does not pay an invoice by the due date, the supplier shall have the right to charge interest on arrears and reasonable collection costs.
- 7.5 The supplier 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 supplier 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.
- 7.6 The customer shall have the right to withhold from an unpaid sum costs arising from repair work to defective supplies or from the procurement of new, corresponding supplies as well as any delay penalty under the contract or other possible contractual penalty and guarantee period security.

## 8 Security

- 8.1 If the customer is required under the contract to make an advance payment, the supplier 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 delivery time specified in the contract. The supplier must extend the validity of the security in the event of the delivery being delayed.
- 8.2 If security for the guarantee period has been agreed, the supplier 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. The security must be valid for at least one month beyond the expiry date of the guarantee period.
- 8.3 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 for any advance payment or guarantee period.
- 8.4 The supplier shall be responsible for all costs arising from acquiring the security.

## 9 Handover of supplies and transfer of risk

- 9.1 The supplier shall hand over the supplies to the customer at the time specified in the contract. The supplies or part thereof must not be handed over before the agreed time without the customer's consent.
- 9.2 If not otherwise agreed, the delivery terms are "Delivered to a place specified by the customer" (TOP, Finnterms 2001).
- 9.3 Risk transfers to the customer when the supplies have been handed over to the customer in accordance with the delivery terms.
- 9.4 If the supplies are not handed over at the right time and this is due to the customer or a factor on the part of the customer, risk shall be transferred to the customer when the supplier has performed what the handover requires of the supplier, and the customer has been notified of the matter in writing. The supplier shall not without the customer's consent insure at the customer's cost supplies whose risk lies with the customer according to the contract.
- 9.5 The supplier shall be liable for such supplies, parts and accessories of the customer that the customer has transferred to the supplier's possession for storage, repair or further processing.

## 10 Acceptance inspections and delivery control

- 10.1 The customer is entitled to inspect the supplies prior to their delivery.
- 10.2 The inspections and control performed by the customer before handover shall not limit the supplier's obligation and liability.
- 10.3 After the handover of the supplies, the customer shall perform an acceptance inspection as soon as circumstances permit. The delivery shall be deemed approved unless the customer makes a claim concerning a defect in the delivery within a reasonable period.
- 10.4 The supplier and customer shall both have a general obligation to cooperate in furthering inspections and the acceptance inspection. Each contracting party shall be responsible for their own expenses arising from inspections.
- 10.5 Any defects perceived in an inspection must be removed by the supplier at its own expense without unreasonable delay. The customer shall have no obligation to reimburse the supplier for costs arising from supplies or accessories that become unserviceable or lose value in the course of a normal inspection.
- 10.6 If there is a defect in the supplies, the supplier shall be responsible for all costs arising to the customer from repeating the inspection, handling and transport.

## 11 Guarantee

- 11.1 The guarantee period shall be 24 months, if not otherwise agreed. The guarantee period shall begin from the day on which the customer has received and accepted the supplies.
- 11.2 The guarantee shall cover all defects that appear during the guarantee period. The supplier's guarantee shall not, however, cover defects that arise from using the supplies contrary to instructions or other incorrect use.
- 11.3 The supplier shall be obliged without delay and at its own cost to remove all defects that appear during the guarantee period or to deliver new supplies to replace the defective supplies as soon as possible after being informed about them.
- A repair under guarantee shall also include amendments corresponding to the repair in documents relating to the supplies.
- 11.4 If not otherwise agreed, the guarantee period of the supplies shall be extended by the amount of time that the supplies cannot be used due to a defect. The length of the guarantee period shall, however, be at most twice that of the original guarantee period.
- 11.5 If, during the guarantee period, a defect appears in the supplies and there is good

cause to assume that the same defect will also appear in other supplies, the supplier shall be obliged to remedy this defect in all supplies that have been and shall be delivered.

- 11.6 The customer must deliver supplies for repair under guarantee to the place in Finland indicated by the supplier. The supplier shall be responsible for costs relating to the repair under guarantee as well as for expenses arising from the delivery and return of the supplies for repair under guarantee.
- 11.7 If the supplier does not fulfil its obligations within a reasonable time of being informed by the customer of a defect, the customer shall have the right to make the necessary repairs using a third party and to demand damages in accordance with Section 14. The customer must notify the supplier in advance of its intention to make a repair using a third party. The customer shall have the right instead of a repair to demand a price reduction.
- 11.8 Even after the guarantee period, the supplier shall be obliged without delay to remove defects appearing in the supplies which were present in the supplies when risk transferred to the customer and which the customer could not reasonably have noticed in the acceptance inspection or during the guarantee period.

## 12 Delay

- 12.1 If a contracting party perceives that it will be delayed in its delivery or 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 the supplier being delayed, the supplier must notify the customer of a new delivery time as soon as possible.
- 12.2 If the delivery is delayed for a reason caused by the supplier, 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 delivery or part thereof for every beginning seven (7) day period by which the supplier exceeds the agreed delivery 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 supplier.

- 12.3 A delay in installation and start-up as well as a delay in the supply of information necessary for use or other information required by the contract shall be equivalent to a delay in delivery.
- 12.4 If the customer has made an advance payment and delivery is delayed for a reason caused by the supplier, 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 supplies. The customer shall have the right to deduct the interest from payments made to the supplier.

## 13 Force majeure

- 13.1 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.
- 13.2 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 13.1 and the subcontract cannot be performed elsewhere without unreasonable waste of time or cost.
- 13.3 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.
- 13.4 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.
- 13.5 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.

## 14 Damages

- 14.1 The customer and the supplier shall have the right to receive damages for direct losses arising from the other contracting party's breach of contract.
- 14.2 If the contract is cancelled for a reason caused by the supplier on the basis of Section 16 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.
- 14.3 The customer shall have the right to receive damages for delay or other losses arising from the supplier'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.
- 14.4 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.



## 15 Price reduction and cancellation of the contract

- 15.1 If the supplier has not repaired a defect or supplied a replacement product in accordance with agreed terms and conditions, the customer shall have the right to demand a price reduction from the supplier.
- 15.2 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.

- 15.3 A substantial breach of contract shall be deemed to be, for example, a delivery contrary to the contract by the supplier, if 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 delivery is unreasonably delayed or the delays or defects occur repeatedly.
- 15.4 If the customer has made an advance payment, the supplier 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.

## 16 Termination of the contract in special situations

- 16.1 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 supplier if the customer had when making the procurement decision been aware of actual circumstances relating to the supplier. By these circumstances is meant the exclusion criteria listed in Sections 53 and 54 of the Act on Public Procurement (348/2007). Accordingly the supplier shall have the right to receive full payment for supplies delivered 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.
- 16.2 The customer shall have the right to give notice of terminating the contract with immediate effect, if the supplier's financial or other circumstances are perceived to have changed substantially so that it cannot be assumed that the supplier will fulfil its contractual obligations and the supplier gives no reliable explanation about the fulfilment of its obligations. Before giving notice of termination, the customer must notify the supplier about the threat of termination and give the supplier an opportunity to provide an explanation within a reasonable period.

## 17 Intellectual property rights

- 17.1 If not otherwise agreed, intellectual property rights to the supplies or related material shall not be transferred to the customer, excluding right of ownership to the supplies. All material that the customer and supplier 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 material transferred to it by the supplier when this involves the use of material for a purpose related to the use of supplies referred to in the contract. When it makes and commissions changes to material transferred by the supplier, the customer must ensure that none of the supplier's business or professional secrets are divulged. Right of use shall include the right to use, copy and make or commission changes. The customer shall have the right to transfer material to the party to whom the customer's tasks are transferred.
- 17.2 The supplier shall be responsible for ensuring that supplies or related material delivered by the supplier do not, when they are used, violate a third party's patent, copyright or other intellectual property rights which are valid in Finland.
- 17.3 If any claims are presented against the customer concerning intellectual property rights relating to the supplies or related material, the supplier shall be obliged to meet these claims on the customer's behalf and at its own expense. The supplier shall be responsible 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 supplies or related material.

## 18 Confidentiality

- 18.1 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.
- 18.2 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.
- 18.3 The supplier shall not use the contract or the customer's name in marketing without the customer's consent. If not otherwise agreed, the supplier can, however, use the contract as reference information when making tenders to procurement units referred to in the Act on Public Procurement.

## 19 Transfer of the contract, changes and options

- 19.1 The supplier 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.
- 19.2 Changes to the contract must be made in writing. Changes made in electronic form shall be deemed changes in writing to the contract.
- 19.3 Changes relating to the delivery and their impact on the delivery schedule or price must be agreed in writing before measures are initiated.
- 19.4 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.

## 20 Duty to help and assist should the supplier change

- 20.1 If not otherwise agreed, in the event of a change of supplier the supplier shall be obliged to help and assist the customer in transferring the contractual obligations to the new supplier. The supplier shall have the right to charge for additional work arising from this in accordance with its price list.
- 20.2 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.

## 21 Settlement of disputes and applicable law

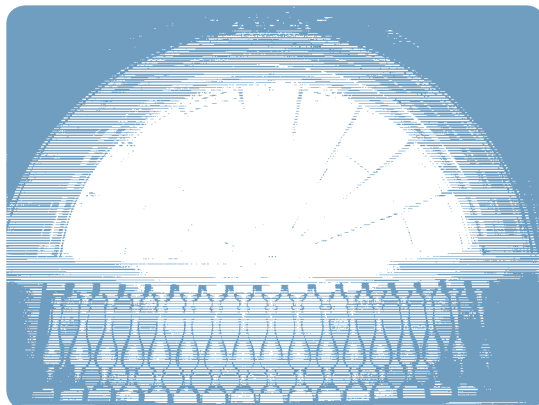
- 21.1 Issues relating to the contract shall be resolved primarily through negotiations between the contracting parties.
- 21.2 If a dispute cannot be resolved through negotiation, they shall be submitted for resolution in Court of First Instance in the customer's domicile.
- 21.3 The laws of Finland shall be applied to the contract. The connecting factor rules of Finnish law or the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not, however, be applied to the contract.

## 22 Order of validity of contract documents

22.1 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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