



MINISTRY  
OF FINANCE

# General Terms of Public Procurement in Supply Contracts

## JYSE terms, April 2022

Governance Policy

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# General Terms of Public Procurement in Supply Contracts

JYSE terms, April 2022

Ministry of Finance Helsinki 2022

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### Abstract

The General Terms of Public Procurement (JYSE) are contract terms maintained by the Ministry of Finance. The terms take into account the contractual requirements laid down in the Act on Public Procurement and Concession Contracts to the extent possible in general terms. The general terms are intended to be used as standard contract terms in procurement contracts between contracting entities and suppliers and service providers. The general terms can be used to supplement the terms of the procurement contract itself.

Separate terms have been drafted for supplies and services:

- JYSE 2014 SUPPLIES (note updated version of April 2022)
- JYSE 2014 SERVICES (note updated version of April 2022)

The general terms of public procurement are used extensively, which has contributed to suppliers and service providers being aware of the terms and conditions that are applied in public procurement.

**Keywords** governance policy, procurement, procurement procedure, contract terms, public procurement

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## Julkisten hankintojen yleiset sopimusehdot tavarahankinnoissa JYSE-ehdot, huhtikuu 2022

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<b>Valtiovarainministeriön julkaisu</b>	<b>2022:22</b>	<b>Teema</b>	Hallintopolitiikka
<b>Julkaisija</b>	Valtiovarainministeriö		
<b>Yhteisötekijä</b>	Valtiovarainministeriö		
<b>Kieli</b>	englanti	<b>Sivumäärä</b>	27

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### Tiivistelmä

Julkisten hankintojen yleiset sopimusehdot (JYSE) ovat valtiovarainministeriön ylläpitämiä sopimusehtoja. Ehdossa on huomioitu hankintalain sopimuksille asettamat vaatimukset siinä määrin kuin se yleisissä ehdoissa on mahdollista. Yleiset sopimusehdot on tarkoitettu käytettäväksi hankintayksiköiden ja toimittajien välisissä hankintasopimuksissa vakiosopimusehtoina. Yleisillä sopimusehdoilla voidaan täydentää varsinaisen hankintasopimuksen ehtoja.

Sopimusehdot on laadittu erikseen tavaroille ja palveluille:

- JYSE 2014 TAVARAT (huom. huhtikuun 2022 päivitysversio)
- JYSE 2014 PALVELUT (huom. huhtikuun 2022 päivitysversio)

Julkisten hankintojen yleiset sopimusehdot ovat laajasti käytössä. Sopimusehtojen laajan käytön on katsottu osaltaan johtaneen siihen, että julkisissa hankinnoissa palvelujen ja tavaroiden tarjoajilla on yleisesti tiedossa ne ehdot, joita julkisten hankintojen osalta sopimuksissa noudatetaan.

**Asiasanat** hallintopolitiikka, hankinta, hankintamenettely, sopimusehdot, julkiset hankinnat

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## Allmänna avtalsvillkor för offentlig upphandling av varor JYSE-villkor, april 2022

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### Referat

Finansministeriet svarar för de allmänna avtalsvillkoren för offentlig upphandling (JYSE). I villkoren beaktas de krav som upphandlingslagen ställer på kontrakt i den mån det är möjligt i fråga om allmänna villkor. De allmänna avtalsvillkoren är avsedda att användas som standardavtalsvillkor i upphandlingskontrakt mellan upphandlande enheter och leverantörer. De allmänna avtalsvillkoren kan komplettera villkoren i det egentliga upphandlingskontraktet.

Det finns separata avtalsvillkor för varor och tjänster:

- JYSE 2014 VAROR (obs. den uppdaterade versionen från april 2022)
- JYSE 2014 TJÄNSTER (obs. den uppdaterade versionen från april 2022)

De allmänna avtalsvillkoren för offentlig upphandling används i stor utsträckning. Detta anses ha bidragit till att de som tillhandahåller tjänster och varor allmänt känner till de villkor som iakttas i avtalen vid offentlig upphandling.

**Nyckelord** förvaltningspolitiken, upphandling, upphandlingsförfarande, avtalsvillkor, offentlig upphandling

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## INTRODUCTION

On 22 December 1993, the Ministry of Trade and Industry approved the General Terms of Public Procurement (JYSE 1994) by virtue of the Government Decree on Public Procurement (1416/93). As the name suggests, the terms have been used not only in central government but also in local government and other public procurement units. Government 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) entered into force on 1 June 2007.

As part of the general guidance on procurement activity and development thereof, the Ministry of Finance established on 18 November 2008 a working group on the General Terms of Public Procurement which was tasked to update and renew the General Terms of Public Procurement introduced in 1994. The working group arrived at a solution by which separate terms of contract were prepared for services and supplies: JYSE 2009 SUPPLIES and JYSE 2009 SERVICES.

Once JYSE 2009 had been in force for a few years, the Ministry of Finance established a working group to examine the need to update and amend the terms. The working group finished its work on 30 June 2014, and JYSE 2014 was published thereafter.

After that time, the JYSE 2014 terms have also been updated in August 2016, at which time modifications required by procurement directives prior to the entry into force of new national procurement legislation were taken into account. After the entry into force of the new national procurement legislation (Acts 1397/2016 and 1398/2016) at the beginning of 2017, JYSE 2014 was updated in April 2017 to take into account the procurement legislation reform.

The terms were updated in April 2022 so that the effects of sanctions imposed by the Finnish authorities, the European Union or the UN were included as grounds for termination of a procurement contract under special circumstances.



These terms may be freely used and modified on a case-by-case basis also in the future. Below is a summary of the latest modifications.

### JYSE 2014 SUPPLIES – version history

Version	Key changes
<b>Augusti 2016 / Updated version</b>	1.13 A definition of mandatory exclusion clauses was added for the duration of the transition period
	3.6 Obligation to replace a subcontractor, references
	5.7 and 5.8 Terms on revising prices were clarified
	4.8 Obligation to submit an extract from the criminal record (with a transition period)
	5.8 A reference to the price change clause
	15.1 Termination of contract, exclusion clause
	15.3 References corrected
	15.4 Termination of procurement contract, material change to contract
	15.5 Termination of procurement contract, severe breaches
	<b>April 2017 / Updated version</b>
3.6 A reference to the new Procurement Act revised	
4.8 Deleted	
6.1 Electronic invoice changed as the invoicing option	
6.2 Different terms of payment for electronic invoices and invoices on paper deleted	
15.1 A reference to the new Procurement Act revised	
15.5 Wording specified	
<b>April 2022 / Updated version</b>	1.13 A definition of sanction added
	3.6 Sanctions added as grounds for changing subcontractors
	15.1 Added sanctions imposed by the Finnish authorities, EU or UN as grounds for termination

# 1 Issues to be observed when applying JYSE 2014 SUPPLIES

## Value added tax

In offers, the price is usually stated exclusive of value-added tax (VAT 0%). In accordance with JYSE 2014 SUPPLIES, the price does not include value added tax. This does not, however, influence the duty to pay value added tax. The supplier has the right to invoice the value added tax associated with the supplies from the customer.

## Advance payment

Any advance payments are subject to a separate agreement. JYSE 2014 SUPPLIES include provisions on the lodging of security for any advance payment made.

## Using index clauses

A separate agreement should be made if the contracting parties wish to use index clauses.

## International trade

According to JYSE 2014 SUPPLIES, contractual disputes relating to supply contracts shall be resolved in Finland in the court of first instance. It is expressly stated in JYSE 2014 SUPPLIES that the connecting factor rules of Finnish law shall not be applied to procurement contracts based on JYSE 2014 SUPPLIES. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is not to be applied to procurement contracts made on the basis of JYSE 2014 SUPPLIES. These terms and their use in international trade should be assessed on a case-by-case basis.

## Sale of Goods Act

The sale of movable property is regulated in the Sale of Goods Act (355/1987). Insofar as the terms of JYSE 2014 SUPPLIES do not otherwise separately prescribe, the provisions of the Sale of Goods Act shall apply.

## Options

The term 'option' in JYSE 2014 SUPPLIES refers to a purchase option for additional supplies made in a procurement notice or an invitation to tender, or an option relating to additional supplies or the extension of the contract period. When submitting a tender in competitive tendering, the service provider commits to the terms stated in the invitation to tender, such as an option. Whether the option is used is at the sole discretion of the customer. If the customer decides to order additional supplies mentioned in a procurement notice or an invitation to tender from the supplier, or decides to extend the contract period by exercising an option mentioned in the competitive tender documents, the supplier is obliged to supply said goods.

## Minimum delivery and invoicing charges

In accordance with Clause 5.4 of JYSE 2014 SUPPLIES, the supplier does not have the right to demand any minimum delivery or invoicing charges. Suppliers should therefore take costs arising from any small deliveries into consideration in the price of the supplies. The procurement unit should consider, on a case-by-case basis, whether minimum delivery charges are to be permitted in specific sectors.

## Warranty

According to JYSE 2014 SUPPLIES, the warranty shall be 24 months, unless otherwise agreed. An agreement on a different warranty period may be made, however, and in many cases agreeing on a shorter or longer warranty period is justified.

## Deliveries in case of disturbances or exceptional circumstances

JYSE 2014 SUPPLIES does not include any specific terms and conditions regarding deliveries under exceptional circumstances. Public administration actors shall ensure that even outsourced activities are managed as well as possible under all circumstances (section 12 of the Emergency Powers Act, 1552/2011). Critical functions shall be identified and the invitation to tender shall, if necessary, include the duty to prepare in order to safeguard the continuity of operations.

## Damages

Under JYSE 2014 SUPPLIES, as a general rule only direct damages shall be compensated and the maximum amount of liability for damages is defined as five times the calculated value of the procurement contract. In JYSE 2014 SUPPLIES, 'direct and indirect damages' refer to the division into direct and indirect damages laid down in section 67 of the Sale of Goods Act (355/1987). Under these terms, the aforementioned limitations of liability do

not apply if the other contracting party has caused the damage wilfully or through gross negligence, violated the confidentiality obligations or violated any intellectual property rights.

In certain procurement contracts, deviating from the maximum amount of liability for damages specified in JYSE 2014 SUPPLIES may be appropriate. If the parties do not wish to limit the liability for damages regarding the maximum amount of compensation by way of agreement, Clauses 14.4 and 14.5 are to be deleted.

### **Notification of defect and claim period**

JYSE 2014 SUPPLIES state that the supplier should be notified of any defects within a reasonable time of the defect having been detected without specifying any specific deadline for submitting a claim. As procurement units purchase a large number of different types of supplies on the basis of contracts based on JYSE 2014 SUPPLIES, the reasonable claim periods differ significantly. If the contracting parties consider it necessary to agree on more specific claim periods, these should be agreed separately.

## 2 General Terms of Public Procurement in Supply Contracts (JYSE 2014 SUPPLIES)

### 1 Definitions

#### 1.1 Subcontractor

A third party contributing to the fulfilment of the contractual obligations referred to in a procurement contract.

#### 1.2 Document

Documents include but are not limited to operating instructions, manuals, guidelines and other documents required when using the supplies.

#### 1.3 Procurement contract

A contract between a customer and a supplier on the delivery of supplies in accordance with the contractual terms. The term 'procurement contract' refers to the documents laid down in Chapter 21.

#### 1.4 Handover

The moment when the supplies have been handed over to the customer in accordance with the delivery terms.

#### 1.5 Amendment

An agreed change to the original scope or content of the delivery, or additional work.

#### 1.6 Contractual penalty

A penalty separately agreed by the contracting parties which the supplier is obliged to pay to the customer in case of a breach of contract separately specified by the contracting parties. The customer has the right to receive the contractual penalty without having to demonstrate the losses to the customer arising from the supplier's breach of contract.

#### 1.7 Supplies

The supplies that are the subject of the procurement contract as well as related services, documents and intellectual property rights, if any, to the agreed extent.

### **1.8 Customer**

The procurement unit that is acquiring the supplies on the basis of the procurement contract.

### **1.9 Supplier**

The company or other operator that has undertaken to deliver the supplies for the customer.

### **1.10 Liability for risk**

Liability for the destruction, disappearance, deterioration or decrease of the supplies beyond the other contracting party's control.

### **1.11 Delay penalty**

A penalty that the supplier is obligated to pay to the customer in the event of a delay attributable to the supplier.

### **1.12 Defect**

If the supplies do not comply with the requirements set in Chapter 4, they are deemed defective.

### **1.13 Sanction**

Sanction means a sanction imposed by the Finnish authorities, the European Union or the United Nations.

## **2 Contact persons**

2.1 Both contracting parties shall nominate a contact person whose task it is to supervise and monitor the implementation of the procurement contract and to communicate on issues relating to its implementation. Unless otherwise agreed, the contact persons do not have the right to amend the procurement contract. A contracting party shall inform the contact person of the other contracting party without delay and in writing if a contact person changes.

## **3 Subcontracting**

3.1 The supplier bears overall responsibility for meeting the obligations under the procurement contract, regardless of whether the supplier is using subcontractors.

3.2 The supplier has the right to use subcontractors when performing the duties under the procurement contract. The supplier is responsible for the work of a subcontractor as for its

own and is obligated to ensure that the subcontractor complies with the obligations laid down in the procurement contract.

3.3 The supplier does not have the right to replace a subcontractor named in the procurement contract or a subcontractor contributing to the fulfilment of material contractual obligations without the customer's consent.

3.4 However, if a subcontractor named in the procurement contract or a subcontractor contributing to the fulfilment of material contractual obligations is unable to contribute to the fulfilment of obligations under the procurement contract for reasons not attributable to the supplier or caused by a force majeure event, the supplier has the right to replace the original subcontractor with another subcontractor that is able to offer corresponding resources and quality that meets with the customer's approval. The customer may only refuse to accept a replacement subcontractor proposed by the supplier for a justified reason. If the supplier is unable to propose a replacement subcontractor that the customer can approve within a reasonable period of time, the customer has the right to terminate the procurement contract with six (6) months' notice.

3.5 Upon a request from the customer, the supplier shall provide an account of the subcontractors it uses.

3.6 Should the customer so require, the supplier is obliged to replace a subcontractor who is subject to a mandatory criterion for exclusion referred to in legislation on public contracts or a discretionary criterion for exclusion referred to in section 81, subsection 1, points 3–11 of the Act on Public Procurement and Concession Contracts (1397/2016) or a sanction or asset freeze imposed by the European Union (EU) or the United Nations (UN) or the Finnish authorities, even if the criterion has arisen or the sanction has been imposed after the beginning of the contractual relation.

#### **4 Properties of supplies**

4.1 The type, quantity, quality and other properties of supplies shall correspond to that which has been agreed. Furthermore, the supplies shall comply with the information about the supplies provided to the customer.

4.2 Unless otherwise agreed, the supplies shall be suitable for the purpose for which such supplies are generally used or be suitable for the specific purpose for which the supplies are intended if the supplier has been made aware of this specific purpose. The quality of supplies shall, at the minimum, correspond to any samples delivered to the customer in advance.

4.3 The supplies shall fulfil regulations included in the European Union's mandatory legislation and regulations included in Finnish laws and decrees, as well as regulations issued by the authorities with respect to structure, accessories, occupational health and safety, fire safety and electrical safety, among other issues.

4.4 The supplies shall be accompanied by all certificates, permits and other documents that are to be acquired by the supplier and that are needed when using the supplies.

4.5 The supplier shall deliver to the customer drawings and instructions as well as other information and documents included in the contract that are needed for the installation, repair, maintenance and use of the supplies. The information and documents shall be in the Finnish language, unless the customer has approved the delivery of the documentation in another language.

4.6 The supplier shall guarantee the availability of maintenance and spare parts for the supplies at reasonable prices and terms under the prevailing circumstances. Unless otherwise agreed, maintenance and spare parts shall be available for a period corresponding to the general service life of the supplies.

4.7 The supplier may, with the consent of the customer, replace the supplies specified in the procurement contract with other supplies. The replacement supplies shall meet the requirements stipulated in the procurement contract and their properties shall correspond to those of the original supplies. The supplier shall deliver the replacement supplies at a price no greater than that of the original supplies.

## 5 Price

5.1 The price shall be fixed for a period of 12 months from the beginning of the contract period, unless otherwise agreed. The price does not include value added tax.

5.2 The supplier shall invoice value added tax in accordance with the currently valid Value Added Tax Act.

5.3 The price shall include all costs incurred from the provision the supplies and services, including but not limited to travel and accommodation costs, daily allowances, overtime compensation as well as any indirect taxes and fees, excluding value-added tax, payable by the supplier and applicable at the time of the deadline for offers.

5.4 Unless otherwise agreed, the supplier is not entitled to levy any minimum delivery or invoicing charges.



5.5 Any advance payment shall be considered a fixed part of the contract price.

5.6 The supplier has the right to take into consideration in the price direct costs arising from new public charges decreed by the authorities or increases of existing charges that take place after the submission of the tender and directly influence the supplies provided for the customer, provided that they were not known when the offer was prepared and that the supplier is able to justify the price change. In such a case, the price of the supplies shall be revised accordingly from the date when said changes enter into force. The supplier has the aforementioned right even in the case the price is fixed. Should the customer so demand, the supplier is also obliged to observe in the price any changes caused by the elimination or reduction of such charges.

5.7 During the contract period, the supplier has the right to revise the price if the following prerequisites are met:

- the price adjustment is based on general cost development;
- the reason for the price adjustment has arisen after signing of the procurement contract;
- the reason for the price revision has an immediate effect on the price of a product or service covered by the contract; and
- the reason for the price revision is not attributable to the supplier's activities.

The supplier shall deliver a price adjustment proposal in writing at the latest three (3) months prior to the entry into force of the price adjustment. A price adjustment may enter into force at the earliest when 12 months have passed from the beginning of the contract period or a previous price adjustment made at the initiative of the supplier. The supplier shall present to the customer an appropriate and justified explanation of the cost trend and the reasons for the price adjustment.

5.8 The customer also has the right to propose a price adjustment if the prerequisites laid down in Clause 5.7 are met during the validity of the contract. The customer shall deliver a price adjustment proposal in writing at the latest three (3) months prior to the entry into force of the price adjustment. A price adjustment may enter into force at the earliest when 12 months have passed from the beginning of the contract period or a previous price adjustment made at the initiative of the customer. Upon request, the customer shall present an appropriate and justified explanation of the cost trend and the reasons for the price adjustment.

5.9 If the contracting parties are unable to reach an agreement on a price adjustment, both parties have the right to terminate the procurement contract with a with six (6) months' notice. The notice shall be given in writing before the entry into force of the new prices. The prices valid before the price adjustment proposal was submitted shall apply during the period of notice.

## 6 Terms of payment

6.1 The supplier shall use electronic invoices when invoicing the customer.

6.2 The due date of the electronic invoices shall be 21 days from the arrival of an acceptable invoice.

6.3 Unless otherwise agreed, the supplier is entitled to send an invoice for agreed payments when the supplies have been delivered. Recurring payments shall be invoiced at agreed invoicing intervals in arrears. Each invoice shall include an itemisation of the grounds for invoicing.

6.4 If the customer fails to pay an invoice by the due date, the supplier has the right to charge interest on arrears in accordance with the Interest Act (633/1982) plus reasonable debt collection costs.

6.5 The supplier has the right to cease fulfilment of its contractual obligations if a clear and uncontested payment is delayed for more than thirty (30) days and the delayed payment is material. The supplier shall notify the customer in writing of such a cessation at the latest fifteen (15) days before the start of the cessation. The notification may be made immediately after the case of neglect.

6.6 The customer has the right to withhold from an unpaid sum any costs arising from the repair of defective supplies or from the procurement of new, corresponding supplies due to a delay in the delivery of the supplies, as well as any delay penalty under the procurement contract or any other contractual penalty and warranty period security plus interest accumulated for the advance payment in case of a delay or termination.

## 7 Securities

7.1 If the customer is required under the procurement contract to make an advance payment, the supplier shall, before the advance payment is made, post a security to the satisfaction of the customer, which shall be at least fifteen (15) per cent greater than the advance payment. The security shall remain in force for at least one month after the delivery time specified in the procurement contract. The supplier shall extend the validity of the security in the event of the delivery being delayed.

7.2 If an agreement on a security for the warranty period has been made, the supplier shall, before the beginning of the warranty period, post a security to the customer's satisfaction that must be at least fifteen (15) per cent of the contract price, excluding value added tax. The security shall remain in force for at least one month after the end of the warranty period.

7.3 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 warranty period.

7.4 The supplier is responsible for all costs arising from the security.

## **8 Handover of supplies and transfer of liability for risk**

8.1 The supplier shall hand over the supplies to the customer at the time specified in the procurement contract. The supplies or part thereof may not be handed over before the agreed time without the customer's consent.

8.2 Unless otherwise agreed, the delivery term is "toimitettuna perille tilaajan nimeämään paikkaan" ("delivered to a place specified by the customer"; TOP, Finnterms 2001).

8.3 The liability for risk is transferred to the customer when the supplies have been handed over to the customer in accordance with the delivery terms.

8.4 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, the liability for risk shall be transferred to the customer when the supplier has performed what the handover requires from the supplier, and the customer has been notified of this in writing. The supplier does not have the right to, without the customer's consent, insure at the customer's cost supplies whose risk lies with the customer under the procurement contract.

8.5 The supplier carries the risk for any supplies, parts and accessories of the customer that the customer has transferred to the supplier's possession for storage, repair or further processing.

## **9 Inspections prior to handover, supervision and acceptance inspections**

9.1 The customer has the right to inspect the supplies prior to their handover.

9.2 Inspections and control performed by the customer before handover do not limit the supplier's obligations and liability.

9.3 After the handover of the supplies, the customer shall perform an acceptance inspection as soon as circumstances permit. The supplies shall be deemed approved unless the customer makes a claim concerning a defect within a reasonable period.

9.4 The supplier and customer both have a general obligation to cooperate in promoting the inspections and the acceptance inspection. Each contracting party is responsible for their expenses arising from inspections.

9.5 Any defects detected during the inspections and the acceptance inspection shall be removed by the supplier at its own expense without unreasonable delay. The customer is under no obligation to reimburse to the supplier any costs arising from supplies that become unserviceable or lose value in the course of a normal inspection.

9.6 If there is a defect in the supplies, the supplier is responsible for all costs arising to the customer from repeating the inspection, handling and transport.

## 10 Delays

10.1 If a contracting party realises that a delivery will be delayed or it will not be able to perform its contractual obligations on time or considers a delay probable, the delaying contracting party shall, immediately and in writing, notify the other contracting party of the delay and its impact on the fulfilment of the procurement contract. In the event of delay on the supplier's part, the supplier shall give the customer a new delivery time as soon as possible.

10.2 A delay in installation and start-up as well as a delay in the supply of other information necessary for the use of the supplies or other information required by the procurement contract shall be considered a delay in delivery.

10.3 If the delivery is delayed for a reason attributable to the supplier, the customer has the right to receive a delay penalty. The customer has the right to receive the delay penalty without having to demonstrate that the supplier's delay has caused any losses for the customer. Unless otherwise agreed, the delay penalty shall be one (1) per cent of the value, excluding value added tax, of the delayed delivery for every beginning seven (7) day period by which the supplier exceeds the agreed due date. The delay penalty will be charged for a maximum of ten (10) weeks. In addition to the delay penalty, the customer has the right to receive compensation for damage caused by the supplier's delay as laid down in Chapter 14.

10.4 If the customer has made an advance payment and the delivery is delayed for a reason attributable to the supplier, the supplier is obligated to pay annual interest for the delay period according to the Interest Act for the part of the advance payment that corresponds to the value of the delayed supplies.

10.5 The customer has the right to withhold payment for the supplies should the delivery be delayed. The customer may not, however, withhold a sum that clearly exceeds the claims to which the customer is entitled on the basis of the delay.

10.6 If the supplier's performance is delayed and the delay is of essential significance for the customer with regard to the nature of the supplies, the customer has the right to acquire substitutive supplies of a corresponding standard from a third party at the supplier's expense (right to cover purchase). The customer shall seek to inform the supplier about its decision to exercise this right before acquiring the substitutive supplies.

10.7 A procurement contract can be terminated on the basis of a material delay as laid down in Clause 12.7.

10.8 The customer has the right to withhold interests and costs referred to in Clauses 10.3, 10.4 and 10.6, in accordance with Clause 6.6, due to a delay in the delivery of the supplies.

## 11 Warranty

11.1 The warranty period is 24 months, unless otherwise agreed. The warranty period begins on the day on which the supplies are handed over to the customer. However, should the customer find the supplies defective in the acceptance inspection, the warranty will only begin from the day on which the supplier has remedied the defect.

11.2 The warranty covers any and all defects detected during the warranty period. The warranty does not cover any defects that arise from the supplies being used contrary to the operating instructions or otherwise incorrectly, however.

11.3 The supplier is obliged, without delay and at its own expense, to eliminate all defects that appear during the warranty period or to deliver new supplies to replace the defective ones. Repairs under warranty also include amendments corresponding to the repairs in documents relating to the supplies.

11.4 Unless otherwise agreed, the warranty 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 warranty period shall, however, be at the most twice that of the original warranty period.

11.5 If a defect appears in the supplies during the warranty period and there is justified reason to assume that the same defect will also appear in other supplies (typical defect), the supplier is obliged to remedy this defect in all supplies that have been and will be delivered.

11.6 The customer shall deliver the supplies for repair under warranty to a location in Finland indicated by the supplier. The supplier is responsible for costs relating to the repairs under warranty as well as for any and all expenses arising from the delivery and return of the supplies for repair under warranty.

11.7 If the supplier fails to fulfil its warranty obligations within a reasonable time of the customer having informed the supplier of a defect, the customer has the right to have the necessary repairs made by a third party and demand the costs incurred as damages from the supplier in accordance with Clause 14. The customer shall inform the supplier in advance of the intention to have the repairs made by a third party. The customer has the right to demand a price reduction instead of repairs.

11.8 Even after the warranty period has expired, the supplier is obliged upon notification to remove without delay and at its own expense any defects detected in the supplies that were present when risk was transferred to the customer and which the customer could not reasonably have expected to notice in the acceptance inspection or during the warranty period.

## **12 Defect, price reduction and termination of the contract**

12.1 The defectiveness of supplies shall be assessed based on the properties of the supplies at the time when the liability for risk is transferred to the customer. The supplier is responsible for any defect that was present in the supplies at this time, even if the defect is not detected until later.

12.2 If the supplies are defective, the customer shall inform the supplier of the defect within a reasonable period of the defect having been detected or of the time it should have been detected.

12.3 The supplier shall acknowledge receipt of the notification of defect and inform the customer of the initiation of corrective measures no later than 14 days after having received the notification.

12.4 If a defect observed in the supplies prevents the intended use of the supplies, the customer is entitled to withhold payment of the purchase price until the supplier has eliminated the defect.

12.5 If there is a defect in the supplies, the supplier shall examine the cause of the defect at its own expense and rectify it without delay. The supplier may be released from this liability by demonstrating that the defect did not arise from a factor within the scope

of the supplier's responsibility. In such a case, the supplier is entitled to charge for the investigation and correction of the defect in accordance with its regular price list.

12.6 If the supplier has not repaired a defect or supplied a replacement product in accordance with the agreed terms and conditions, the customer has the right to a price reduction from the supplier.

12.7 Each contracting party has the right to terminate the procurement contract in part or in whole if the other contracting party has materially violated its contractual obligations or it is evident that a material breach of contract will take place. Material breaches of contract include but are not limited to the supplies not complying with the agreement and the defect or the consequences thereof to the customer being more than minor and the defect, despite the customer's reminder, not being immediately remedied or defects occurring repeatedly. A material delay in performance by a contracting party or repeated delays also constitute a material breach of contract.

12.8 If the customer has made an advance payment, the supplier shall, when the procurement contract is cancelled, refund 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 refunding date.

12.9 If a defect due to a reason attributable to the supplier cannot be remedied, or if the supplier fails to remedy the defect within a reasonable period of time, the customer has the right to have the supplies repaired by a third party or acquire substitute supplies of a corresponding standard from a third party at the supplier's expense (right to cover purchase). The customer shall seek to inform the supplier about its decision to exercise the right before making the cover purchase.

12.10 The customer has the right to withhold the interests and costs referred to in Clauses 12.6, 12.8 and 12.9 in accordance with Clause 6.6 due to defective supplies.

### **13 Force majeure**

13.1 A force majeure event is an unusual and relevant event that occurs after the signing of the procurement contract and prevents the fulfilment of the contract and that the contracting parties had no reason to take into account when signing the procurement 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 events include war, rebellion, internal unrest, expropriation or confiscation for public needs, import or export ban, natural catastrophe, interruption of public transport

or energy distribution, strike or other 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 a force majeure event only in case the subcontractor's delay is the result of an obstacle referred to in Clause 13.1 and another subcontractor cannot be used without unreasonable waste of time or costs.

13.3 If the fulfilment of a contractual obligation is delayed due to a force majeure event, the deadline for meeting the contractual obligation shall be extended for as long as is reasonable considering all the circumstances influencing the case.

13.4 Each contracting party shall notify the other contracting party immediately about the start and end of a force majeure event, and the contracting parties shall agree on its impact on the delivery at the latest at this point in time.

13.5 Each contracting party has the right to terminate the procurement contract in full or in part if the fulfilment of the contract due to the continuation of a force majeure event is delayed by more than four (4) months.

## 14 Damages

14.1 The customer and the supplier both have the right to receive damages for direct losses arising from the other contracting party's breach of contract.

14.2 If the procurement contract is terminated for a reason attributable to the supplier on the basis of Chapter 15 and losses arise to the customer from this, the customer has the right to receive damages for direct losses arising from the premature termination of the contract.

14.3 The customer has the right to receive damages for a delay or any 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 Unless otherwise agreed, the contracting parties' liability for damages shall be at most five (5) times the calculated value of the procurement contract.

14.5 The term 'calculated value of the procurement contract' refers to the value of the supplies that are the subject of the procurement contract between the customer and the supplier. In the case of a framework agreement, the calculated value of the procurement contract is the total value of acquisitions that the customer has and will make from the



supplier on the basis of the framework agreement. In the case of a procurement contract of a continuous nature or a framework agreement, the calculated value of a procurement contract shall be the average purchases made per month multiplied by the number of months corresponding to the contract period. In the case of a procurement contract valid until further notice, the calculated value of the procurement shall be determined on the basis of a 48-month contract period. If the loss occurs during an option period, the months of both the actual contract period and the contract's option period shall be taken into account when defining the calculated value of the procurement contract.

14.6 The limitations of liability specified in this chapter do not apply if the other contracting party has caused the damage wilfully or through gross negligence, violated the confidentiality obligations or violated intellectual property rights. In such a case, the injured party has the right to demand compensation for indirect losses as well.

## **15 Termination of the procurement contract under special circumstances**

15.1 The customer has the right to terminate the procurement contract with immediate effect if the supplier is burdened by a mandatory criteria for exclusion referred to in legislation on public contracts or a discretionary criterion for exclusion referred to in section 81, subsection 1, paragraphs 3–11 of the Act on Public Procurement and Concession Contracts (1397/2016) or a sanction of asset freeze imposed by the European Union (EU) or the United Nations (UN) or the Finnish authorities, even if the criterion has arisen or the sanction has been imposed after the beginning of the contractual relation.

15.2 The customer has the right to give notice of terminating the procurement contract with immediate effect if the supplier's financial or other circumstances are perceived to have changed materially so that it cannot be assumed that the supplier can meet its contractual obligations and the supplier gives no reliable explanation about the fulfilment of its obligations. The termination shall be made within a reasonable time of the customer having been informed about the existence of the grounds for termination.

15.3 Before giving notice of termination by virtue of Clause 15.1 or 15.2 above, the customer shall notify the supplier about the impending termination and give the supplier an opportunity to submit an explanation within a reasonable period of time.

15.4 The customer has the right to terminate the agreement in part or in whole with immediate effect if a material change has been made to the contract which, on the basis of the legislation on public contracts, would have required a new procurement process.

15.5 The customer has the right to terminate the agreement with immediate effect a procurement contract with the supplier should not have been signed because the Court

of Justice of the European Union has, in proceedings in accordance with article 258 of the Treaty on the European Union, stated that it has been in severe breach of obligations in accordance with treaties and procurement directives.

15.6 If the customer terminates the contract by virtue of Clause 15.1, 15.2, 15.3, 15.4 or 15.5 above, the supplier has the right to receive full payment for the supplies delivered before the procurement contract termination date but the supplier does not have the right to receive any other compensation for the termination of the procurement contract.

## **16 Intellectual property rights**

16.1 Unless otherwise agreed, intellectual property rights to the supplies or related materials will not be transferred to the customer, with the exception of the right of ownership to the supplies. All materials that the customer and supplier hand over to one another before or after the signing of the contract will remain the property of the assignor. The customer will, however, have an irrevocable right to use the materials transferred to it by the supplier if the materials will be used for a purpose related to the use of the supplies. The right of use includes the right to use, copy and make or commission modifications of the materials. When making or commissioning modifications of the materials handed over by the supplier, the customer shall ensure that none of the supplier's business or trade secrets are disclosed. The customer has the right to transfer the materials to a party to whom the customer's tasks are transferred, with equal rights and obligations.

16.2 The supplier is responsible for ensuring that the supplies or related materials provided by it will not, when used in accordance with the procurement contract, violate a third party's patent, copyright or other intellectual property rights valid in Finland.

16.3 If any claims are presented against the customer based on intellectual property rights relating to use of the supplies or related materials, the supplier is obliged to meet these claims on the customer's behalf at its own expense. The supplier is obligated to ensure that no legal costs, damages, other compensations 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 materials.

## **17 Confidentiality**

17.1 The contracting parties undertake to keep secret confidential materials and information that they receive from each other that by law must be kept secret and undertake not to use the materials and information for purposes other than those laid down in the procurement contract.

17.2 Transfer of information to an authority or other party on the basis of a mandatory official order shall not be deemed a violation of the confidentiality obligation.

17.3 The supplier may not use the procurement contract or the customer's name in any marketing materials without the customer's consent. Unless otherwise agreed, the supplier may, however, use the procurement contract as reference when submitting offers to procurement units referred to in procurement legislation.

17.4 The obligations laid down in this chapter shall remain in force after the procurement contract period.

## **18 Assigning or amending the contract and options**

18.1 Without the customer's consent, the supplier does not have the right to assign the contract to a third party, even in part. The customer has the right to assign the procurement contract to a third party to whom the customer's duties are transferred in full or in part.

18.2 All amendments to the contract shall be made in writing. Amendments made in electronic format shall also be deemed amendments in writing.

18.3 Agreements on amendments relating to the supplies and their impact on the delivery schedule or price shall be made in writing before the changes are made.

18.4 If the procurement involves an option, the customer decides on whether to use it. The terms of the procurement contract shall apply to the option.

## **19 Duty to assist in case of change of supplier**

19.1 In the event of a change of supplier, the supplier is obliged to help and assist the customer in assigning the contractual obligations to the new supplier. The supplier has the right to charge for this work in accordance with its price list.

19.2 The duty to help and assist begins before the termination of the procurement contract when a notice of termination has been given or the procurement contract has been terminated or when the customer notifies that it is initiating a procurement that applies to supplies under this procurement contract. Unless otherwise agreed, the obligation shall remain in force at the most until 12 months have passed since the termination of the procurement contract.

## **20 Dispute resolution and applicable law**

20.1 Any and all issues relating to the procurement contract shall be primarily resolved through negotiations between the contracting parties.

20.2 If a dispute cannot be resolved through negotiation, it will be submitted for resolution to the court of first instance at the customer's registered office.

20.3 The procurement contract is governed by Finnish law. However, the connecting factor rules of Finnish law or the United Nations Convention on Contracts for the International Sale of Goods (CISG) do not apply to the procurement contract.

## **21 Order of validity of procurement contract documents**

21.1 The procurement contract documents complement each other. Should there be any conflict between the contract documents, they shall be applied in the following order of validity, unless otherwise agreed:

1. Contract
2. Invitation to tender
3. General Terms of Public Procurement in Supply Contracts  
(JYSE 2014 SUPPLIES)
4. Offer



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