

INVITATION TO TENDER NO 10183

PREPARATION OF TEXTS, PROOFREADING AND COPY-EDITING

DRAFT CONTRACT

"CASCADE" MULTIPLE FRAMEWORK SERVICE CONTRACT

CONTRACT NUMBER – 10183

The European Community (hereinafter referred to as "the Community"), represented by the Commission of the European Communities (hereinafter referred to as "the Commission"), which is represented for the purposes of the signature of this Contract by [Mr/Mrs/Ms name in full,], Head of the '[name of unit]' Unit of the Office for Official Publications of the European Communities (hereinafter referred to as "the Publications Office"),

of the one part,

and

Official name in full:

Official legal form:

Statutory registration number:

Official address in full:

.....

VAT registration number:

hereinafter referred to as "the Contractor"¹, represented for the purposes of the signature of this Contract by:

Name in full and function:

.....

of the other part,

¹ In case of a joint offer, the following sentence will be added to this part of the contract which indicates the parties:
"The parties identified above and hereinafter collectively referred to as 'the Contractor' shall be jointly and severally liable vis-à-vis the Commission for the performance of this contract".

HAVE AGREED

the **Special Conditions** and the **General Conditions** below and the following annexes:

- Annex 1** – Price schedule and estimation form (Volume I)
- Annex 2A** – Financial identification form (Volume I)
- Annex 2B** – Legal entity form (Volume I)
- Annex 2C** – Order form and Specific contract (please note that these are indicative models and they might change in the future) (Volume I)
- Annex 2E** – Agreement/Power of Attorney in case of a joint bid (Volume I)
- Annex 3** – Tender Specifications (Volume II)²
- Annex 4** – Contractor's tender (Volume III)³

which form an integral part of this contract (hereinafter referred to as “the Contract”).

The terms set out in the Special Conditions shall take precedence over those in the other parts of the Contract. The terms set out in the General Conditions shall take precedence over those in the annexes. The terms set out in the Contract shall take precedence over those in the order forms and specific contracts. The terms set out in Tender Specifications shall take precedence over the Contractor's tender.

Subject to the above, the several instruments forming part of the Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by the Commission, subject to the rights of the Contractor under Article I.8 should he dispute any such instruction.

This Contract sets out the legal, administrative, technical and financial conditions applicable to all relations between the European Community and the Contractor during its period of validity.

² Including clarifications if applicable.

³ Not including the draft contract and the documents already attached in Volume I.

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I – Special Conditions

ARTICLE I.1 - SUBJECT

- I.1.1** The purpose of the Contract is the provision of services for the preparation of texts and proofreading in all 23 official languages of the European Union and for copy-editing in German, English and French, concerning the following lots:
- Lot 1 : Publications
 - Lot 2: Jurisprudence
- I.1.2** Signature of the Contract imposes no obligation on the Commission to purchase. Only implementation of the Contract through orders and specific contracts is binding on the Commission.
- I.1.3** Once implementation of the Contract has been asked or has commenced, the Contractor shall reply and execute the tasks in accordance with all terms and conditions of the Contract.
- I.1.4** The Contract does not confer on the Contractor any exclusive right to provide the services described in Annex 3 to the Commission. The Contractor is selected as the *1st / 2nd / 3rd Contractor for lot [complete] of the cascading multiple framework contract.*

ARTICLE I.2 - DURATION

- I.2.1** The Contract shall enter into force on the date of signature by the Commission.
- I.2.2** Under no circumstances may implementation commence before the date on which the Contract enters into force. Execution of the tasks may under no circumstances begin before the date on which the order or specific contract enters into force.
- I.2.3** The Contract is concluded for a period of 12 months with effect from the date on which it enters into force. This contractual period and all other periods specified in the Contract are calculated in calendar days unless otherwise indicated.
- I.2.4** The orders or specific contracts shall be returned signed before the Contract to which they refer expires.
- The Contract shall continue to apply to such orders and specific contracts after its expiry, but no later than three (3) months.
- I.2.5** The Contract shall be renewed automatically up to three (3) times, each time for twelve (12) months, under the same conditions, unless written notification to the contrary is sent by one of the contracting parties by registered mail and received by the other not later than three (3) months before its expiry. Renewal does not imply any modification or deferment of existing obligations.

ARTICLE I.3 –PRICES

- I.3.1** The prices of the services shall be as listed in Annex 1
- I.3.2** Prices shall be expressed in EUR.
- I.3.3** Prices shall be fixed and not subject to revision for implementation during the first year of duration of the Contract.
- From the beginning of the second year of duration of the Contract, 75% of each price may be revised upwards or downwards each year, where such revision is requested by one of the

contracting parties by registered letter no later than three months before the anniversary of the date on which it was signed.

In case of a justified and timely request, the revised prices shall enter into force on the anniversary date of the entry into force of the Contract.

The price revisions will be calculated with [the same number of decimals as was accepted in the initial original price schedule] and also the revised prices will have the same number of decimals.

The Commission shall purchase on the basis of the prices in force on the date on which orders and/or specific contracts are signed. Such prices shall not be subject to revision.

Revision shall be calculated in accordance with the following formula:

$$\text{Pr} = \text{Po} \left(\frac{\text{Ir}}{\text{Io}} (0,25 + 0,75 \frac{\text{I} - \text{Io}}{\text{I} - \text{Io}}) \right)$$

where:

Pr = revised price;

Po = price in the original tender;

I = is the harmonised index of consumer prices in the Contractor's country⁴, expressed in euro, as published on the Internet site "Europa" (Eurostat), accessible currently at the address <http://epp.eurostat.ec.europa.eu/>, under the theme "Economy and finance", tag "Tables", "Short-term indicators", "Consumer prices", "HICP – All items – Index";

Io = index for the month corresponding to the final date for submission of tenders;

Ir = index for the month corresponding to the date of receipt of the letter requesting a revision of prices.

ARTICLE I.4 – IMPLEMENTATION OF THE CONTRACT

I.4.1 Within 5 working days of an order form being sent by the Commission to the first Contractor, the Commission shall receive it back, duly signed and dated. Should the Contractor be unavailable, he shall give reasons for refusal within the same period and the Commission shall be entitled to place the order with the next contractor on the list. In the event of failure to observe this deadline, the Contractor shall be considered unavailable. The period allowed for the execution of the tasks shall start to run on the date the Contractor signs the order form, unless a different date is indicated on the form.

I.4.2 For services which involve tasks that are not set out in the price schedule but are directly related to the subject of the Contract, the Commission shall ask the Contractor for the lot in question to submit a bid based on the description of services required. The Contractor shall have ten (10) working days to draw up his bid, unless a different period is specified in the description of services required. Should the Contractor be unavailable, he shall give reasons for refusal within the same period and the Commission shall be entitled to send a request to the next contractor on the list. In the event of failure to observe this deadline or disagreement on the allocation of resources, the Contractor shall be considered unavailable.

⁴ In case of a joint offer, the index of the country of the co-ordinator (consortium leader) will be used.

Within 10 working days of a specific contract being sent by the Commission to the Contractor, the Commission shall receive it back, duly signed and dated. In the event of failure to observe this deadline, the Contractor shall be considered unavailable.

The period allowed for the execution of the tasks shall start to run on the date the Contractor signs the order, unless a different date is indicated on the form.

ARTICLE I.5 – PAYMENT PERIODS

Payments under the Contract shall be made in accordance with Article II.4. Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted. Payment requests may not be made if payments for previous orders or specific contracts have not been executed as a result of default or negligence on the part of the Contractor.

All invoices must be drawn up and calculated in accordance with the unit prices given in the price schedule.

Only the work actually carried out is to be invoiced (in euros), on the basis of the unit prices given in the price schedule.

The invoice must be drawn up in the same way as the estimate attached to the order (type of work, number of pages and urgency). Any difference between the actual invoice and the estimate must be clearly marked, that is, it must be presented by type of item (an item can be a type of work, number of pages or urgency).

I.5.1 Pre-financing:

Not applicable.

I.5.2 Interim payment.

Not applicable.

I.5.3 Payment of the balance

The request for payment the balance of the Contractor shall be admissible if accompanied by

- the relevant invoices, indicating the reference number of the Contract and the copie of the order to which they refer with his attached estimate,
- provided the work has been approved by the Commission.

The Commission shall have twenty (20) working days from receipt to approve or reject the invoice, and the Contractor shall have fifteen (15) working days in which to submit additional information or a new invoice.

Within thirty (30) days of the date on which the invoice is approved by the authorised department of the Commission, payment of the balance corresponding to the relevant invoices shall be made.

I.5.4. Performance guarantee

Not applicable

I.5. Invoices and supporting documents, are to be sent to:

OFFICE FOR OFFICIAL PUBLICATIONS OF THE EUROPEAN COMMUNITIES
CAD-FACTURATION
2, RUE MERCIER
L-2985 LUXEMBOURG

All invoices must carry the number of the Contract and be marked:

“Exempt from VAT. Certificate No _____”

(This information will be supplied by the Commission once the Contract is under way)⁵.

ARTICLE I.6 – BANK ACCOUNT

Payments shall be made to the Contractor’s bank account denominated in euro (or local currency where the receiving country does not allow transactions in euro), identified (by a document issued or certified by the bank) as follows:

Name of bank:

Address of branch in full:

Exact designation of account holder:

Full account number including codes:

IBAN code:

BIC code:,

as stated in the Contractor’s financial identification form set out in Annex 2A.

ARTICLE I.7 – GENERAL ADMINISTRATIVE PROVISIONS

Any communication relating to the Contract or to its implementation shall be made in writing and shall bear the Contract and order or specific contract numbers. Ordinary mail shall be deemed to have been received by the Commission on the date on which it is registered by the department responsible indicated below. Communications shall be sent to the following addresses:

For the Office for Official Publications of the European Communities:

The person responsible for supervising the performance of this Contract is:

⁵ For Contractors established in Belgium, the orders shall include the following provision: “En Belgique, l’utilisation de ce bon de commande vaut présentation d’une demande d’exemption de la TVA n° 450” or an equivalent statement in the Dutch or German language. The Contractor shall include the following statement in his invoice(s): “Exonération de la TVA, article 42, paragraphe 3.3 du code de la TVA” or an equivalent statement in the Dutch or German language.

For Contractors established in Italy, the provisions of the Contract constitute a request for VAT exemption, provided the Contractor includes the following statement in his invoice(s): “Operazione non imponibile ai sensi dell’articolo 72, comma 3) paragrafo 3 del D.P.R. n. 633 del 26/10/1972 come modificato da ultimo dal D.L. n. 323 del 20/06/1996 convertito in Legge n. 425 dell’8/8/1996”.

Office for Official Publications of the European Communities
[Mr /Mrs/Ms complete name]
[complete] Unit
2, Rue Mercier
L-2985 Luxembourg
Fax: +352 2929 42750

All correspondence concerning the provisions of this Contract or any amendments is to be sent to the following address:

Office for Official Publications of the European Communities
Mr António Carneiro
Ressources Direction, Calls for Tenders and Contracts Unit
2, Rue Mercier
L-2985 Luxembourg
Fax: +352 2929 42672

For the Contractor:

The persons responsible for supervising the performance of this Contract on behalf of the Contractor are:

for administrative matters:

Mr/Mrs/Ms
Function:
Company name:
Official address in full:
Tel:
Fax:
E-mail:

for technical matters:

Mr/Mrs/Ms
Function:
Company name:
Official address in full:
Tel:
Fax:
E-mail:

ARTICLE I.8 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES

- I.8.1** The Contract shall be governed by the Community law complemented, where necessary, by the national substantive law of the Grand Duchy of Luxembourg.
- I.8.2** Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the courts of the Grand Duchy of Luxembourg.

ARTICLE I.9 – DATA PROTECTION

- I.9.1** Any personal data included in or relating to the Contract, including its execution, shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. It shall be processed solely for the purposes of the performance, management and follow-up of the Contract by the Office for Official Publications of the European Communities, the entity acting as data controller without prejudice to possible transmission to the bodies charged with a monitoring or inspection task in conformity with Community law. The Contractor shall have the right of access to his personal data and the right to rectify any such data that is inaccurate or incomplete. Should the Contractor have any queries concerning the processing of his personal data, he shall address them to the Office for Official Publications of the European Communities, the data controller. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.
- I.9.2** When processing data on behalf of the Commission in the performance of the Contract the Contractor:
- (a) shall act only on instructions from the Commission;
 - (b) shall comply with the obligations set out in Articles 21 and 22 of Regulation (EC) 45/2001 on the confidentiality and the security of processing unless, by virtue of Article 17(3), second indent, of Directive 95/46/EC, the Contractor is already subject to obligations with regard to confidentiality and security laid down in the national law of one of the Member States.
- Appropriate technical and organisational measures will be taken by the Contractor for the security of the processing in accordance with Article 22 of Regulation (EC) 45/2001 and will have to be agreed between the Contractor and the Commission in writing or in another equivalent form.
- I.9.3** The Contractor shall comply with Council regulation (Euratom, EEC) No 1588/90 of 11 June 1990 on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities (OJ No L151, 15.6.1990, p.1).

ARTICLE I.10 – TERMINATION BY EITHER CONTRACTING PARTY

Either contracting party may, of its own volition and without being required to pay compensation, terminate the Contract by serving three month formal prior notice. Should the Commission terminate the Contract, the Contractor shall only be entitled to payment corresponding to the services ordered and executed before the termination date. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the services rendered up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

ARTICLE I.11 – QUALITY CONTROL, ACCEPTANCE AND NON-ACCEPTANCE

I.11.1 Acceptance and non-acceptance

The work delivered by the Contractor has to be accepted within twenty (20) working days after reception of the work. A maximum of 5 % of mistakes will be considered acceptable. If the work is not accepted, the Contractor has to carry out the necessary corrections and to deliver it again without additional payment within fifteen (15) working days. In this case, a new acceptance period of twenty (20) working days will apply.

I.11.2 Non-payment

After the second delivery, if the quality of the delivered work is found to be still unacceptable, the Publications Office reserves the right to refuse the work, in which case no payment is made for the refused work.

I.11.3 Temporary exclusion

If over a period of three (3) months the work delivered by the Contractor is not accepted three (3) times after the second delivery, the Publications Office may exclude this Contractor temporarily from the participation in the framework contract in the context of this call for tender. The Contractor may submit arguments against the decision about temporary exclusion within ten (10) working days of notification by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction or of written withdrawal by the Commission within ten (10) working days of the receipt of such arguments, the decision about temporary exclusion shall become enforceable. The temporary exclusion shall take effect on the day on which it became enforceable and shall take its end two (2) months after that day. The period of temporary exclusion may be extended up to three (3) months in case of second or any further temporary exclusion in course of duration of the framework contract. After the expiry of the period of temporary exclusion, the Commission will consult the temporary excluded Contractor for any new order to be placed with him in accordance with the arrangements described above and the temporary excluded Contractor may accept the work.

II – GENERAL CONDITIONS

ARTICLE II. 1 – PERFORMANCE OF THE CONTRACT

- II.1.1** The Contractor shall perform the Contract to the highest professional standards. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.
- II.1.2** The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to him are to be executed.
- II.1.3** Without prejudice to Article II.3 any reference made to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.
- II.1.4** The Contractor must ensure that any staff performing the Contract have the professional qualifications and experience required for the execution of the tasks assigned to him.
- II.1.5** The Contractor shall neither represent the Commission nor behave in any way that would give such an impression. The Contractor shall inform third parties that he does not belong to the European public service.
- II.1.6** The Contractor shall have sole responsibility for the staff who execute the tasks assigned to him.

The Contractor shall make provision for the following employment or service relationships with his staff:

- staff executing the tasks assigned to the Contractor may not be given orders direct by the Commission;
 - the Commission may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of the Commission any right arising from the contractual relationship between the Commission and the Contractor.
- II.1.7** In the event of disruption resulting from the action of a member of the Contractor's staff working on Commission premises or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace him without delay. The Commission shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to him resulting from the replacement of staff in accordance with this Article.
- II.1.8** Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on his own initiative record it and report it to the Commission. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with his obligations under the Contract. In such event, the Contractor shall give priority to solving the problem rather than determining liability.
- II.1.9** Should the Contractor fail to perform his obligations under the Contract in accordance with the provisions laid down therein, the Commission may - without prejudice to its right to

terminate the Contract - reduce or recover payments in proportion to the scale of the failure. In addition, the Commission may impose penalties or liquidated damages provided for in Article II.16.

ARTICLE II. 2 – LIABILITY

- II.2.1** The Commission shall not be liable for damage sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of the Commission.
- II.2.2** The Contractor shall be liable for any loss or damage caused by himself in performance of the Contract, including in the event of subcontracting under Article II.13. The Commission shall not be liable for any act or default on the part of the Contractor in performance of the Contract.
- II.2.3** The Contractor shall provide compensation in the event of any action, claim or proceeding brought against the Commission by a third party as a result of damage caused by the Contractor in performance of the Contract.
- II.2.4** In the event of any action brought by a third party against the Commission in connection with performance of the Contract, the Contractor shall assist the Commission. Expenditure incurred by the Contractor to this end may be borne by the Commission.
- II.2.5** The Contractor shall take out insurance against risks and damage relating to performance of the Contract if required by the relevant applicable legislation. He shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the Commission should it so request.

ARTICLE II. 3 - CONFLICT OF INTERESTS

- II.3.1** The Contractor shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of the Contract. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which could arise during performance of the Contract must be notified to the Commission in writing without delay. In the event of such conflict, the Contractor shall immediately take all necessary steps to resolve it.

The Commission reserves the right to verify that such measures are adequate and may require additional measures to be taken, if necessary, within a time limit which it shall set. The Contractor shall ensure that his staff, board and directors are not placed in a situation which could give rise to conflict of interests. Without prejudice to Article II.1 the Contractor shall replace, immediately and without compensation from the Commission, any member of his staff exposed to such a situation.

- II.3.2** The Contractor shall abstain from any contact likely to compromise his independence.

- II.3.3** The Contractor declares:

- that he has not made and will not make any offer of any type whatsoever from which an advantage can be derived under the Contract,
- that he has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to performance of the Contract.

II.3.4 The Contractor shall pass on all the relevant obligations in writing to his staff, board, and directors as well as to third parties involved in performance of the Contract. A copy of the instructions given and the undertakings made in this respect shall be sent to the Commission should it so request.

ARTICLE II. 4 – INVOICING AND PAYMENTS

II.4.1 Pre-financing:

Not applicable.

II.4.2 Interim payment:

Not applicable.

II.4.3 Payment of the balance:

Within sixty days of completion of the tasks referred to in each order or specific contract, the Contractor shall submit to the Commission a formal request for payment accompanied by those of the following documents, which are provided for in the Special Conditions:

- a final technical report in accordance with the instructions laid down in Annex 3;
- the relevant invoices indicating the reference number of the Contract and of the order or specific contract to which they refer;

If the report is a condition for payment, on receipt the Commission shall have the period of time indicated in the Special Conditions in which:

- to approve it, with or without comments or reservations, or suspend such period and request additional information; or
- to reject it and request a new report.

If the Commission does not react within this period, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations and information enclosed.

Where the Commission requests a new report because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new report shall likewise be subject to the above provisions.

ARTICLE II. 5 – GENERAL PROVISIONS CONCERNING PAYMENTS

II.5.1 Payments shall be deemed to have been made on the date on which the Commission's account is debited.

II.5.2 The payment periods referred to in Article I.5 may be suspended by the Commission at any time if it informs the Contractor that his payment request is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced. In case of doubt on the eligibility of the expenditure indicated in the payment request, the Commission may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is eligible.

The Commission shall notify the Contractor accordingly by registered letter with acknowledgment of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter. The remainder of the period referred to in Article I.5 shall begin to run again once the suspension has been lifted.

II.5.3 In the event of late payment the Contractor shall be entitled to interest, provided the calculated interest exceeds EUR 200. In case interest does not exceed EUR 200, the Contractor may claim interest within two months of receiving the payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations ("*the reference rate*") plus seven percentage points ("*the margin*"). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment. Suspension of payment by the Commission may not be deemed to constitute late payment.

ARTICLE II. 6 – RECOVERY

II.6.1 If total payments made exceed the amount actually due or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the appropriate amount in euro on receipt of the debit note, in the manner and within the time limits set by the Commission.

II.6.2 In the event of failure to pay by the deadline specified in the request for reimbursement, the sum due shall bear interest at the rate indicated in Article II.5.3. Interest shall be payable from the calendar day following the due date up to the calendar day on which the debt is repaid in full.

II.6.3 In the event of failure to pay by the deadline specified in the request for reimbursement, the Commission may, after informing the Contractor, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor also has a claim on the Communities that is certain, of a fixed amount and due. The Commission may also claim against the guarantee, where provided for.

ARTICLE II. 7 - REIMBURSEMENTS

Not applicable to this contract.

ARTICLE II. 8 – OWNERSHIP OF THE RESULTS - INTELLECTUAL AND INDUSTRIAL PROPERTY

Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the Contract, shall be owned solely by the Community, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where industrial or intellectual property rights exist prior to the Contract being entered into.

ARTICLE II. 9 – CONFIDENTIALITY

II.9.1. The Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to performance of the Contract. The Contractor shall continue to be bound by this undertaking after completion of the tasks.

II.9.2. The Contractor shall obtain from each member of his staff, board and directors an undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to execution of the tasks and that they will not divulge to third parties or use for their own benefit or that of any third party any document or information not available publicly, even after completion of the tasks.

ARTICLE II.10 - USE, DISTRIBUTION AND PUBLICATION OF INFORMATION

II.10.1 The Contractor shall authorise the Commission to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the Contract, in particular the identity of the Contractor, the subject matter, the duration, the amount paid and the reports. Where personal data is concerned, Article I.9 shall apply.

II.10.2 Unless otherwise provided by the Special Conditions, the Commission shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from the Commission.

II.10.3 Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from the Commission and shall mention the amount paid by the Community. It shall state that the opinions expressed are those of the Contractor only and do not represent the Commission's official position.

II.10.4 The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the Commission has specifically given prior written authorisation to the contrary.

ARTICLE II. 11 – TAXATION

II.11.1 The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.

II.11.2 The Contractor recognises that the Commission is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities.

II.11.3 The Contractor is to ensure that all invoices addressed to the Commission under this Contract are marked “For official use by the European Communities. Exempt from all taxes and duties pursuant to Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities and Article 15(10) of the Sixth Directive (77/388/EEC) as amended”.

II.11.4 For the application of Articles 3 and 4 of the said Protocol and Article 15(10) of the Sixth Directive (77/388/EEC) as amended, the Contractor shall comply with the national tax legislation applicable to revenue under this Contract with the Commission.

ARTICLE II. 12 – FORCE MAJEURE

II.12.1 Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour

disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.

- II.12.2** Without prejudice to the provisions of Article II.1.8, if either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.
- II.12.3** Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to perform his contractual obligations owing to force majeure, he shall have the right to remuneration only for tasks actually executed.
- II.12.4** The contracting parties shall take the necessary measures to reduce damage to a minimum.

ARTICLE II. 13 – SUBCONTRACTING

- II.13.1** The Contractor shall not subcontract without prior written authorisation from the Commission nor cause the Contract to be performed in fact by third parties.
- II.13.2** Even where the Commission authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the Commission under the Contract and shall bear exclusive liability for proper performance of the Contract.
- II.13.3** The Contractor shall make sure that the subcontract does not affect rights and guarantees to which the Commission is entitled by virtue of the Contract, notably Article II.17.

ARTICLE II. 14 – ASSIGNMENT

- II.14.1** The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from the Commission. Request for the authorisation shall be submitted no later than 45 calendar days before the proposed assignment.
- II.14.2** In the absence of the authorisation referred to in 1 above, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on the Commission.

ARTICLE II. 15 – TERMINATION BY THE COMMISSION

- II.15.1** The Commission may terminate the Contract, a pending order or a specific contract in the following circumstances:
- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
 - (b) where the Contractor has been convicted of an offence concerning his professional conduct by a judgment which has the force of *res judicata*;
 - (c) where the Contractor has been guilty of grave professional misconduct proven by any means which the Commission can justify;
 - (d) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;

- (e) where the Commission seriously suspects the Contractor of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- (f) where the Contractor is in breach of his obligations under Article II.3;
- (g) where the Contractor was guilty of misrepresentation in supplying the information required by the Commission as a condition of participation in the Contract procedure or failed to supply this information;
- (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the Commission's opinion, have a significant effect on the performance of the Contract;
- (i) where execution of the tasks under a pending order or a specific contract has not actually commenced within fifteen days of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Commission;
- (j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- (k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations;
- (l) where the maximum liquidated damages specified in Article II.16.2 have been applied by the Commission.

II.15.2 In case of force majeure, notified in accordance with Article II.12, either contracting party may terminate the Contract, where performance thereof cannot be ensured for a period corresponding to at least one fifth of the period laid down in Article I.2.3.

II.15.3 Prior to termination under point e), h) or k), the Contractor shall be given the opportunity to submit his observations.

Termination shall take effect on the date on which a registered letter with acknowledgment of receipt terminating the Contract is received by the Contractor, or on any other date indicated in the letter of termination.

II.15.4 Consequences of termination:

In the event of the Commission terminating the Contract or a pending order or specific contract in accordance with this Article and without prejudice to any other measures provided for in the Contract, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

The Commission may claim compensation for any damage suffered and recover any sums paid to the Contractor under the Contract.

On termination the Commission may engage any other contractor to execute or complete the services. The Commission shall be entitled to claim from the Contractor all extra costs incurred in doing so, without prejudice to any other rights or guarantees enforceable under the Contract.

ARTICLE II. 16 – LIQUIDATED DAMAGES

- II.16.1** Should the Contractor fail to perform his obligations under the Contract within the time limits set by the Contract, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the Commission's right to terminate the Contract, the Commission may decide to impose liquidated damages of 0.2 % of the amount of the relevant purchase per calendar day of delay.
- II.16.2** The Contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by the Commission within thirty days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable. These liquidated damages shall not be imposed where there is provision for interest for late completion. The Commission and the Contractor expressly acknowledge and agree that any sums payable under this Article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations. The amount of the liquidated damages shall be limited to 20 % of the total value of the Contract.

ARTICLE II. 17 – CHECKS AND AUDITS

- II.17.1** Pursuant to Article 142 of the Financial Regulation applicable to the general budget of the European Communities, the European Court of Auditors shall be empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the European Communities from signature of the Contract up to five years after payment of the balance of the last implementation.
- II.17.2** The Commission or an outside body of its choice shall have the same rights as the European Court of Auditors for the purpose of checks and audits limited to compliance with contractual obligations from signature of the Contract up to five years after payment of the balance of the last implementation.
- II.17.3** In addition, the European Anti-Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EC) No 1073/1999 from signature of the Contract up to five years after payment of the balance of the last implementation.

ARTICLE II. 18 – AMENDMENTS

Any amendment to the Contract shall be the subject of a written agreement concluded by the contracting parties. An oral agreement shall not be binding on the contracting parties. An order or a specific contract may not be deemed to constitute an amendment to the Contract.

ARTICLE II. 19 – SUSPENSION OF THE CONTRACT

Without prejudice to the Commission's right to terminate the Contract, the Commission may at any time and for any reason suspend execution of the Contract, pending orders or specific contracts or any part thereof. Suspension shall take effect on the day the Contractor receives notification by registered letter with acknowledgment of receipt or equivalent, or at a later date where the notification so provides. The Commission may at any time following suspension give notice to the Contractor to resume the work suspended. The Contractor shall not be entitled to claim

compensation on account of suspension of the Contract, of the orders or specific contracts, or of part thereof.

SIGNATURES

For the Contractor,

[*Company name*/forename/surname/function]

For the Commission,

[forename/surname/function]

signature[s]: _____

signature:_____

Done at [Luxembourg], [date]

Done at Luxembourg, [date]

In duplicate in English.

INVITATION TO TENDER N 10183**ANNEX 2 TO THE CONTRACT****ORDER FORM No [complete]**

governed by the provisions of Framework Contract No [complete] signed on [complete]

European Commission Office for Official Publications of the European Communities Unit 2, rue Mercier L-2985 Luxembourg	Mr/Mrs/Ms [complete] [Function] [Company name] [Official address in full]	
Pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities, the Commission is exempt from all taxes and dues, including value added tax, on payments due in respect of this order form. (Every invoice indicates the contract number and mentions : « Exempt from VAT. Certificate No” This certificate of VAT exemption will be supplied soon.)		
Description of the services	Quantity	Price
TOTAL PRICE		
<i>[Fixed price without reimbursable costs] [Reimbursable costs up to a maximum amount of EUR ... to be added to the price according to the conditions laid down in the Contract]</i>		
<i>[The duration of the tasks shall not exceed complete].</i> <i>[Execution of the tasks shall start from [the date of Contractor's signature of this order form] [complete date].]</i>	Other details:	

Acceptance of this order implies that the Contractor waives all other terms of business or of execution of the services.

For the Commission,
[forename/surname/function]

For the Contractor,
[Company name/forename/surname/function]

signature: _____

signature[s]: _____

Done at Luxembourg, [date]

Done at [Luxembourg], [date]