

GENERAL TERMS AND CONDITIONS OF SMIT CONTRACT

1. Terms

In the general terms and conditions of the SMIT contract and in the contract itself the terms are used in the following meaning:

“Warranty” – the obligation of the contractor to ensure the compliance of the transferred object of the contract with the contract and the elimination of shortcomings that have emerged at the cost of the contractor during the period (“warranty period”) and under the terms and conditions provided for in the contract.

“Contract documents” – documentation related to the procurement procedure carried out by the contracting entity in accordance with the Public Procurement Act. The contract documents form an inseparable part of the contract.

“Third party” – any natural or legal person other than the contracting entity or the contractor.

“Contract” – an agreement between the contracting entity and the contractor in which the object of the contract and specific terms and conditions related to performance are specified. The contract documents, these general terms and conditions and other documents on which the parties have agreed shall form inseparable parts of the contract.

“Object of contract” – the service, result or thing that the contracting entity buys under the contract.

“Tender” – the tender which has been submitted by the contractor and declared successful; the tender is binding on the contractor.

“Party” – depending on the context, either the contracting entity or the contractor, together referred to as the **“Parties”**.

“SMIT” – IT and Development Centre. Ministry of the Interior, Estonia, registry code 70008440.

“Contracting entity” – SMIT.

“Location of contracting entity” – Mäealuse 2/1, Tallinn, unless another location is provided for explicitly in the contract.

“Order” – a written document to be submitted by the contracting entity to the contractor on the basis of the contract which includes the contracting entity’s proposal to make a tender to the contractor for selling the things, providing the service and/or performing the work determined by the contracting entity.

“Contractor” – a natural or legal person who has entered into a contract with SMIT.

“Working time” – the period from 8:30 to 17:00 on working days.

“Working day” – calendar days from Monday to Friday, except public holidays.

“Moment of receipt” – the moment the object of the contract is transferred by the contractor and the contracting entity deems it proper in accordance with the contract and receives the object of the contract.

“Record of transfer and receipt” – a document signed by both parties which certifies the transfer and receipt of the object of the contract or a part (stage) thereof.

“General terms and conditions” – this document, which provides the general principles of

the contractual relationship between the parties to the contract.

2. General principles

- 2.1 The general terms and conditions shall form an inseparable part of the contract and are binding on the parties.
- 2.2 The parties may agree on terms and conditions that are different from the general terms and conditions. In the case of any conflict between the provisions of the general terms and conditions and those of the contract, the provisions of the contract shall prevail.
- 2.3 If the wording of the contract can be interpreted in several ways, the parties shall proceed from the actual intention of the parties and the way in which a reasonable person would understand the wording in the same circumstances.
- 2.4 In any issues not provided for in the contract, the parties shall follow the legislation in force in the Republic of Estonia and the principles of good faith and reasonableness.

3. Performance of contract

- 3.1 Upon entry into the contract, the contractor shall assume the obligation of performing it properly. In issues not regulated by the contract, the contractor shall follow the guidelines of the contracting entity, the appropriate requirements in force in the Republic of Estonia and, upon the lack thereof, corresponding and generally recognised international requirements and good practice.
- 3.2 Upon the performance of the contract, the contractor undertakes to keep in mind the purpose of the contract and, if necessary, seek additional explanations from the contracting entity. If any conflicts arise, the contractor shall inform the contracting entity thereof immediately and, upon the performance of the contract, follow the respective guidelines of the contracting entity.
- 3.3 The language used between the parties upon the performance of the contract shall be Estonian. Any documents to be drawn up within the framework of the contract shall be transferred to the contracting entity in Estonian. Documents may be transferred in any other language only with the prior consent of the contracting entity. At the request of the contracting entity, the contractor shall provide a translation at its own cost.
- 3.4 If necessary, the contracting entity shall provide the contractor with access to the documentation, information, premises and/or technological environments important for the performance of the contract. The need for access shall be assessed by the contracting entity.
- 3.5 The contractor is required to adhere to the procedure for use of premises at the location of the contracting entity and other requirements and restrictions related to security that the contracting entity has introduced to the contractor before starting to perform the contract and/or during performance of the contract.
- 3.6 If the contractor comes into contact with the contracting entity's assets during the performance of the contract, the contractor shall use the assets in a purposeful and prudent manner and ensure that the assets are protected and preserved.
- 3.7 The contractor shall also perform, on the basis of the contract and for the value provided for therein, the so-called coherent work that is not explicitly provided for in the contract, but the performance of which is required following good practice and the contractor's

professionalism and/or required for the achievement of the purpose arising from the contract. The coherent work described in this clause shall not mean an amendment to the initial task or work volume as arising from the contracting entity.

- 3.8 The contracting entity has the right to check, at any time, the compliance of the object of the contract with the contract and to require the contractor to provide information about the performance of the contract.
- 3.9 The contractor is required to perform the work to a high degree of quality and in an efficient and timely manner. If the contracting entity has any justified doubt about the performance of the aforesaid obligations, the contracting entity shall have the right to make a corresponding inquiry to the contractor. If the contractor's justifications are not sufficient for the contracting entity, the contracting entity shall have the right to seek the position of an independent third party.
- 3.10 If the parties have entered into a framework agreement within the meaning of the Public Procurement Act, upon receipt of an order the contractor shall be obliged to submit a tender or a justification about the impossibility of submitting a tender.
- 3.11 Communication aimed by the contractor at the public and related to the object of the contract or the performance thereof, incl. press releases, the use of the contracting entity's name or reference to the insignia in a network publication or advertising materials, is permitted only if the contracting entity has granted its explicit prior consent thereto.
- 3.12 The contracting entity shall have the right to involve in the contract, on the contracting entity's side, third parties, incl. state authorities.

4. Transfer and receipt of object of contract

- 4.1 The object of the contract shall be transferred by the contractor to the contracting entity at the location of the contracting entity in accordance with the terms and conditions of the contract.
- 4.2 The contracting entity shall have ten working days to check the compliance of the work submitted for receipt with the terms and conditions of the contract. The contracting entity may extend the aforesaid term if the extension is justified, and the contractor shall not have any right to refuse the extension without good reason.
- 4.3 If the contracting entity has not signed the record of transfer and receipt or notified of extending the term within the term specified in clause 4.2, the object of the contract shall be deemed as received and the moment of receipt shall be deemed to be the calendar day following the expiry of the term provided for in clause 4.2.
- 4.4 If the contracting entity detects any defects, shortcomings or other non-compliance with the terms and conditions of the contract in the object of the contract submitted for receipt, the contractor is in breach of the contract and the breach shall be eliminated on the basis of the respective guidelines of the contracting entity.
- 4.5 If the contracting entity has no complaints in respect of the object of the contract, the parties shall sign a record of transfer and receipt.
- 4.6 Along with the record of transfer and receipt the contractor shall transfer to the contracting entity the technical and other documentation required for the use and management of the object of the contract on paper and/or an electronic data medium (CD/DVD etc.) and/or by e-mail or install it in the environment indicated by the contracting entity.

- 4.7 The contractor shall have the right to require an expert assessment if it disagrees with the complaints of the contracting entity concerning the quality of the object of the contract. The expert shall be selected upon agreement between the parties and the costs of the expert assessment shall be paid for by the contractor. If it emerges as a result of expert assessment that the object of the contract is in compliance with the terms and conditions of the contract, the costs of conducting the expert assessment shall be paid for by the contracting entity.
- 4.8 If the object of the contract is development work and no record of transfer and receipt has been entered into for the transfer of the development work and clause 4.3 does not apply, the moment of receipt of the development work shall be deemed to be the day the contracting entity started to use the result of the work as a whole in the production environment (live).
- 4.9 The receipt of the object of the contract by the contracting entity shall not relieve the contractor of its liability for defects not detected upon transfer and receipt of the object of the contract or for the non-compliance thereof.

5. Transfer of right of ownership

- 5.1 The moment of transfer of the right of ownership in respect of the object of the contract shall be deemed, in the case of both a thing and a right, to be the moment of receipt of the object of the contract.

6. Settlement

- 6.1 The contracting entity is required to pay the contractor a fee for the object of the contract in accordance with the terms and conditions agreed on in the contract and on the basis of an invoice submitted by the contractor.
- 6.2 The amounts set out in the contract are without VAT and VAT shall be added to them at the applicable rate thereof.
- 6.3 The contractor shall submit to the contracting entity an invoice following the moment of receipt of the object of the contract. If the contract is performed in stages and respective payment in stages has been agreed on, the contractor shall submit to the contracting entity an invoice after signing a record of transfer and receipt of the respective stage.
- 6.4 An invoice to be submitted by the contractor shall refer clearly and unambiguously to the contract. An invoice not in compliance with the terms and conditions set out in this clause shall not be subject to payment. The deadline for payment of an invoice is 21 calendar days.
- 6.5 The contractor shall send an invoice in PDF format to the e-mail address arved@smit.ee or in e-invoice format via Omniva Invoice management (directly from the accounting programme, to be uploaded as an XML file to the information system or to be drawn up directly in the operator's information system www.omniva.ee).
- 6.6 The prices provided for in the contract cannot be increased in connection with inflation, a rise in prices or for any other reason.
- 6.7 If the parties have provided the maximum value of the contract in the contract, the parties shall regard this amount as indicative, i.e. if the contract is cancelled in accordance with the terms and conditions of the contract or, by the moment of expiry of the contract, the

contracting entity has submitted orders on the basis of the contract in a smaller volume than the maximum value of the contract, the difference between the maximum value and the actual value shall not be subject to payment to the contractor or compensation in any other manner.

- 6.8 If the contracting entity has any grounds for demanding from the contractor a contractual penalty and/or compensation for damage, the contracting entity shall have the right to deduct the contractual penalty and/or damages from the amount subject to payment to the contractor on the basis of the contract.

7. Warranty and elimination of shortcomings

- 7.1 The general principles of the warranty conditions provided for in this chapter only apply if the parties have explicitly agreed on the application of the warranty.
- 7.2 The beginning of the warranty period is deemed to be the moment of receipt of the object of the contract.
- 7.3 The duration of the warranty period and terms for the elimination of shortcomings shall be agreed on in the contract.
- 7.4 The warranty does not cover shortcomings that arise as a result of the contracting entity's negligence or intentional act or omission.
- 7.5 The contractor undertakes to start, at its own cost, eliminating shortcomings that emerge on the object of the contract during the warranty period as of the moment a corresponding claim is submitted to the contractor by the contracting entity and in agreement with the contract and not terminate the required activities until the shortcomings are eliminated.
- 7.6 Any costs related to the elimination of a shortcoming that is covered by the warranty and emerged during the warranty period, incl. transport, postal et al. expenses, shall be borne by the contractor.
- 7.7 If the contractor does not regard a shortcoming as being covered by the warranty, the contractor shall have the right, within three working days of the elimination of the defect, to submit to the contracting entity a respective notice along with the justifications, pointing out the volume of work required to eliminate the defect, and if the contracting entity agrees with the justifications of the contractor, the contractor shall have the right, pursuant to the contract, to document the time spent eliminating the defect and require compensation therefor in accordance with the contract or if no hourly et al. applicable fee for the performance of the work has been agreed on in the contract, the parties shall agree on the compensation for the costs separately, the basis for the agreement shall be the price list usually submitted for such work by the contractor.
- 7.8 In the case of development work, a notice of a defect is deemed to have been submitted if it has been registered in the contracting entity's defect management environment and the defect management environment has sent it to the contact person determined by the contractor.
- 7.9 At the request of the contracting entity, the contractor shall eliminate any defects and shortcomings that emerge on the object of the contract during the warranty period at the location of the contracting entity.
- 7.10 If the contractor does not start eliminating a shortcoming in accordance with the contract, the contracting entity shall have the right to eliminate the shortcoming itself or

use the help of a third party and require from the contractor, in addition to a contractual penalty, compensation for costs related to the elimination.

- 7.11 If the object of the contract is a thing and the warranty period of the manufacturer of the thing or any component thereof is longer than the warranty period agreed on in the contract, the expiry of the warranty period set out in the contract shall not terminate the validity of the manufacturer's warranty. The contractor is required to transfer the documentation related to the manufacturer's warranty set out in this clause to the contracting entity separately, but failure to perform the obligation to transfer the warranty documents shall not affect the validity of the warranty.
- 7.12 If the object of the contract is a thing and the contractor eliminates any non-compliance with the terms and conditions of the contract that emerges on the object of the contract through repairs, the warranty period shall be extended by the duration of the period of repairing the thing. If the contractor eliminates any non-compliance with the terms and conditions of the contract that emerges on the object of the contract or a component thereof by replacing the thing or component, the warranty period of the respective thing or component shall start from the very beginning as of the date of replacement.
- 7.13 A party has the right to require an impartial expert assessment if there are any disagreements as to the application of the warranty. The impartial expert shall be selected upon agreement between the parties and the costs of conducting the expert assessment shall generally be paid for by the contractor. The costs of conducting the expert assessment shall be paid by the contracting entity if, as a result of the assessment, the object proves to be in compliance with the requirements.

8. Confidentiality requirements

- 8.1 Personal and security data that have become known upon entry into and/or performance of the contract and other information and circumstances whose disclosure may damage the interests of the other party constitute confidential information. Confidential information is also deemed to be information provided with the notation "confidential", "for internal use" etc. or about which a party has notified or it can reasonably be presumed that it is confidential information.
- 8.2 A party undertakes to use confidential information only for the achievement of the purpose of the contract.
- 8.3 Confidential information shall not be subject to disclosure to any third parties and a party undertakes to make every effort for it not to fall into the possession of any third parties and for no such risk to arise. Confidential information may be disclosed only with the prior written consent of the other party, in the cases explicitly provided for in the contract or if this obligation arises from legislation, within the extent provided for in legislation.
- 8.4 The obligation to maintain the confidentiality of confidential information shall not depend on the validity of the contract, but shall remain in effect without a term following the expiry of the contract. If a due date has been set for the confidentiality obligation, the confidentiality requirement in respect of the aforesaid information shall remain in effect until the due date.
- 8.5 The contractor shall ensure that confidentiality agreements that guarantee the maintenance

of the confidentiality of the confidential information of the contracting entity under the same principles as provided for in the contract, incl. in the general terms and conditions, have been entered into with all persons, incl. alternate members, involved by it in the performance of the contract. The person responsible for the performance of the confidentiality agreement shall be the contractor.

8.6 The contracting entity shall have the right to send information related to the contract to state authorities without the consent of the contractor.

9. Force majeure

9.1 The parties shall be liable for breaching their contractual obligations unless such a breach is excusable. A party's breach of an obligation shall be excusable if it is caused by *force majeure*.

9.2 Under *force majeure* the parties understand circumstances which are beyond the control of a party and, following the principle of reasonableness, it could not have been expected that the party would take them into account, avoid them or overcome the impediment or consequences thereof at the time of entry into the contract, particularly natural disasters, general power cuts, acts of war or blockade. Upon the occurrence of *force majeure*, the performance of obligations shall be postponed according to the duration of the impediment.

9.3 The party whose activities in performing their contractual obligations are hindered by *force majeure* shall notify the other party thereof as soon as possible by assessing the extent to and period in which it is unable to perform its obligations. Upon failure to perform the notification obligation, the party shall be liable for a breach of its contractual obligations in accordance with the procedure provided for in the contract. Upon the cessation of the impediments caused by *force majeure*, the affected party shall notify the other party thereof immediately.

9.4 If, as a result of *force majeure*, the ability of a party to perform its contractual obligations is only partially affected, the party shall only assume liability for obligations whose performance was not hindered by *force majeure*.

10. Liability

10.1 The parties shall be liable for the accuracy of their representations and warranties and for the full and timely performance of their obligations in accordance with the contract. The contractor shall also be liable before the contracting entity in full if the breach arises from an act or omission of subcontractors or other partners involved by the contractor.

10.2 If a contractual penalty or fine for delay applies in accordance with the terms and conditions of the contract, the maximum amount of the contractual penalty or fine for delay shall be limited to the total value of the contract in the case of each specific breach. If the contract is performed on the basis of orders to be submitted within the maximum value of the contract, the maximum rate of the contractual penalty or fine for delay in the case of each order shall be the value of the order in respect of which the breach occurred. The upper limit shall not apply in the case of an intentional breach.

10.3 Claims for contractual penalties and fines for delay shall be submitted within a reasonable period of time.

- 10.4 If the contracting entity accepts the improper performance of an obligation, it may reduce the price subject to payment by it for the obligation proportionally with the ratio of the value of improper performance of the obligation to the value of proper performance.
- 10.5 Payment of the contractual penalties arising from the contract as well as compensation for the damage caused shall not release the default party from the performance of its contractual obligations.
- 10.6 The parties shall do everything, within reason, to reduce the damage that is or may be the basis for any claim for compensation for damage under the contract.
- 10.7 In the case of damage caused to the contracting entity and/or third parties through failure to perform or improper performance of obligations assumed with the contract, the contractor undertakes, according to the guidelines of the contracting entity, to restore the situation prior to causing the damage and compensate the damage caused or to compensate the damage caused, including the costs incurred by the contracting entity and/or the third party for the restoration of the situation.
- 10.8 If the proper performance of the contract by the contractor is hindered due to an act or omission of the contracting entity, the respective deadline shall be postponed proportionally.
- 10.9 If one of the parties breaches the contract, the other party shall have the right to use, in respect of the default party, as a legal remedy, in addition to that provided for elsewhere in the contract, the right to refuse to perform its obligations until the performance of the obligation owed by the default party.
- 10.10 Upon a breach of the requirements related to the premises of the location of the contracting entity or other requirements related to security or use of assets, the contracting entity shall have the right to require from the contractor a contractual penalty in the amount of 500 euros for each respective case and, in addition, compensation for direct proprietary damage in the amount not covered by the contractual penalty.
- 10.11 Upon a breach of the confidentiality obligation, the contracting entity shall have the right to require from the contractor a contractual penalty in the amount of 20,000 euros for each respective case and, in addition, compensation for direct proprietary damage in the amount not covered by the contractual penalty.
- 10.12 Upon a delay in payment of a properly submitted invoice, the contractor shall have the right to require from the contracting entity a fine for delay at the rate of 0,1% of the overdue amount per working day of delay, but no more than the overdue amount.
- 10.13 Failure to resort to or a delay in resorting to a legal remedy by a party upon a breach of contract by the other party shall not be regarded as the damaged party waiving the right to resort to such legal remedies or any other legal remedies.
- 10.14 If the contractor needs to process personal data in the course of performance of the contract, the contractor shall undertake, upon the processing thereof, to strictly adhere to the respective requirements arising from legislation and, upon a breach thereof, be liable independently and in accordance with the procedure provided for in legislation.

11. Transfer of claims and obligations, amendment and cancellation of contract

- 11.1 The contractor may not transfer its rights or obligations arising from the contract or

assign these in any other manner to any third party without the prior written consent of the contracting entity.

- 11.2 In addition to that provided for in the Public Procurement Act or elsewhere in the contract, the parties may agree on amending the contract if the amendments differ from the initial terms and conditions to a limited extent, e.g. changing the order of interim stages, changing the deadline to an insignificant extent, specifying the component related to the object of the contract and other amendments that cannot be deemed, by way of reasonable interpretation, to constitute the amendment of the terms and conditions of the contract to a significant extent.
- 11.3 The contracting entity has the right to cancel the contract at any time by notifying the contractor no less than 90 calendar days in advance. The contracting entity also has this right if the parties have agreed on a fixed-term contract. Upon the cancellation of the contract on the basis of this clause, the contracting entity shall pay the contractor for the things that have actually been transferred or the services that have actually been provided by the time of cancellation; any other amounts shall not be subject to compensation.
- 11.4 A party has the right to premature unilateral cancellation of the contract by notifying thereof in advance if:
- 11.4.1 the other party has breached the contract and has not eliminated the breach within the reasonable term determined by the party; or
 - 11.4.2 this is a fundamental breach of contract; or
 - 11.4.3 the breach is recurrent.
- 11.5 Upon the cancellation of the contract through the fault of the contractor, the contractor only has the right to require a fee for the things that have actually been transferred or the services that have actually been provided by the moment of termination and that the contracting entity can use in reality.
- 11.6 In addition to that provided for elsewhere, a party shall have the right to cancel the contract at any time if:
- 11.6.1 the performance of the contract is hindered due to *force majeure* which has suspended the performance of the contract for more than three months; or
 - 11.6.2 bankruptcy proceedings have been commenced in respect of the other party, the bankruptcy of the other party has been declared or its assets have been seized or its financial situation has significantly deteriorated according to the justified assessment of the other party, and this deterioration makes proper performance of the contract unlikely.
- 11.7 The contracting entity shall make the settlement related to the expiry of the contract within two months of the expiry of the contract.
- 11.8 Rights and obligations which, due to their nature, do not depend on the validity of the contract shall remain in effect following the expiry of the contract.
- 11.9 If the parties have entered into a framework agreement within the meaning of the Public Procurement Act, the contracting entity shall have the right to submit orders on the basis thereof until the expiry of the framework agreement. Following the expiry of the framework agreement, contracts related to orders shall remain in effect in full in accordance with the terms and conditions provided for therein; the contract shall be

subject to all the terms and conditions of the framework agreement and other documents of the contract.

- 11.10 If any term or condition of the contract becomes contrary to legislation, the contract shall remain in effect in relation to any other parts thereof. The provisions that have become contrary to legislation shall be replaced with new provisions in conformity with the general principles of the contract by agreement between the parties. The invalidity of single provisions of the contract shall not affect the validity of the contract as a whole.
- 11.11 The contractor is required to notify of commencement of bankruptcy or liquidation proceedings in respect of it and of any other circumstances that may hinder or make the proper performance of the contract by the contractor impossible.
- 11.12 If the object of the contract is a thing or if, in the course of performance of the contract, such things are granted to the use of the contracting entity or delivered to the location of the contracting entity that are to be returned, due to the nature of the contract, upon withdrawal from or cancellation of the contract, the contracting entity shall return the thing to the contractor as soon as possible and the contractor undertakes to take it back within three working days of a corresponding claim of the contracting entity. If the contracting entity delays, without good reason, in returning a thing and the delay exceeds 20 working days, the contractor shall have the right to require reasonable compensation in respect of the days delayed without good reason. If the contractor does not perform its obligation within 20 working days of the contracting entity's corresponding reminder, the contracting entity shall have the right to utilise the thing at its own discretion and the contractor shall have no right to require any compensation for possible damage arising therefrom.

12. Communication of notices

- 12.1 The organisation of the performance of the contractual obligations of the parties, incl. signing the record of transfer and receipt and communicating the notices, claims and other documents prescribed in the contract, shall take place via the contact persons determined by the parties.
- 12.2 Any notices and complaints related to the contract shall be submitted in writing, unless it arises otherwise from the nature of the notice or the terms and conditions of the contract and they must be addressed, according to the nature of the notice, to the contact person specified in the contract
- 12.3 A notice communicated electronically shall be deemed to have been delivered as of the moment it is communicated using the contact details specified in the contract or communicated in any other manner set out in the contract.
- 12.4 The other party shall be notified of any changes to the contact persons or details as soon as possible. Until the receipt of a respective notice, a notice shall be deemed to have been properly communicated if it has been sent using the contact details known by the other party at the time.

13. Final provisions

- 13.1 In the case of any conflicts between the documents of the contract, the conflict shall be resolved according to the following order of priority:

- 13.1.1 the contract;
 - 13.1.2 the general terms and conditions;
 - 13.1.3 other documents of contract.
- 13.2 Attempts shall be made to settle any disputes arising from the contract by way of negotiations. If no agreement is reached, the dispute shall be resolved in Harju County Court.