

Terms and Conditions of Government IT Procurement

SPECIAL TERMS AND CONDITIONS FOR PROCUREMENT OF CUSTOMIZED APPLICATIONS

Contract date and no.: _____

Annex no.: ____

1 SCOPE OF APPLICATION

(1) These Special Terms and Conditions for Procurement of Customized Applications apply to the procurement of applications customized for the customer's needs and according to the customer's requirements by central government agencies; by state enterprises; by central government institutions and funds; and by municipalities and municipal federations, provided that these Terms and Conditions are referred to in the contract and unless otherwise agreed in writing.

(2) These Special Terms and Conditions are used in conjunction with the General Terms and Conditions of Government IT Procurement, except that sections 4, 7, 8, 10, 13(2) to 13(4) inclusive, 14(3) and 19 of the General Terms and Conditions do not apply unless otherwise agreed. In case of conflict, these Special Terms and Conditions take precedence over the General Terms and Conditions.

2 DELIVERY

(1) The customized application is detailed in the contract. If the customized application contains standard software, it must be mentioned in the contract, and any special terms and conditions for their use must be detailed.

(2) Delivery includes the design, definition, implementation, testing and taking into use of the customized application unless otherwise agreed. Delivery can include other tasks too, such as data conversion and personnel training, if these are agreed in the contract.

(3) The phases, timetable and resources required for delivery are agreed in the contract.

(4) Maintenance and further development of the customized application will be agreed separately.

3 TESTING AND ACCEPTANCE OF DELIVERY

(1) The supplier performs the supplier tests specified in the contract on the customized application before handing over it to the customer for acceptance tests. Unless otherwise agreed, the supplier conducts the tests according to his usual practice, using material supplied beforehand by the customer. Accepted completion of the supplier tests is absolutely mandatory before the supplier can deliver the application to the customer for acceptance tests. Completion of the supplier tests is accepted when no errors are found in tests conducted by the supplier. The supplier notifies the customer when the customized application is ready for the customer's acceptance tests.

(2) The supplier hands over the customized application for acceptance tests so that it is installed in the user environment specified in the contract according to the delivery schedule. The customer will at his expense ensure that the user environment conforms to the contract unless otherwise agreed. The supplier will hand over the instructions and documentation required for acceptance tests to the customer and will also provide training as agreed for the customer's representatives so that they can carry out the tasks.

(3) The customer conducts the acceptance tests. The customer submits the testing plan to the supplier for comments in advance. However, the testing plan is not binding. Notwithstanding the testing plan, the customer is entitled to conduct any and all tests he considers necessary. Unless otherwise agreed, the customer has 30 days in which to conduct the acceptance tests, starting from the supplier's notification in writing that the customized application or an agreed part thereof is ready for acceptance tests and the supplier has handed over the customized application to the customer for testing as specified in section 3(2). The supplier must not hand over the customized application or part thereof to the customer for acceptance tests before the agreed time, unless the customer specifically agrees to this in writing. The parties may agree to the supplier assisting the customer in the acceptance tests.

(4) Unless otherwise agreed, the customer will conduct a test on agreed interim phases within 7 days of receiving notification in writing from the supplier that the test can be started. Acceptance of an interim phase does not discharge the supplier from li-

ability for errors which may emerge in subsequent interim tests, nor does it prevent the customer from declaring an error in the customized application as per section 3(6). Unless otherwise agreed, an interim test must be accepted before the following phase can be begun.

(5) Any errors discovered in the acceptance tests will be corrected by the supplier immediately. The deadline for conducting the acceptance tests will be extended by a reasonable amount of time required by the customer for testing and accepting corrections made to any errors.

(6) The customer must notify the supplier immediately in writing of any errors noted in the customized application, or at the latest within 3 working days of the expiry of the acceptance tests deadline.

(7) The customized application or part thereof is considered to be accepted if the customer has not notified the supplier of any errors within the time specified in section 3(6), or if the customer has started using the customized application or part thereof for production purposes.

(8) Minor errors shall not prevent acceptance. However, the supplier is required to correct such errors at no extra cost and without unreasonable delay.

(9) In fixed-price deliveries, each party is responsible for his own costs incurred in conducting the acceptance tests. In deliveries charged by the hour, the customer pays for the supplier's work in connection with the acceptance tests. However, the supplier is liable for the costs incurred in correcting errors related to repeat testings.

(10) Unless otherwise agreed, delivery is considered to have been completed when the customized application has been accepted and the supplier has fulfilled all his contractual obligations related to the taking into use of the product or the end result of the service.

4 PROJECT ORGANIZATION AND IMPLEMENTATION

(1) The parties set up a project and a steering group for the implementation of the contract and to manage cooperation between the parties. Both parties appoint a representative to the steering group, which is a cooperative body in charge of supervising the project. The duties of the steering group are detailed in the contract, and it is

convened as requested by the parties as necessary, at least after every delivery phase. The meetings of the steering group are minuted.

(2) The supplier appoints a project manager, who reports to the steering group about the status and progress of the project. His other duties are detailed in the contract. Both parties appoint a contact person, whose duty is to monitor and supervise implementation of the contract and to communicate information regarding implementation of the contract to his own organization and to the other party. The supplier's contact person is the supplier's project manager, unless otherwise agreed. If a contact person is to be replaced, the party concerned must notify the other party of the replacement in good time.

(3) The parties allocate the necessary human resources to the project. Certain key employees can be specified by name in the contract.

(4) The parties each reserve the necessary facilities and tools required for the project.

(5) Both parties will contribute to the implementation of the project in contexts which are under the control or subject to the decision of that party. Both parties will take any decisions required for the implementation of the project without undue delay.

(6) Unless otherwise agreed, the supplier creates the customized application and carries out other project work according to the supplier's standard procedures.

(7) The party responsible for the development environment is responsible for managing backup copies related to the customized application specified in the contract during the project and for verifying them. The customer manages backup copies of his own information and files in the production environment and also verifies them.

5 SUPPLIER'S RESOURCES

(1) The supplier ensures that sufficient personnel is allocated to the delivery.

(2) The supplier will not replace key employees specified by name without the customer's permission except for reasons beyond the supplier's control. The customer may not unreasonably refuse such a replacement. The supplier always notifies the customer of changes in key personnel in writing in advance and finds a replacement without delay.

- (3) The replacement must have at least the same competence and experience as the original key employee.

6 WARRANTY

- (1) In addition to that which is specified concerning warranties in section 17 of the General Terms and Conditions, the following applies:
 - (i) The warranty period is 12 months from the customer's acceptance of the customized application, unless otherwise agreed. This is different from what is specified in section 17 of the General Terms and Conditions. If the customized application is accepted in phases, the warranty period for previously accepted stages will not expire until 6 months have elapsed from acceptance of the entire customized application.
 - (ii) The customer is entitled to require that the supplier posts a security with and to the satisfaction of the customer as a warranty guarantee before the final payment instalment is paid to the supplier. This security shall be 15% of the total price of the project inclusive of VAT, and it shall be valid for at least three months after the expiry of the warranty period. If the fulfilment of the supplier's warranty obligations is delayed, the supplier will extend the warranty period. The supplier is liable for all costs incurred through the security.
 - (iii) For standard software, the warranty terms and conditions of those applications or the Special Terms and Conditions for Procurement of Standard Software (JIT 2007 – Standard Software) apply. Unless otherwise agreed, the Special Terms and Conditions for Procurement of Standard Software (JIT 2007 – Standard Software) apply. However, the supplier is responsible for ensuring that the standard software included are such that the customized application as a whole complies with requirements and agreed specifications. If there is an error in the customized application which is due to the standard software it contains, the supplier will correct the error if possible or work around it if this is not reasonably possible. The supplier will find out the cause of the error and correct it at his expense.

7 RIGHTS

- (1) Ownership in the media which contain the customized application specified in the contract is transferred to the customer when the media have been delivered as per the terms of delivery.
- (2) Unless otherwise agreed, copyright and other intellectual property rights in the customized application and the related documentation remain with the supplier or relevant third party.
- (3) Unless otherwise agreed, the customer is entitled at no extra cost to do the following, either by himself or assisted by an external service provider, the copyright and intellectual property rights of the supplier or third party notwithstanding:
 - (i) use the customized application in his own functions,
 - (ii) change and further develop the customized application,
 - (iii) make new copies of the customized application for his own use,
 - (iv) use material and know-how derived from the use of the customized application in the use of other applications,
 - (v) transfer the customized application to a different platform, operating system or geographical location, though taking any relevant export restrictions into account,
 - (vi) grant user rights in the customized application to third parties, if the management or reorganization of the duties of the central government, municipality or municipal federation so require,
 - (vii) obtain control and user rights of the machine-language version and source code of the customized application.

Confidentiality requirements must be taken into account in applying points i-vii.

- (4) The provisions of section 7(3) do not, however, apply to standard software, unless otherwise agreed. For standard software, either the user rights for those applications or the Special Terms and Conditions for Procurement of Standard Software (JIT 2007 – Standard Software) apply. Unless otherwise agreed, the Special Terms and

Conditions for Procurement of Standard Software (JIT 2007 – Standard Software) apply.

8 SUPPLIER'S OBLIGATIONS

(1) The supplier ensures that the customized application and its descriptions comply with the contract and that the work is done using the professional competence, good technological practice and standard of quality required for the task.

(2) The supplier will only employ subcontractors approved by the Customer for the delivery. The customer will not without just cause refuse permission to use a subcontractor. The supplier is responsible for the work done by the subcontractor and for ensuring that the subcontractor complies with the contractual obligations of the supplier.

(3) The supplier cooperates and negotiates with other suppliers and consultants employed by the customer if the customer so requests. Unless otherwise agreed, the supplier is entitled to bill for this extra work, but must always notify the customer in advance of such extra work.

9 CUSTOMER'S OBLIGATIONS

(1) In addition to the customer's contractual obligations, the customer will give the supplier any information in his possession that the supplier requests for the purpose of completing the task. The customer is liable for the content of the information, instructions and orders given to the supplier.

10 MAINTENANCE

(1) The supplier offers support and maintenance services for the customized application as agreed separately. The supplier undertakes to provide support and maintenance services for at least one year from acceptance of the customized application by the customer.

11 SOURCE CODE DEPOSIT CONTRACT

(1) If the customer requests, the supplier aims to have the source code of the standard software, together with any changes or additions made to it for the customer, deposited with a neutral source code deposit service provider (escrow agent) so that the customer gains user rights to the source code. This makes it possible for the customer to use and maintain the customized application to such an extent as agreed between the customer and the supplier in case:

- (i) the owner of the rights is declared bankrupt or goes into receivership,
- (ii) no maintenance is available for the customized application from the supplier, from the owners of the rights to the standard software in question, or from any other third party on essentially the same terms as those agreed on by the customer and the supplier concerning maintenance.