

JHS 166 Terms and Conditions of Public IT Procurement

Annex 7. Special Terms and Conditions for Procurement of Hardware (JIT 2015 – Hardware)

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INSTRUCTIONS FOR USE

These Special Terms and Conditions for Procurement of Hardware are used in the procurement of IT and communications hardware. In addition to these Special Terms and Conditions, a separate agreement on the hardware procurement must always be made. These Special Terms and Conditions are attached to the procurement agreement. When using these Special Terms and Conditions for Procurement of Hardware, *JIT 2015 General Terms and Conditions* must also be attached to the procurement agreement. In case of any conflict, the procurement agreement shall take precedence over these Special Terms and Conditions for Procurement of Hardware which, in turn, shall take precedence over the General Terms and Conditions.

The following matters should always be agreed upon in conjunction with procurement of hardware:

- which requirements are set for the hardware installation location
- whether hardware installation is included in the delivery of hardware
- what the permitted mean time between failures (Mean Time Between Failures) shall be

The provider of electrical and electronics equipment (manufacturer, importer, and retailer selling the equipment under its own brand) is obligated to arrange the organisation of waste management for the products it has issued to the market and is liable for the associated costs (producer responsibility) on the basis of *Chapter 6 of the Waste Act (646/2011)* and *the Government Decree on Waste Electrical and Electronic Equipment (519/2014)*.

If the procurement serves to replace existing hardware, the client may require in the invitation to tender that the supplier has a system in place for the proper disposal of old hardware and that the supplier accepts the hardware being replaced free of charge either in conjunction with the delivery of new hardware or, if this is not possible for the client, at a location situated within a reasonable distance (e.g. less than 30 km) from the client's premises.

If delivery of third-party hardware is agreed upon, it should be clearly specified which party is responsible for the hardware delivery and which party is the client's contractual partner in this respect.

These use instructions do not form part of the agreement.

Agreement date and no.: _____

Annex no.: _____

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1 Scope of application

(1) These Special Terms and Conditions for Procurement of Hardware are applied to the procurement of hardware by public procurement units, if these terms and conditions are referred to in the agreement and to the extent they have not been otherwise agreed upon in writing.

(2) These Special Terms and Conditions are used together with the General Terms and Conditions of Public IT Procurement. In case of any conflict, these Special Terms and Conditions shall take precedence over the aforementioned General Terms and Conditions of Public IT Procurement with regard to their corresponding provisions.

2 Definitions

In addition to the following definitions of the Special Terms and Conditions, the definitions of *JIT 2015 General Terms and Conditions* shall be applied.

hardware

fi laite

the hardware which is the object of the agreement, and the firmware required to operate it, as well as the associated documentation

handover

fi luovutus

the handover of the hardware to the client for inspection

specifications

fi määrietykset

the technical and functional hardware specifications agreed by the contracting parties on the basis of the requirements

error

fi virhe

the object of delivery does not fulfil the agreed requirements and specifications, or it does not function in accordance with them

3 Rights

(1) The right of ownership and liability for risk associated with the hardware under the agreement are passed to the client once the hardware has been delivered to the client.

(2) The right of ownership and intellectual property rights to the client's material belong to the client or a third party, and they are not transferred to the supplier. The supplier shall have the right to process the client's material solely for purposes of fulfilling the agreement.

4 Finance lease

(1) If the client selects a finance lease as the form of financing, the supplier commits to selling the products to the leasing supplier appointed by the client under the terms and conditions agreed in this agreement. The supplier shall deliver the products to the client and invoice the client's leasing supplier. The client shall be responsible for ensuring that it has a leasing agreement in force with the leasing supplier.

(2) The client shall be responsible for ensuring that it notifies the leasing supplier of the accepted delivery of the products within the time agreed for the acceptance of the delivery in *Section 9*.

5 Installation

(1) Unless otherwise agreed, the client shall be responsible for the installation of the hardware in accordance with the supplier's instructions. The supplier shall provide the client with the instructions required for the installation in conjunction with the delivery.

(2) If the installation has been agreed to be performed by the supplier:

- i. The supplier shall provide the client, in good time, with written instructions for setting up the operating environment so that it is in accordance with the supplier's instructions. In this case, the supplier shall have the right, on a jointly agreed date, to inspect the operating environment before the agreed installation date.
- ii. The client shall be responsible, at its own expense, for setting up the installation environment so that it is in accordance with the supplier's instructions.
- iii. The client shall be responsible for the arrangement of the storage and work facilities required during the supplier's installation.
- iv. The client shall provide the supplier with access to the installation premises on the jointly agreed date to perform the installation.

6 Pre-installation

(1) If the delivery includes the pre-installation of software, the supplier shall provide the client with documentation describing the pre-installation process.

7 Handover

(1) The supplier shall hand over the hardware to the client for inspection on the date agreed upon in the agreement. The handover may take place before the agreed date with the client's permission. If the handover is delayed from the agreed date, a new handover date shall be agreed upon mutually.

(2) Unless otherwise agreed, the delivery clause is "delivered to the location designated by the client" (Finnterms 2001, delivery clause TOP for domestic sales).

8 Acceptance inspection

(1) The client shall inspect, without delay after the handover, that the delivery includes all of the hardware specified in the agreement and that the hardware is externally intact.

(2) The client shall notify the supplier of any deviations it has identified during its acceptance inspection within seven (7) weekdays of the handover.

9 Acceptance of the delivery

(1) Unless otherwise agreed, the client shall inspect the hardware within fifteen (15) weekdays of the handover. The supplier shall assist the client in the inspection of the delivery in a manner agreed upon mutually. The deadline for the inspection of the delivery shall be extended by the time which the client reasonably requires in order to inspect and accept any error corrections carried out by the supplier.

(2) The client shall notify the supplier of any errors identified in the hardware without any delay; however, no later than within three (3) working days after the end of the time reserved for the inspection of the hardware's functionality. The notification shall be issued in writing.

(3) Any minor errors and defects identified in the hardware do not prevent the delivery from being accepted. The supplier is nevertheless obligated to correct such errors and defects free of charge and without undue delay.

(4) If the client has not given notification of errors within the time stated in *Section 9(2)*, or if the client has taken the hardware into use, the client shall be deemed to have accepted the hardware.

(5) Each contracting party is responsible for its costs arising from the inspection of the hardware's functionality.

(6) Unless otherwise agreed, the delivery shall be deemed to have taken place once the hardware has been accepted.

10 Changes

(1) All changes and their impact on the delivery schedule or price shall be agreed upon in writing following a mutually agreed procedure.

11 Availability and maintenance of spare parts

(1) The supplier is responsible for ensuring that spare parts, servicing and firmware maintenance are available for newly delivered hardware, or its replacement hardware, in Finland at reasonable prices and under reasonable terms and conditions for at least five (5) years after the delivery.

12 Delays

(1) If a contracting party finds that it will be delayed in its delivery or in its performance of an obligation, or it considers such delay probable, the contracting party must, without delay and in writing, notify the other contracting party of the delay and its impact on the fulfilment of the agreement. If the supplier is delayed, it shall notify the client of a new delivery time as soon as possible.

(2) If the delivery of hardware is delayed due to a reason under the responsibility of the supplier, the supplier shall pay a contractual penalty to the client for each commencing period of seven (7) days, by which the supplier exceeds the due date agreed for the delivery or its part under the agreement. The penalty for each above-mentioned period shall be 0.5 per cent of the purchase price of the delayed hardware. However, the maximum penalty shall be 7.5 per cent of the price in question. The amount of damage caused by the delay does not affect the amount of the penalty. However, the client shall not be entitled to receive a contractual penalty over the time during which the supplier provides the client, free of charge, with replacement hardware accepted by the client.

(3) Such errors or defects which do not prevent the hardware from being delivered or used in accordance with the agreement do not constitute a right to a penalty for delays. However, the supplier is obligated to correct such errors or defects within the scope of the warranty and without undue delay.

(4) The supplier shall not be entitled to receive a contractual penalty due to the client's delay.

(5) If the delivery of the hardware is delayed due to a reason attributable to the client, the delivery shall remain interrupted until the client notifies that the reason for the delay no longer exists. After receiving the client's notification, the supplier shall notify of a new delivery schedule. If the delivery of hardware is delayed due to a reason attributable to the client for more than three (3) months, the supplier shall have the right to cancel the agreement.

13 Replacement hardware and changes

(1) The supplier may, with the client's consent, replace the hardware agreed upon in the agreement with other hardware. The replacement hardware must fulfil what the contracting parties have agreed upon in writing in terms of its capacity, performance and other properties. What has been agreed upon regarding the installation of the original hardware shall also be applied to the installation of the replacement hardware.

(2) The client is entitled to make changes to the hardware owned by the supplier which the supplier has leased out or otherwise handed over to be used by the client only with the supplier's written consent.

14 Warranty

(1) The supplier shall provide the hardware with the warranty specified in the agreement. Unless otherwise agreed, the warranty terms and conditions set forth below shall be followed.

(2) The supplier shall, without delay and at its own expense, correct any errors identified in the hardware during the warranty period or deliver a new hardware to replace the defective one. Warranty repairs also include making changes corresponding to the repairs in the documentation.

(3) The supplier's warranty does not cover errors that have been caused by the hardware being used contrary to the written instructions issued by the supplier or contrary to the agreement. Furthermore, it does not cover errors that have been caused by regular wear and tear, or damage which has not been caused by the supplier. In addition, the warranty does not cover the hardware to the extent the client has made changes to the hardware, or has had such changes made by a third party, without the supplier's written consent.

(4) The supplier shall perform the warranty repairs at the client's premises, unless otherwise stated in the agreement. In order for the error to be corrected, the client shall place the hardware to be repaired available to the supplier for the required time during the regular working hours of the supplier.

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- (5) If the warranty repairs are performed at the supplier's premises, the client shall deliver the hardware to the location in Finland designated by the supplier for the warranty repair. The supplier shall pay for costs arising from the delivery of the hardware for warranty repairs and the return of the hardware.
- (6) The warranty period of hardware shall be extended by the time during which the hardware has been inoperable due to an error. However, the duration of the warranty period is at most twice the length of the original warranty period.
- (7) If the supplier does not fulfil its warranty obligations within a reasonable time after the client has given notification of an error, the client shall have the right to have the necessary repairs performed by a third party and claim for compensation equalling the repair costs from the supplier. The client shall notify the supplier in advance of such repairs. Furthermore, the client shall have the right, instead of repairs, to claim for damages or a price reduction. *Section 11 of JIT 2015 General Terms and Conditions* shall be applied to damages.
- (8) Unless otherwise agreed, the warranty period for hardware is twelve (12) months from the delivery.
- (9) If it is deemed that a fault or error reported by the client is not within the scope of warranty, the supplier shall have the right to charge for the identification and localisation of the fault and error in accordance with charging criteria agreed upon in writing. In addition, the supplier shall have the right to charge the client for the repair of a fault or error not covered by warranty if such repair has been agreed upon.
- (10) The supplier's liability for faults and errors in the hardware is limited to the fulfilment of the warranty obligations under this *Section 14*. After the warranty period, the supplier's liability for faults and errors in the hardware shall be limited to the obligations set out in a maintenance agreement, if any, unless otherwise required by mandatory provisions of the law.