



# *Revised* General conditions of CERN Contracts and Invitations to tender

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# ILO Training

Overview in addition to the specific **ILO training day** that took place on 1 March about the revision of :

- **the General Conditions of CERN Contracts and**
- **the General Conditions of CERN Invitations to Tender**



# Why a revision of the GCs?

Reflect the **lessons learned** in particular during the *COVID crisis*

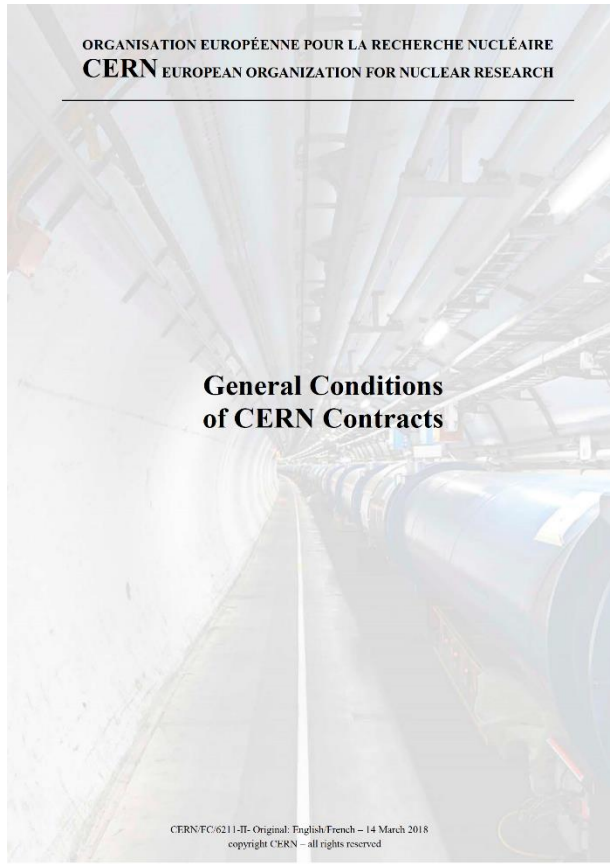
Implement feedback on contract cases and dispute settlement over the last years

Need for updates and improvements of procedures and *wording*

# Working Group and Benchmarking



# General Conditions of CERN Contracts (G3C)



- To the attention of the **contractors**
- Rules applicable to the relationship between CERN and the Contractor
- Referred to in **Purchase Orders and Contracts**
- to be complemented or modified by **specific clauses**

# Overview of Key Improvements

- Clarification on **CERN's status** and its privileges and immunities
- Introduction of detailed procedure on **expert nomination** when contractor challenges its warranty obligations
- Introduction of new clauses on “**Data protection**” and **IT security provisions** in clause on “Communication”
- New **arbitration clause** referring to ICC Rules (to align with ESO, ESA, ITER)
- Clarification of **definitions**, such as *Contract Price, Force Majeure, Group of firms, Personal Data, Subcontractor, Warranty Period*;
- Specification of terms: “activities”/“services” “deliverables”/“supply”, etc....
- Clarification of **status of Contractors' personnel**, in particular concerning their identification and communication conditions (new clause 3.5)
- Specification of provisions on **Equipment** made available by CERN, on **Bank guarantees** and the exceptions to the **liability caps**
- Update of references and numbering
- Overall improvement of documents' clarity and format

# CERN's status



- Introduction of specific, standard, wording to clarify **CERN's status** and resulting privileges and immunities (no need to specify on a case by case basis)

The European Organization for Nuclear Research is an intergovernmental organisation with its seat in Geneva, Switzerland. Its facilities are located on either side of the border between Switzerland and France. Pursuant to its founding Convention, CERN fosters international scientific collaboration in fundamental particle physics research. CERN refrains from activities for military purposes and the results of its research are made generally available. By virtue of its international legal status, CERN enjoys certain privileges and immunities in its Member States<sup>1</sup>, and nothing in the Contract (including any reference to external rules) shall constitute or be construed as a waiver by it of these privileges and immunities.





# Expert nomination

- Introduction of a detailed procedure for the nomination of an **expert** in cases where the contractor challenges its warranty obligations (new clause 26.7)

If the Contractor challenges the existence of the Non-conformity and/or the applicability of the warranty, any Party may request the intervention of a neutral, independent, adequately qualified and experienced third party expert (the “Expert”). The Parties shall, within 30 Days and in good faith, jointly appoint the Expert, who shall perform any necessary assessment and set out its findings in a written report, which shall be delivered to and be binding on the Parties. If the Parties fail to agree on the Expert, CERN shall be entitled to appoint the Expert. The Expert shall perform the assessment and submit its report within two Months from its appointment, or any other time period agreed between the Parties. All related costs shall be borne by the Contractor except if, and to the extent that, it has been established on the basis of the Expert’s report that the Contractor is not responsible for the Non-conformity.



# Data, communication & IT security



- Introduction of new clause on “**Data protection**” (clause 15)
- New provisions on **IT security** in the “**Communication**” clause 34
- to reflect CERN’s internal regulations and standards (Operational Circular 11, etc...)

## Data Protection

Where the Contractor processes **Personal Data** on behalf of or provided by CERN, it shall ensure that its processing **complies with the principles set out in CERN's rules and regulations** and that appropriate safeguards are in place to protect the privacy of the data subject concerned. Unless agreed otherwise in writing between the Parties, CERN's template shall be used for any data processing agreement.

In particular, the Contractor shall:

- process the Personal Data **solely for the performance of the Contract**, unless otherwise required by Laws, in which case the Contractor shall notify CERN in advance, or within two Days;
- take appropriate technical and organisational **security measures**, and notify CERN promptly of any data breach, and assist CERN in complying with its obligations under CERN's rules and regulations;
- **not transfer Personal Data to any third party**, unless agreed otherwise in writing by the CERN Procurement Service;
- assist CERN in **responding to requests from data subjects** under CERN's rules and regulations;
- if requested by CERN, demonstrate its **compliance with its data privacy protection obligations** under the Contract, and contribute to audits, including inspections, conducted by CERN or any appointed representative;
- permanently **delete or return all Personal Data to CERN** following completion of its contractual obligations or termination of the Contract.

The Contractor shall ensure that any transfer of Personal Data from the Contractor to CERN or any third party complies with Laws.



## **Communication and Information Technology Security**

Whenever the Contract stipulates that information is to be communicated in writing, the requirement shall be deemed to have been met if the information is communicated by letter or electronic mail, it being understood that the burden of proving that the information has been correctly communicated shall at all times remain with the issuing Party. Written communication shall be deemed to have taken place on the date of receipt of such communication by the receiving Party. Risk related to electronic communications shall be borne by the sending Party. Any communication by or to any person other than the person designated in the Contract shall not be valid.

The Contractor shall ensure an adequate level of security in its information technology and processes used in the performance of the Contract. In particular and without limiting the Contractor's duty of care in this respect, the Contractor shall report to CERN promptly in writing any of the following events and provide to CERN all necessary information and supporting documents that CERN may reasonably request related to such event:

- loss of integrity or confidentiality of CERN data, including Personal Data ("CERN data");
- unauthorised access to, use of, or interference with CERN data by any person or organisation;
- unauthorised access to the Contractor's network elements, buildings and tools;
- use of the Contractor's information technology system or services by any third party in order to gain unauthorised access to any computer resource or CERN data, or threat thereof;
- loss of availability of CERN data due to any failure or compromise of the Contractor's security.

# Arbitration clause



- New arbitration clause referring to **ICC Rules** to align with ESO, ESA, ITER (clause 36)

## Arbitration

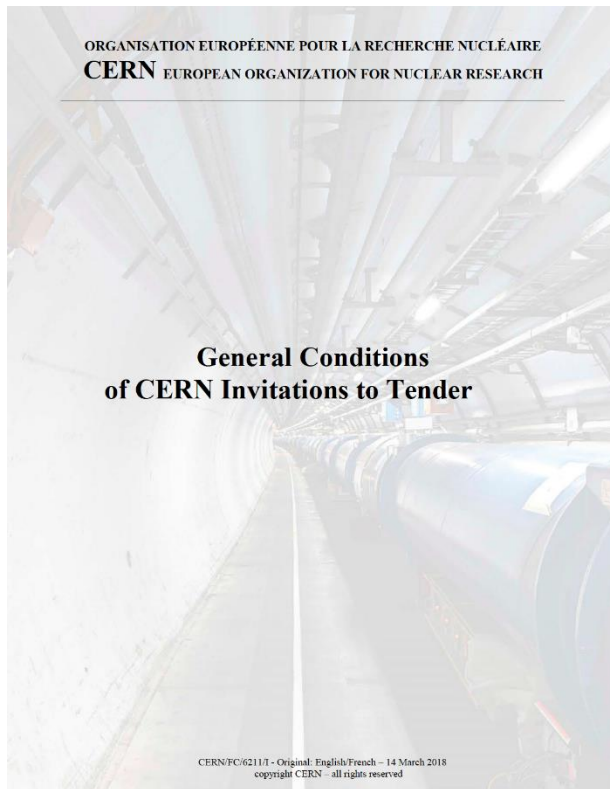
Without prejudice to CERN's international legal status, if any dispute under the Contract fails to be settled amicably, such dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce of Paris. Unless agreed otherwise in writing by the Parties, the ICC Expedited Procedure Provisions shall not apply, any dispute shall be settled by three arbitrators, in English and take place in Geneva. Notwithstanding the reference of any dispute to arbitration, the Parties shall continue to perform their obligations under the Contract.

The arbitral tribunal shall interpret the provisions of the Contract in accordance with clause 35.

Neither the arbitral award nor any procedural order made in the arbitration shall be published or its contents made known to any third without the prior written approval of each Party.

Any deadline or timeline falling in or incorporating CERN's end of year closure in whole or in part shall be deferred or suspended by a period equal to such period of closure.

# General Conditions of CERN Invitations to Tender (GCIT)



- To the attention of the **bidders**
- Rules applicable to the invitation to tender process
- **Reflect the principles laid down in the Procurement Rules**

# Overview of Key Improvements

- Update of document to align with revised version of G3Cs (definitions, references, numbering, etc...)
- Clarification on CERN's status /privileges and immunities
- Introduction of new provisions on “Communication and IT security”
- Overall improvement of documents' clarity and format



# Next Steps

- Revised General Conditions submitted for *information* to **Finance Committee and Council this week (March 2023)**
- Updated **French version** available soon;
- Revised **General Conditions** will replace the **previous version** CERN/FC/6211-I & II and apply to **all orders and contracts placed as from the date of their publication** foreseen **in April**.



# Find the documents

<https://procurement.web.cern.ch/document-category/key-reference-documents>

## Documents: Key Reference Documents

### General Conditions applicable at CERN

Title	File
General Conditions of CERN Contracts (EN)	 Read
Conditions générales des Contrats du CERN (FR)	 Read
General Conditions of CERN Invitations to Tender (EN)	 Read
Conditions générales des appels d'offres du CERN (FR)	 Read
Working on the CERN site (EN/FR)	Read



# QUESTIONS ?

- Contact **Procurement Legal**:

[Procurement.Legal@cern.ch](mailto:Procurement.Legal@cern.ch)

- Consult the **Procurement website**:

<https://procurement.web.cern.ch/>



Thank you for your attention!