



CERN GENERAL CONDITIONS

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The General Conditions- a bit of history

- ✓ 1975 version of General Conditions used for nearly 30 years
 - ✓ But during the LHC construction phase complemented by specific contract conditions to correct deficiencies
- =) decision to have new General Conditions which integrate the LHC contract experience (=10 years)

The General Conditions – a bit of history

- ✓ First version of “New General Conditions” approved by FC in June 2007
- ✓ Implementation for a trial period of more than a year
- ✓ General Conditions well received by contractors - only one article (liability) has caused discussions => changed by CERN to make it more reciprocal
- ✓ New General conditions approved by FC October 2008

Scope of the General Conditions

- ✓ Tenders and Contracts (back to back conditions)
- ✓ Contracts and Purchase Orders
- ✓ Supplies and Services

However: General Conditions are not intended to cover specific needs = have to be covered in the contract

The General Conditions will be supplemented by new standard documents for tenders and contracts to insure overall consistency of logic and language

Tender Conditions

- The New Conditions are a blend between the 1975 conditions and the instructions for bidders used for some LHC tenders
- Terminology fully consistent with Contract Conditions, both documents are complementary
- New features:
 - Confidentiality
 - Intellectual Property
 - Currency

General outline of the Contract conditions

The structure of the document follows the different stages of the execution of the contract (1/3):

- ✓ Definitions
- ✓ Applicability
- ✓ Entry into force
- ✓ Performance of the Contract
- ✓ Priority of contract documents
- ✓ Combination of firms
- ✓ Countries of origin
- ✓ Representatives and correspondence
- ✓ Sub-contracting
- ✓ Assignment
- ✓ Compliance with laws

The structure of the document follows the different stages of the execution of the contract (2/3):

- ✓ Personnel
- ✓ Use of logo and the CERN name
- ✓ Confidentiality
- ✓ Intellectual property
- ✓ Equipment and materials made available
- ✓ Activities on the CERN site
- ✓ Monitoring
- ✓ Documents
- ✓ Delivery
- ✓ Changes required by CERN
- ✓ Acceptance procedure
- ✓ Contract Price
- ✓ Invoicing and Payment
- ✓ Bank guarantee

The structure of the document follows the different stages of the execution of the contract (3/3):

- ✓ Warranty
- ✓ Force Majeure
- ✓ Liability
- ✓ Termination
- ✓ Consequences of Termination
- ✓ Concessions and Waivers
- ✓ Clauses that survive
- ✓ Communications in writing
- ✓ Governing law
- ✓ Arbitration
- ✓ Amendments
- ✓ Languages

Some clauses in detail

1) Subcontracting

- ✓ limited to 51% of the value of the contract
- ✓ No subcontracting of management of the contract
- ✓ No sub-subcontracting of work to be executed on the site
- ✓ Change in subcontractor subject to prior authorization by CERN
- ✓ Step-in right by CERN

Some clauses in detail

2) Compliance with laws:

Definition of laws:

“CERN rules and regulations relevant for the execution of the contract and all laws, treaties, rules, regulations and orders of any local or national authority having jurisdiction over the contractor”.

Special Feature of CERN:

domain straddles the Franco- Swiss border = two national laws potentially applicable to contractors working on the CERN site.

Some clauses in detail

2) Compliance with law (continued):

- ✓ To solve this issue, CERN is negotiating a treaty with its Host States which defines a single applicable law per contract (not yet signed due to problems with the EC).
- ✓ In addition, CERN contractors have also to comply with CERN rules established by virtue of its intergovernmental status.

Some clauses in detail

3) Intellectual Property

Definition of IP:

“Intellectual property including know-how, in forms such as drawings, documents, designs, interventions, software programmes, reports, processes and protocols, and protected by means such as secrecy, patents, copyrights and trademarks”

Some clauses in detail

3) Intellectual Property (continued)

- ✓ Disclosure of IP only a license to use as necessary under the contract
- ✓ CERN IP: made available "as-is" without any warranty
- ✓ Contractor's IP: warranty with regard to infringement of third party IP
- ✓ Supplies and services include a license to IP necessary for their free and unlimited use including modifications and repair
- ✓ IP resulting from the execution of the contract vested in CERN

Some clauses in detail

4) LIABILITY

Basic Principle: Each party indemnifies the other for the damages caused by its acts

Limitation: 1MCHF or contract price or insurance whatever is the highest + no liability for indirect damages

Exceptions:

- Non compliance with laws and IP infringement by the contractor
- injury and death (limitation normally invalid)
- gross negligence willful misconduct

Obligation for contractor to take out adequate insurance Liability

Some clauses in detail

5) Termination :

Possibility for each party to terminate in case of:

- ✓ gross negligence willful misconduct of the other party
- ✓ Breach not remedied within period set in notification
- ✓ Bankruptcy, insolvency

Possibility for CERN to terminate at will at any time

Some clauses in detail

6) Consequences of termination

Termination by CERN (except termination at will):

- ✓ Compensation by the contractor for all costs incurred by CERN including performance of the contract by a third party
- ✓ Such Compensation is without prejudice to penalties or other damages which may be claimed under the contract

Termination by the Contractor or termination at will by CERN:

- ✓ Compensation for costs incurred by the contractor but limited to :
- ✓ Contract price unpaid for supplies
- ✓ Contract price for three months for services

THANK YOU