

**General terms and conditions of contract ('Terms and Conditions')
for supplying services and work on behalf of the
Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH**

August 2014 (Terms and Conditions 2014)

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1. General provisions for supplying work and services

1.1. Components of the contract and applicable law

The components of the contract are

1. the contract with its annexes;
2. these Terms and Conditions and their annexes;
3. the Standard Official Contracting Rules for Services, Part B (VOL/B).

In the event that there is any discrepancy or contradiction between the components of the contract, the above components of the contract shall apply in the order shown. In the event of any discrepancy or contradictions between annexes, the provision in the annex with the lower number shall apply. The contractor's general terms and conditions of business or payment shall not apply.

The contract shall be governed by the laws of the Federal Republic of Germany.

1.2. Quality of work and services

The work and services to be provided must comply with the recognised state of the art and the generally accepted rules of technology as well as being consistent with the general strategy of the ultimate commissioning party/client. They must be of excellent quality.

When performing the work and services, the contractor must respect the local conditions in the relevant country as well as customary trading practices and the legal provisions, ordinances and official regulations, and take into account the financing possibilities and the general, special and social impacts of the measure. Respect for human rights and due consideration of environmental and gender aspects must be ensured.

1.3. Subcontracts

Any subcontracting of work and services by the contractor to third parties shall require the prior written approval of GIZ, unless the contract stipulates that such work or services be procured by the contractor.

1.4. Obligation of an assigned expert and a subcontractor

The contractor shall ensure that the staff it employs as well as its subcontractors comply with the provisions of the contract in accordance with section 1.1. where applicable.

1.5. Confidentiality

Any and all data relating to the contract as well as any other information of which the contractor becomes aware in the course of performing the contract must be treated as confidential during and beyond the term of the contract. The contractor shall not be permitted to make use of any such data and information for the contractor's own purposes.

The contractor must not make documents and/or work results of any kind, including in particular, but not limited to, reports, accessible to third parties without prior written approval by GIZ. Third parties under this provision also include the ultimate commissioning party/client.

1.6. Requirement for GIZ's approval for publications

Any publications regarding the measure require prior written approval by GIZ, even after the contract has come to an end. A brief description of the contract and scope of activity for the contractor's PR purposes shall not require GIZ's approval. A statement on the content of the contract and the key results constitutes a brief description for the purposes of these Terms and Conditions. The contractor must always express in an appropriate way that its activities are on behalf of GIZ, and must also name the ultimate commissioning party/client and any further financing parties.

1.7. Rights of use

1.7.1. Principle

Unless otherwise agreed in the contract, the contractor shall assign all assignable rights to the work results to GIZ waiving its rights to be identified as the author. If the assignment of rights is not permissible by law, the contractor shall grant GIZ an irrevocable, worldwide and exclusive right – for the duration of statutory copyright and other property rights – to use all work results, including commercial use outside the measure.

1.7.2. Work results

Work results pursuant to 1.7.1. are all work and services that are created or procured in performance of the contract, especially studies, drafts, documentation, articles, information, records, illustrations, drawings, plans, calculations, materials, photos, slides, image files and other visual presentations.

1.7.3. Computer programs

Work results pursuant to 1.7.2. shall also include any computer programs which the contractor produces, modifies, procures or makes available in the performance of the contract. The right of use assigned to GIZ pursuant to 1.7.1. specifically includes the right to load, display, run, transmit, save, modify, translate, edit and reproduce the programs in unlimited quantities. For the purposes of processing, the contractor shall provide GIZ with the respective source code and program documentation, copies of which GIZ shall also be entitled to pass on to third parties.

1.7.4. Existing work products

The assignment of rights of use pursuant to 1.7.1. above shall also apply to studies, drafts, documentation, articles, information, records, illustrations, drawings, plans, calculations and other materials supplied from the contractor's existing work products. If the contractor has notified GIZ in writing prior to entering into the contract that such products exist, and if the contractor does not substantially modify these in performance of the contract, GIZ shall only be entitled to a non-exclusive right of use for the relevant products.

1.7.5. Scope of right of use

GIZ's rights of use under 1.7.1. above shall include the right to use the work results and existing work products without limitations with respect to time, content and location. In particular, GIZ shall be entitled to make use of these rights in the following manner:

- (a) duplication, distribution and making accessible to the public through any printed materials and media in any number of editions and for print-on-demand services;
- (b) intangible reproduction by oral presentation and public reproduction thereof, including on radio and television;
- (c) digitisation, electronic duplication, distribution and making accessible to the public, in particular through recording on image and audio storage media, including audiovisual storage media, and the use of machine-readable storage media (e.g. disks, CDs, DVDs, flash media), including storage, incorporation into computer programs, transfer to other data storage media and installations, processing for and entry in machine-readable databases; distribution and making accessible to the public may be in physical or intangible form, including online use, in particular through the internet or intranets, display on monitors and downloads;
- (d) adaptation (including shortened and supplemented versions), redesign and translation or transfer into other languages or forms of presentation, including the right to produce audio, image or text formats, subtitling and duplication, distribution, making accessible to the public, publication or public reproduction of such versions, including on radio and television, by GIZ or by third parties contracted by GIZ;
- (e) adaptation for film, radio broadcasting and television broadcasting purposes, in particular through corresponding adaptation for the purpose of filming and refilming, including on video, DVD, cine film and other technical processes, transmission on radio and television in any communication form and public reproduction, including repeated reproduction or reproduction outside the event, including through oral presentation, screening or performance, also for recording, transfer and reproduction on image or audio storage media and audiovisual media, in unprocessed or processed form, for reproduction, distribution and making accessible to the public in any version, number, edition or issue, for public performance, for public screening/presentation or reproduction.

1.7.6. Extension of rights of use to include forms of use unknown at the time of entry into the contract.

The contractor shall further assign to GIZ an irrevocable, worldwide and exclusive right – for the duration of statutory copyright and other property rights – to use the work results within the meaning of 1.7.2. and 1.7.3. above and the existing products within the meaning of 1.7.4. in ways still unknown at the time of entry into the contract, including commercial use outside the measure.

In the event of notification of existing work products pursuant to 1.7.4. above, and in the event that GIZ wishes to use these products in ways still unknown at the time of entry into the contract, the contractor and GIZ shall agree an appropriate remuneration for this separately.

1.7.7. Assignment to third parties by GIZ

GIZ shall further be entitled to assign to third parties the rights of use granted or to grant sublicences in these rights of use to third parties; in the case of non-exclusive rights of use under 1.7.4. above, however, this shall be limited to the assignment and granting of sublicences to the ultimate commissioning party/client, the executing organisation of the measure, the partner institution and all other parties involved.

1.7.8. Freedom from third-party rights

The contractor warrants that the work results are free from any copyright or other third party rights that would prejudice the use of the work results to the extent described above. The contractor indemnifies GIZ against all third party claims arising from the granting or exercise of the rights of use pursuant to 1.7.1. and shall reimburse GIZ for all costs incurred in connection with corresponding legal defence.

1.7.9. Compensation

The contractually agreed remuneration also includes the granting of rights of use.

1.7.10. Contractor's right of use for its own purposes

GIZ may grant a right of use for the work results to the contractor in writing, pursuant to 1.7.2. and 1.7.3., and free of charge, where such use is for the contractor's own purposes. GIZ will permit such use if and to the extent that the contractor can demonstrate a legitimate interest and this does not conflict with GIZ's interests. The contractor must name GIZ with every use of the work results.

1.8. Keeping of contract-related records

The contractor must keep contract-related records and work results for ten years after acceptance of the final report or, as the case may be, of the work, and must provide them for inspection at GIZ's request.

1.9. Reporting obligation relating to the provision of services

The contractor shall submit the reports specified in the contract according to type and frequency, in the agreed form and language, and in the format stipulated by the ultimate commissioning party/client, to GIZ on time. The reporting formats to be used can be found on the GIZ website at: www.giz.de - Procurement – Important documents. Unless otherwise agreed in the contract, the contractor shall prepare the reports in German and forward them in electronic form (both in a format that is MS Word compatible and as PDF) to GIZ, as well as three printouts (hard copy). The contractor shall supply further copies on written request against reimbursement of reasonable prime costs.

1.9.1. Required content

All reports and the associated documents must clearly indicate the ultimate commissioning party/client, any other financing parties and GIZ. The reports must be concise and limited to information directly relevant to the contract. Where there are local subsidies as per 4.7 below, details of their settlement must also be given. The reports should state the degree to which objectives are achieved. They must be dated and hard copies need to be signed. Any sources and references must be stated.

1.9.2. Interim reports and final report

The final report is due at the latest six weeks after the term of the measure ends. Where a measure has a term of at least 12 months, interim reports are due every twelve months. The partner institution must be involved in writing the reports.

The key sections must be forwarded to the measure's executing organisation in the country's official language or an agreed common language after written approval by the technical contact person or person responsible for the commission.

1.9.3. Special reports

The contractor shall produce special reports without delay or prior request if there is an important reason. For this purpose, an important reason shall include substantial changes in the risk assessment of the measure, substantial changes in time, financial, technical or development policy aspects, and risks to the safety or health of assigned staff. GIZ may also request special reports on specific procedures/incidents and issues at any time. No additional remuneration shall be payable for such special reports.

1.10. Studies/appraisals as the agreed work

If the contractor's primary task is to produce one or more studies or appraisals, the reporting requirements set out at 1.9. above do not apply.

1.11. Use of GIZ's corporate design

When designing materials relating to the measure which are intended for use with third parties (e.g. business cards, letterhead, emails, publications, presentations), the specifications in GIZ's Corporate Design Manual (annex 1 to these Terms and Conditions) must be followed. The design must also be agreed with GIZ's technical contact person or person responsible for the commission, and in the event of direct cooperation also with the responsible partner institution in the country of assignment.

1.12. Obligation of the contractor to report obstacles to the performance of contract

The contractor must notify GIZ in writing without delay of all events and results which delay performance of the contract or make it impossible, or necessitate modification of the contract, the agreed obligations or the conditions. This applies in particular to the conducting of a feasibility study on investment measures if the contractor reaches the conclusion that the feasibility study will show that the investment measure would be uneconomical.

1.13. Obligation of the contractor to report on the status of the measure

GIZ shall be entitled to review the progress and results of the performance of the contract at any time, including the project accounts and any special accounts connected to the project. The contractor must keep the necessary records available and provide the necessary information for this purpose. At the request of GIZ the contractor shall also provide information to other institutions or persons and organisations commissioned by GIZ as well as making audits possible, and agreeing to cooperate appropriately in any such audits.

1.14. Person-related data and the obligation to maintain transparency

1.14.1. Saving and processing personal data

The contractor agrees that personal data may be stored and processed by GIZ and shall obtain written consent from any expert it employs, setting out that that expert also agrees to their personal data being processed by GIZ. GIZ shall process personal data only to the extent required in connection with the implementation of the contract. The personal data involved comprise in particular the name, address, performance profile, qualifications, area or measure of assignment, evaluation of results and contracts entered into with the contractor, including terms and conditions.

1.14.2. Obligation to ensure transparency

To ensure that the internationally recognised principles relating to maximum transparency and efficiency in development cooperation are upheld, selected information on the project and its funding, as well as the specific award of the contract (name, type of award, type of service, project number, contract value and period of service delivery) will be published on the website of GIZ.

1.15. Code of Conduct

The contractor shall be obligated to respect the rules and guidelines contained in the GIZ Code of Conduct (annex 2 to these Terms and Conditions) in its dealings with GIZ employees.

1.16. Conflict of interest

The contractor shall at all times act in an impartial and loyal manner.

The contractor shall not be permitted to accept any additional remuneration from third parties in connection with the contract. During the term of the contract the contractor shall not accept other orders where a conflict of interest is to be anticipated due to the nature of the order or due to the contractor's personal or financial connections with a third party unless prior written consent has been given by GIZ.

The contractor must not enter into any contracts with natural or legal persons with whom it has personal or financial ties in connection with contract-related procurements unless GIZ has previously agreed to this in writing.

In the event that a conflict of interest arises in the course of an existing contractual relationship, the contractor must disclose this to GIZ without delay and discuss and agree with GIZ any further steps to be taken. If the parties are unable to reach an agreement in such a case and GIZ terminates the contract, then the contractor is responsible for the termination. The same shall apply in the event that a conflict of interest is not disclosed immediately to GIZ, or if the contractor places a contract-related order for procurement with a legal or natural person with whom it is associated without GIZ having given its prior approval.

1.17. Violations of the Code of Conduct

The contractor must not:

- directly or indirectly offer or give to GIZ, its staff, or a third party any gift or grant any other pecuniary and no pecuniary advantages in connection with the award and/or performance of the contract with GIZ; this shall also include any facilitation fees;
- directly or indirectly accept or demand gifts or any other pecuniary and no pecuniary advantages for itself or others in connection with the award and/or performance of the contract.
- agree any restraints on competition with one or more other companies.

If the contractor violates one of these prohibitions and GIZ as a result terminates the contract, then such termination shall be deemed to be the responsibility of the contractor.

This provision shall not apply to low-value token gifts. Small or token gifts are occasional presents and other benefits which are granted in an appropriate and standard business framework and whose value per giver, recipient and calendar year does not exceed EUR 35.00.

1.18. Social standards and minimum wage

In performing the contract, the contractor shall be obliged to comply with the fundamental principles and rights at work as stated in the Declaration of the International Labour Organization (ILO) of 18 June 1998 (freedom of association, right to collective bargaining, elimination of all forms of forced or compulsory labour, effective abolition of child labour and elimination of discrimination in respect of employment and occupation). In particular, the contractor shall be obliged in the performance of the contract to comply with the regulations enacting the ILO core labour standards (conventions nos. 29, 87, 98, 100, 105, 111, 138 and 182) in the legislation of the country of assignment. If the country of assignment has not ratified one or more core labour standards or not enacted them in national legislation, the contractor shall be obliged to comply with such regulations in the country of assignment which pursue the same goal as the core labour standards.

The contractor is obliged to comply with the provisions of the minimum wage legislation and, in the case that the contract is performed in Germany, to ensure that the contractor's employees are paid the legal minimum wage.

If the contractor violates one of these obligations and GIZ terminates the contract as a result, then such termination shall be deemed to be the responsibility of the contractor.

1.19. Consequences of violations and contractual penalties

In each of the scenarios set out at 1.16. to 1.18. above, GIZ shall be entitled to exclude the contractor from future tenders for a limited period and to a reasonable extent.

In the event of violations of an obligation under the above provisions, the contractor shall be obliged to pay a contractual penalty of EUR 25,000 for each violation. If the pecuniary advantage given is greater than EUR 25,000, then the contractor shall owe a contractual penalty equal to the amount of the pecuniary advantage. This is without prejudice to any further claims for damages by GIZ. However, the contractual penalty shall be deducted from such claims for damages.

If the contractor fails to meet the agreed dates and deadlines for an agreed work and does not deliver the work within the period of grace set by GIZ, then GIZ shall be entitled, as soon as the period of grace has expired, to demand a contractual penalty of 0.5 % of the remuneration for each week or part thereof after expiration of the set period of grace; however the contractual penalty shall not exceed a total of 8 % of the remuneration.

1.20. Supplementary performance

If the contractor's performance is defective, GIZ may require supplementary performance; however, requiring supplementary performance is not a prerequisite for asserting other rights.

1.21. Termination

GIZ may terminate the contract at any time either wholly or in respect of individual parts of the work and services or with regard to individual experts.

1.21.1. Grounds which are not the fault of the contractor

If GIZ terminates the contract for a reason which is not the fault of the contractor, the contractor shall be entitled to demand the agreed remuneration. However, the contractor must allow deduction of expenses which are or could be saved, as well as of earnings from the use elsewhere of the resources in question, or of potential earnings foregone wilfully. Fees, salaries and ancillary salary costs are deemed to be saveable if they relate to periods more than 90 days after receipt of notice of termination. The contractor bears the burden of proof in the case of exceptions.

1.21.2. Grounds which are the contractor's fault

Should GIZ terminate the contract for a reason which is the fault of the contractor, the only remuneration that shall be paid is for work and services already performed, provided that GIZ has a use for them, either at contract prices or on a pro rata basis taking into account the contract prices and the work and services provided in comparison to what would have been required for complete performance of the contract. Any work and services that cannot be used shall be returned to the contractor at the contractor's expense. If the contract performance comprises the provision of services, any services rendered in accordance with the contract up to the date of termination shall be deemed to have been usable. Under no circumstances shall entitlement exceed the total contract value.

1.22. Liability

The contractor's contractual liability is limited to EUR 300,000. If the total contract value exceeds this figure, the contractor's contractual liability shall be limited to the total contract value. This limitation of liability shall not apply in the event of the contractor's intent or gross negligence. It further does not apply to loss of life, bodily injury or damage to health.

GIZ shall be entitled to claim for loss or damage suffered by the recipient of the work and services as a result of non-compliance with the contractor's contractual obligations.

1.23. Prohibition of assignment by the contractor

The contractor shall not be entitled to assign claims under the contract unless it has obtained GIZ's prior written approval.

1.24. Partial Invalidity

Should individual provisions of this contract be or become invalid or unenforceable, the validity of all other provisions under the contract shall remain unaffected. The invalid or unenforceable provision is to be replaced by a valid and enforceable rule, the effects of which most closely replicate the economic objective which was pursued by the contractual parties with the invalid or unenforceable provision. This shall apply accordingly if it emerges that the contract has gaps or omissions.

1.25. Written Form

The contract, any amendments and additions and all material communications must be in writing.

1.26. Place of Jurisdiction

The exclusive places of jurisdiction are Bonn and Frankfurt/Main if the contractor is a merchant or a legal entity or special fund under public law, or does not have a general place of jurisdiction in the Federal Republic of Germany. The same shall apply if, after entering into the contract, the contractor relocates its domicile or seat or habitual residence from the Federal Republic of Germany to a location abroad, or if its domicile or seat or habitual residence is not known at the time of instituting proceedings. GIZ may also institute proceedings against the contractor before the competent court for the domicile or seat of the contractor or its habitual residence.

2. Employment of staff by the contractor

2.1. Qualifications and requirements for the expert used

The contractor shall be obliged to use only such experts as are capable of performing the tasks allocated to them, who have the necessary professional and local knowledge, and are adequately informed of and prepared for the security situation in the country of assignment. If participation by the contractor and/or its expert in special country orientation courses and/or development policy preparatory courses is agreed, the preparation period shall not form part of the period of deployment.

2.2. Participation in meetings with GIZ

During the term of the measure, and if requested by GIZ to do so, the contractor and its expert must participate in meetings with GIZ in the country of assignment, Germany or at locations specified by GIZ. This also applies to meetings agreed by GIZ during the seconded expert's home leave. The time needed for this is regarded as actual time spent under 5.4. and 5.5. below.

2.3. Replacement of an expert

The replacement of an expert named in the contract requires the prior written approval of GIZ. Approval for a replacement may be refused only on good and sufficient grounds.

2.3.1. Replacement by the contractor

If the contractor requests replacement of an expert designated by name in the contract prior to the start of the contractually agreed period, GIZ may withdraw from the contract.

2.3.2. Replacement at GIZ's request on good and sufficient grounds

GIZ may demand the replacement of an expert if there are good and sufficient grounds. In particular, the following constitute good and sufficient grounds

- (a) if it becomes clear that the expert does not meet the requirements in terms of health, language skills, professional or personal qualifications or the requirements under 2.1. above;

- (b) if the expert's conduct is detrimental to the interests of the Federal Republic of Germany or the ultimate commissioning party/client, or is the subject of complaint for understandable reasons by the government of the country of assignment or the partner institution;
- (c) if the expert contravenes the duties to be imposed on him/her by the contractor despite having been required by the government and/or partner institution in the country of assignment to conduct himself/herself in accordance with his/her duties, or if GIZ has complained about the expert's conduct to the contractor.

The contractor shall bear all additional costs arising in connection with a replacement on good and sufficient grounds as well as any additional expenses arising for replacement personnel. If an expert is replaced following a complaint by the government of the country of assignment or the partner institution, the contractor bears these costs only if it or its expert is responsible for the cause of complaint. If the contractor or its expert is not responsible for the cause of complaint, 2.3.3. below shall apply analogously. This does not affect the right to termination for a reason for which the contractor is responsible.

2.3.3. Replacement at GIZ's request for other reasons

GIZ may also demand the replacement of an expert of the contractor for reasons not associated with the expert's conduct or qualifications. In such cases, GIZ shall reimburse unavoidable expenses in connection with the replacement. If these involve salary or ancillary salary expenses for the expert replaced, these are considered avoidable if they arise more than three months after GIZ's request for replacement, unless the contractor can prove that the incurring of such costs beyond this period of time was unavoidable and that the expert was not assigned elsewhere.

2.3.4. Assignment of a new expert after the request for replacement

For the purpose of replacement, the contractor must assign a new expert without delay, at the latest however three months after receipt of the request for replacement, unless this is explicitly not desired by GIZ.

Prior written approval by GIZ shall be required for the assignment of the new expert. After expiration of the time limit, GIZ shall be entitled to refuse to accept the contractor's performance in this respect.

2.4. Interruption of the activity

If the activity has to be interrupted for reasons for which the contractor or its expert is not responsible, in particular for political reasons, this does not count as default on the part of the contractor. For up to three months the duration of the interruption shall be deemed to be actual time used to provide the work and services. During this time the remuneration shall continue to be paid in the agreed amount, unless the costs are or can be saved or the resources can be used elsewhere. If the seconded expert returns from the country of assignment, no per diem is paid.

If the interruption lasts more than three months, the contractor may give notice of termination of the contract as a whole or of individual parts thereof after this time limit. In this case, the work and services executed up to then shall be settled either at contract prices or on a pro rata basis taking into consideration the contract prices for the complete performance of the contract and the work and services provided. Additional unavoidable costs of travel, demobilisation, mobilisation and protective measures incurred by the contractor as a result of the interruption shall be reimbursed by GIZ upon presentation of proof.

2.5. Leave

For periods of employment of less than four expert months there is no entitlement to paid vacation. If the contractually agreed period of employment of the expert is for an uninterrupted period of at least four expert months, the contractually agreed period of employment also includes vacation time remunerated by GIZ. The entitlement to vacation is four calendar days including weekends and public holidays for each completed month (0.133 expert months) per each full expert month (= 30 calendar days), and at most 48 days (1.600 expert months) for 12 full expert months. The number of days' vacation counted in each vacation period includes any weekends and public holidays falling within or adjoining this period. Fractions of expert months are not included in the calculation.

Vacation must be planned in accordance with the requirements of the measure. If vacation is not taken within the contractually agreed period of employment, the claim for remuneration of vacation time lapses, unless the contractor has agreed with GIZ in writing to the transfer of remaining vacation to follow-on contracts.

2.6. Illness

If the contractually agreed period of employment of the expert is for an uninterrupted period of at least four expert months, sickness-related absence from work of an expert assigned to the measure of up to 42 days during any one year or up to 3.5 days a month is deemed to be actual assignment time.

2.7. Calculating entitlement to remuneration for vacation and sickness

Payment of per diem and overnight accommodation allowances continues during vacation and sickness-related absence from work. However, entitlement to the overnight accommodation allowance in calculating vacation remuneration lapses if the expert takes vacation at the end of the period of assignment abroad in combination with the final homeward journey. Entitlement to the overnight accommodation allowance then lapses at the time of the final homeward journey. However, if the contractor can show that overnight accommodation costs have been incurred for the month of departure due to long-term leases for this very month, the overnight accommodation allowance shall continue to be paid for this month.

3. Special obligations for performance of the contract in the country of assignment**3.1. Principles of conduct**

The contractor and the assigned expert shall be obliged to seek good cooperation with the authorities in the country of assignment. For the duration of the Agreement, they shall refrain from any interference whatsoever in the internal affairs of the country of assignment, in particular with regard to its politics, religion, manners and customs. The contractor and the assigned expert must bear in mind that a task is being performed in the context of international cooperation or international education work with a partner country of the Federal Republic of Germany. They shall be intent on maintaining friendly relations between the country of assignment and the Federal Republic of Germany.

The imparting of skills and knowledge to national experts is very important, and in case of doubt has priority over rapid completion of specialised tasks.

3.2. Cooperation with other institutions

The contractor and the assigned expert are obliged to cooperate with the German mission abroad, specialists working in the country of assignment and the representatives of the Federal Republic of Germany working in the country of assignment, and also where relevant for performance with representatives and experts of multi-lateral or other organisations.

3.3. Compliance with the regulations of the country of assignment

The contractor and the expert must comply with the regulations of the country of assignment (including foreign exchange regulations and, if a national expert and national staff are employed, the regulations on deducting social security contributions) and the rules under the relevant agreement, exchange of notes or master agreements on the measure.

The contractor and the assigned expert are further obliged to adapt their personal conduct to the local conditions. Clear separation of the official and private spheres is often not possible in this regard. Accordingly, the particular context of the contract must also be taken into account in the private sphere. In particular, an inappropriate lifestyle must be avoided. This rule also applies to relatives accompanying the seconded expert.

3.4. Notification of travel dates

Each journey to and from the country of assignment by the expert, including vacation travel, must be notified to GIZ in advance. In the case of planned home leave, the dates must be notified to GIZ at least three weeks before the start of vacation.

3.5. Protective measures, health requirements and necessary insurance policies

The contractor shall be responsible for ensuring that it and its seconded expert meet the health requirements for the country of assignment. The contractor shall in particular be obliged to arrange the necessary vaccinations. The contractor must ensure adequate insurance cover (in particular health, repatriation and accident insurance). The contractor must provide evidence of compliance with this provision on request by GIZ. If GIZ offers a security briefing in the country of assignment, the contractor and expert are obliged to attend.

3.6. Obligation to notify in country of assignment

After arrival in the country of assignment, the contractor and seconded expert must contact GIZ's office in the country of assignment and notify it of the duration and location of their stay and contact details. If there is no GIZ office in the country of assignment, the contractor coordinates notification before departure with GIZ's technical contact person or person responsible for the commission.

All seconded experts with assignments for an uninterrupted period of at least four expert months must register themselves and any accompanying family and household members with the German mission abroad or the responsible embassy. Before the initial outward journey the partner institution must also be notified, stating the measure number and/or title and the names, professions and dates of arrival of the experts travelling out.

After arrival in the country of assignment the seconded expert heading the measure must also present himself/herself to the responsible German mission abroad without delay in coordination with the local GIZ office. The expert shall inform the German mission abroad of the contractor's tasks and activity in the country of assignment under the contract awarded. Any extensions of the assignment must be reported in the same manner.

At the end of the assignment it is necessary to deregister from the relevant offices.

3.7. Length of stay

The contractor must obtain GIZ's approval before extending or shortening the planned in the country of assignment for the purpose of performing the contract; the same applies for the stay of a seconded expert.

3.8. Security precautions and crisis management

Before the outward journey, the contractor shall provide the seconded expert, as well as his/her adult family members and other adults living with them in the household and who are travelling to the country of assignment, each with a copy of the Instruction sheet on security precautions and emergencies and crises abroad (annex 3 to these Terms and Conditions). The contractor shall ensure that it and the persons listed above comply with the regulations set out in the instruction sheet.

The contractor shall be obliged to provide information to GIZ on request at any time with respect to the assigned expert and his/her family members who are currently residing in the country of assignment under the contract with GIZ, using GIZ's data sheets for this purpose (annexes 4 and 5 to these Terms and Conditions). These data must be reported within six hours of informal request by GIZ direct by fax to GIZ's crisis officer. (krisenbeauftragter@giz.de, Fax: +49619679-7321)

To ensure rapid local response in emergency and crisis, it is recommended that the contractor and the assigned expert enter the most important information in a Personal Data Sheet (annex 6 to these Terms and Conditions) and deposit this with GIZ in the country of assignment for the term of the assignment.

3.9. Conduct in a crisis

GIZ may order the immediate departure from the country of assignment if political reasons or crises make this necessary. In a crisis the contractor and the assigned expert must obey GIZ's instructions without delay and possibly participate in evacuation measures. In the event of a withdrawal from the crisis area, any official return is subject to prior written approval by GIZ.

If the contractor and/or the assigned expert do not comply with the obligations under this provision, GIZ may suspend payments to the contractor and may demand that the contractor reimburse any additional expenses incurred by GIZ and/or the German Federal Government as a result of such failure to comply.

3.10. Recall from country of assignment

If the contractor is a single individual, GIZ may require the contractor's immediate return from the country of assignment if there are good and sufficient grounds within the meaning of 2.3.2. above. In this event GIZ shall also be entitled to terminate for a reason for which the contractor is responsible.

3.11. Prohibition of extracontractual activities

Neither the contractor nor the assigned expert shall be permitted to pursue any interests unrelated to the measure in the country of assignment while performing their duties.

Assumption of even honorary extracontractual activities in the country of assignment during the term of the contract by a full-time expert requires prior written approval by GIZ.

3.12. Working hours

The working hours of the contractor and assigned expert shall be determined by the requirements of the measure and the conditions in the country of assignment.

3.13. Partner inputs

The contractor must make use of the partner inputs agreed in the intergovernmental agreements, exchanges of notes, implementation agreements and master agreements.

3.13.1. Default on partner inputs

If the partner inputs pledged in the agreements, exchanges of notes, implementation agreements and master agreements are not or only partly supplied, or not supplied on time, or if further input is provided, the contractor shall be obliged to notify GIZ without delay in writing and to describe the effects on the implementation of the measure. If partner inputs are not properly provided, the contractor shall make suggestions to GIZ for measures to be taken with due consideration of the advantages and disadvantages.

If the German mission abroad confirms in writing that the planned partner inputs have not been supplied in due form, GIZ and the contractor will enter into supplementary agreements.

3.13.2. Modification of contract

If further partner inputs result in a reduction of expenditure by the contractor, GIZ and the contractor shall modify the contract accordingly.

3.14. Services by the GIZ office in the country of assignment and the HIV/AIDS workplace programme

The contractor must ask the local GIZ office what support it will provide for the relevant measure. The contractor must make use of these services if they are provided without charge. Otherwise the conditions for their use shall be agreed in writing between the contractor and the local GIZ office.

If GIZ has an HIV/AIDS workplace programme for national personnel (annex 7 to these Terms and Conditions), the contractor's employees shall participate in the programme.

3.15. Sale of vehicles purchased duty free

Private vehicles of the contractor and its expert imported or purchased duty free under intergovernmental agreements or special regulations in the country of assignment may be sold in the country of assignment only in the following cases, even if otherwise permissible under the regulations in force in the country of assignment:

- (a) if the sale is economically reasonable. This is generally the case if the vehicle is over two years old and has been driven for at least 60,000 km.
- (b) if despite being under the limits in (a) above, the vehicle is showing unusually heavy wear and tear.
- (c) if the vehicle is a total economic write-off.

- (d) if at the end of the expert's assignment the sale saves repatriation costs or if it is not possible to keep the vehicle at the new place of assignment.

Any proposed sale must be coordinated with the GIZ office in the country of assignment, stating the date and price of purchase, mileage, selling price and proposed date of sale, and after consultation with the GIZ office be reported to the responsible German mission in the country of assignment.

4. Procurements and local subsidies

4.1. Procurement by GIZ

If it has been contractually agreed that GIZ will carry out procurements, the contractor shall prepare the necessary manufacturer-neutral specifications for materials and inputs and forward these to GIZ. The contractor shall handle receipt of goods locally or assist the partner institution in doing so. This includes in particular

- arranging for or assisting the recipient (partner institution) with customs clearance, examination of the consignment for completeness and damage in transport, and where applicable notice of damage to GIZ.
- Transmitting confirmation of receipt to GIZ.

4.2. Procurement by contractor

Where the contract requires procurement by the contractor, such orders may only be placed with qualified and competent bidders at cost-efficient conditions and on the basis of competition. When producing the technical specification, the contractor shall also take environmental standards into account in addition to the suitability of the materials and equipment for the designated purpose. The contractor must ensure transparency, equality of treatment and suitability of bidders when handling procurement. As far as possible, at least three offers should be obtained.

4.2.1. Principle

The contractor shall carry out project accounting in accordance with proper accounting principles.

4.2.2. Procurements above the threshold values

Procurements in excess of the thresholds for contracts (EUR 207,000 as at 1 January 2014) for goods and services are subject to the VOL/A (contract awards for public supplies and services – Part A) and VOF (contract awards for freelance services) in the versions valid from time to time, if the contractor procures the goods or services in the European Economic Area. For procurements outside the European Economic Area, these rules must be applied by analogy.

4.2.3. Violation of embargoes and prohibition of business relations with companies or individuals on black-lists

The contractor must take appropriate steps to ensure that it enters into business only with such third parties that are not on the blacklist of the United Nations, the EU or the German Federal Government or on any other such list. In particular, the contractor must ensure that the procurement does not contravene existing embargoes or measures to combat terrorism (HADDEX Handbook of German Export Control of the German Federal Office for Economics and Export Control (BAFA))

4.2.4. Warranty agreements

The contractor shall be under an obligation to enter into warranty agreements with the suppliers which do not place it in a less advantageous position than other clients in comparable transactions. At the request of GIZ, the contractor must assign its claims arising from the contracts with the suppliers to GIZ and support GIZ in asserting any such claims.

4.2.5. Procurement documentation

The contractor shall ensure adequate documentation of all procurements in accordance with the following list.

- the request for materials and equipment;

- the reasoning for the chosen procedure;
- the enquiries;
- the bids;
- documented evaluation of bids and justification for contract award;
- the order;
- confirmation of performance or receipt of goods stating the performance date;
- the invoice/where relevant transport documentation; any correspondence relating to this transaction.

4.2.6. GIZ's right to inspect the documentation

GIZ shall at all times be entitled to request the complete documentation for procurements. This must be made available to GIZ within seven working days of the request.

4.3. Treatment of equipment

The contractor must treat equipment with all due and customary care and diligence and label items as specified by GIZ. Private use of these items by the contractor and its expert is not allowed. Private use of official vehicles may be contractually agreed in justified exceptional cases in return for GIZ being reimbursed for the costs. In this instance, the contractor bears the risk of loss or damage to the vehicle or any third party damage, insofar as these are not covered by the vehicle insurance.

4.4. Inventories

The contractor must comply with the Regulations of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH on the taking of inventories of materials and equipment by the contractor (annex 8 to these Terms and Conditions). The contractor must take an inventory of all items of equipment and replacement parts with an individual purchase price of more than EUR 1,000, unless they are handed over to the partner institution immediately upon their arrival in the country of assignment. Inventories must be taken of aggregates and individual items which belong together (e.g. chairs for a training room, laboratory burners and reagents), even if the individual items cost less than EUR 1,000. Inventories must be taken of equipment with an individual purchase price below EUR 1,000 if multiple items are purchased (e.g. computers, office furniture).

4.5. Handover

The contractor is obliged to hand over the equipment – as agreed in the contract – to the contractually designated institution either after its arrival in the country of assignment or upon completion of the measure, to transfer ownership to the institution, to have the handover certified on the form provided by GIZ for this purpose (annex 9 to these Terms and Conditions) and to submit this to GIZ at the latest with the final invoice. If acceptance of handover is refused, the contractor is obliged to notify the responsible GIZ office without delay. If refusal of handover becomes final, the contractor must provide credible evidence of this to GIZ at the latest with the final invoice.

In cases where work is performed solely in the Federal Republic of Germany, on completion of the work the equipment must be handed over to GIZ or to the institution specified by GIZ in the contract.

4.6. Compliance with relevant procedures for export from the Federal Republic of Germany

If the contractor is responsible for the transport of the goods to the location of use, it shall ensure compliance with the relevant procedures and provisions in respect of foreign trade and payments when exporting the equipment.

4.7. Local subsidies

If the contract provides for local subsidies, the contractor may enter into corresponding agreements with national organisations on the basis of GIZ's specimen agreement (annex 11 to these Terms and Conditions). The contractor enters into the agreement, makes the funds available, advises the local recipient of the subsi-

dy, and steers and monitors the proper use of funds, including documentation by the recipient. In each instance, the individual local subsidy may not exceed EUR 50,000. The contractor will not be reimbursed for the local subsidy by GIZ if the national recipient of the subsidy fails to use the subsidy for the intended purpose.

The contractor shall keep separate accounts for the local subsidies in accordance with proper accounting principles.

5. Pricing, remuneration and invoicing

5.1. Pricing

In its commissions to GIZ, the German Federal Government requires the application of Regulation PR 30/53 on the Prices for Public Contracts of 21 November 1953 – Bundesanzeiger (federal gazette) No. 244 of 18 December 1953 – with the Guiding Principles for Pricing on the Basis of Prime Costs. These commissions are accordingly subject to price auditing by the competent price authority.

The price specified in the contract is a maximum amount; any costs in excess of this shall not be reimbursed.

In addition to the contractually agreed price the contractor may invoice value added tax (VAT) at the statutory rate.

5.2. Price reductions

Rebates, discounts, refunds, tax concessions or refunds and all other price reductions obtained by the contractor in providing work and services at costs reimbursed by GIZ must be availed of and passed on to GIZ or deducted from the invoice.

5.3. Principle of remuneration, items of remuneration

Contractually agreed items of remuneration are generally paid as a lump sum or in exceptional cases upon presentation of evidence; the amounts agreed are the maximum amounts in each case.

5.4. Fee

The contractor's fee or fee of the expert assigned by it covers all personnel costs including ancillary personnel costs, costs of backstopping, communication, reporting and all overheads, profit, interest, risk etc. The contractor must record the actual assignment times on GIZ's invoice form.

5.5. Calculating the fee

The fee is based on the contractually agreed unit (e.g. expert hour, expert day, expert month). Units other than those agreed cannot be invoiced. If expert months are agreed in the contract, an expert month is 30 calendar days.

5.6. Per-diem Allowance

The per diem is a lump sum which covers the additional cost of subsistence to the contractor or the contractor's expert during an assignment away from their regular domicile and/or seat of business for a period as of one day of official travel.

The per diem is not paid if full board is provided without charge by GIZ, the executing institution(s) of the measure, the partner institution or other third parties involved in implementing the contract.

5.7. Overnight accommodation allowance

The overnight accommodation allowance is a lump sum which covers the cost to the contractor or the contractor's expert of accommodation on an assignment away from their regular domicile and/or seat of business, if an overnight stay is necessary.

The overnight accommodation allowance is not paid if accommodation is provided without charge by GIZ, the executing institution(s) of the measure, the partner institution or other third parties involved in implementing the contract.

5.8. Air travel expenses

Air travel expenses are paid to the extent agreed in the contract, generally as a lump sum and in exceptional cases upon presentation of evidence.

Air travel expenses are incurred for the outward and homeward journey of the contractor or contractor's expert to and from the country of assignment and for other contractually agreed official international, regional and domestic flights. The use of other means of transport for an expert's outward and/or homeward journey requires written approval by GIZ.

If the contractually agreed period of assignment of the expert seconded by the contractor to the country of assignment is in each case at least twelve uninterrupted expert months, air travel expenses shall also apply for the following flights:

- the outward and homeward journey of family members (partner and children who are under the age of 18 on the date of the outward journey), provided they stay in the country of assignment for an uninterrupted period of at least six months of the actual period of the expert's assignment;
- one vacation flight each for the contractor's expert and his accompanying family members;
- a further vacation flight for a married expert travelling to the country of assignment without his/her partner; the same applies to a civil partnership.

Depending on the destination, the lump sum is to be calculated on the basis of a reasonable combination of necessary economy, business class and special fares; providers that allow changes in bookings should be chosen. Advantage must be taken of any air fare reductions.

5.9. Other travel expenses

Other travel expenses (domestic and foreign travel) are reimbursed in accordance with the contractually stipulated number and quantity, generally as a lump sum and in exceptional cases upon presentation of evidence.

Where staff are assigned for more than four uninterrupted expert months, costs of travel between the residence and workplace in the country of assignment shall not be deemed to be other travel expenses.

5.10. Relocation goods

For a foreign assignment for an uninterrupted period of more than 12 expert months, the costs of transporting relocation goods (household effects, personal effects, vehicles) are paid as a lump sum for each expert after completing the outward journey.

Irrespective of the expert's marital status, the calculation of the lump-sum amount is based on the costs of outward and homeward transportation of the relocation goods, including ancillary transportation costs, from the location of the contractor's seat of business to the expert's place of assignment, in a 20-foot container.

5.11. Assignment of national staff

National personnel are paid monthly lump sums in the contractually agreed amount on proof of employment.

5.12. Equipment

GIZ shall reimburse the costs of items of equipment and replacement parts including transportation and insurance costs in accordance with the agreed procurement list on presentation of the following documents:

- invoices received/purchase receipts;
- shipping documents including the necessary or prescribed export documents;
- Handover record (annex 9 to these Terms and Conditions)

For procurements exceeding EUR 1,000, a justification and evaluation of the contract award procedure must also be shown on GIZ's award note (annex 10 to these Terms and Conditions).

5.13. Supplies/non-durable items

Supplies/non-durable items in the contractually agreed scope shall be paid for by GIZ as a lump sum.

5.13.1. Office and operating costs

Office and operating costs shall include all costs in connection with the proper operation of the offices, including rent, electricity, water, heating, office supplies, telephone, telefax, photocopiers, paper.

5.13.2. Vehicle costs

Vehicle costs shall include all necessary costs in connection with the proper use of project vehicles, such as repairs due to normal operation, fuel, oil, maintenance, insurance etc.

5.13.3. Other supplies/non-durable items

Other supplies/non-durable items shall include all administrative and operating costs not covered by 5.13.1. and 5.13.2. above.

5.14. Subcontracts

For subcontracts the actual costs incurred shall be reimbursed within the contractually agreed scope on production of proof.

5.15. Workshops, training

The costs of contractually agreed workshops organised by the contractor and training events for the partner institution shall be reimbursed on production of proof.

5.16. Local subsidies

Local subsidies shall be reimbursed on proof of payment and proper use thereof.

5.17. Other costs

Other costs shall be reimbursed as lump sums or on production of proof to the extent contractually agreed.

5.18. Flexible remuneration item

Where a flexible remuneration item is contractually agreed, the contractor shall be permitted to exceed the contractually agreed quantities up to the amount of the flexible remuneration item, taking into account the contractually agreed individual rates and bases for invoicing. The flexible remuneration item covers costs only for items listed in 5.4. to 5.17. above (except for vacation flights), where these are contractually agreed.

Use of the flexible remuneration item must be approved in writing by GIZ's technical contact person/officer responsible for the commission before the costs in question are incurred.

5.19. Offsetting costs

On submission of the final invoice, overruns on individual items may be offset against omitted or reduced items of remuneration if GIZ has approved the offset in writing before the costs in question are incurred. GIZ's approval is not required for offsetting up to EUR 2,500 for each remuneration item.

An increase in the individual rates or agreed prices is not possible.

5.20. Terms of payment, invoicing for service contracts

Payment will only be made upon presentation of invoices using GIZ's invoice form (annexe 14 to these Terms and Conditions). Advance payments will also only be made upon a request for payment using GIZ's designated forms. All invoices/requests for payment must be submitted by post.

5.20.1. Principle

VAT (percentage and amount) must be shown separately in each invoice or request for payment, if the contractor is supplying work and services subject to VAT.

The contractor's claims shall fall due after receipt of an invoice containing all the required details (together with all necessary receipts/vouchers). Payment shall be made by GIZ no later than 30 days after justified claims fall due.

5.20.2. Advance payment

A contractually agreed advance payment is made upon written request for payment no later than 15 days after the end of the calendar month in which the contractually agreed work was started.

5.20.3. Securities for advance payments

GIZ may require the contractor to provide securities for advance payments. GIZ may also require provision of securities retroactively for advance payments effected and as yet unsettled if it considers that a deterioration of the contractor's financial circumstances or similar circumstances jeopardise the performance of contractual obligations or repayment of the advance payment.

5.20.4. Offsetting the advance payment

The advance payment under 5.20.2. above shall be offset against the payment due from the final invoice under 5.20.8. unless otherwise agreed.

5.20.5. Unscheduled adjustment of the advance payment

If there are substantial differences (in excess of 20%) in two consecutive invoicing periods between the costs actually invoiced and the amount of the advance payment effected under 5.20.2 and as yet unsettled, the advance payment shall be adjusted accordingly.

5.20.6. Interim invoice

Unless contractually otherwise agreed, the contractor shall submit an interim invoice to GIZ using GIZ's invoice form no later than 30 days after the agreed invoicing periods for the work and services actually provided in the period.

5.20.7. Suspension and adjustment of the payment plan

GIZ may suspend payment if:

- the contractor does not meet or only partly meets its reporting and information obligations under 1.9., 1.13., 3.6. and 3.8. of these Terms and Conditions;
- there are significant delays in the progress of the work and services or changes in the scope of the work and services or the assignment of staff and
- there is no mutual agreement on a payment plan corresponding to the actual progress or scope of the work and services.

5.20.8. Final invoice, final payment

The contractor shall be obliged to submit the final invoice without delay, and in any event not later than six weeks after the contractual end of the period of assignment. The invoice must contain all the contractor's claims for remuneration, be verifiable and contain all the necessary information (with all the necessary receipts/vouchers). Final payment is made on submission of the final invoice in due form and performance by the contractor of all contractual obligations.

Any amounts overpaid by GIZ must be repaid to GIZ by the contractor without delay after invoicing.

If an advance payment was made and the contractor does not submit the final invoice within 15 days despite a reminder by GIZ, the contractor shall be obliged to repay the advance payment.

5.21. Terms of payment for contracts for work and services

Contracts for work and services shall be subject to the conditions of 5.20. above with the following provisions:

5.21.1. Claim for payment

The final invoice must be submitted without delay and in any event not later than six weeks after acceptance. It must contain all the contractor's claims, be verifiable and contain all the necessary information (with all the necessary receipts/vouchers).

Payment of remuneration is due after acceptance of the work and services after receipt of an invoice containing all the required details (together with all necessary receipts/vouchers). Payment shall be made by GIZ no later than 30 days after justified claims fall due.

5.21.2. Security deposit

If down payments have been agreed, 10% of the amounts invoiced in accordance with the actual progress of the work and services (with VAT) shall be retained. This amount can be released against security being provided. The amount retained shall be disbursed following acceptance of the work and services as a whole.

5.21.3. Acceptance

Acceptance shall be effected in writing.

GIZ shall be entitled to warranty claims for any defects which were evident on acceptance even if it did not reserve the right to such claims at that time.

5.22. Invoicing in foreign currencies

Any costs incurred in foreign currency shall be converted by the contractor into EUR and reimbursed on the basis of the exchange rates. Conversion shall be made on the basis of the European Commission's list of exchange rates for converting EUR into other currencies, which is linked to the GIZ website.

If reimbursement of costs in foreign currency has been agreed in an individual contract, the invoice must be accompanied by a corresponding foreign currency purchase receipt.

5.23. Security

If the contractor provides security, it shall be obliged to do this by way of a guarantee or indemnity in accordance with the specimen forms (annex 12 to these Terms and Conditions) issued by a bank acceptable to GIZ.

5.24. Reconciliation of accounts

The contractor shall be obliged on request by GIZ to reconcile the balances for each contract (down payments less invoiced amounts) with GIZ's Accounting Division once a year at a time of GIZ's choice.

5.25. Price adjustment clause for contract extension

In the case of contracts with an assignment period of at least two years the contractor shall be obliged to agree to a contract extension for the same period subject to price adjustment under the present provision if

GIZ offers the contractor an extension to the contract. The adjustment shall be calculated on the basis of the average salary increases under collective bargaining agreements for the relevant sector in the collective bargaining region of the contractor's seat of business during the term of the contract. The adjustment shall apply to only 80% of the relevant fee (expert month) and to a period extending from the middle of the term of the present contract to the middle of the term of the new contract:

$$\text{NFR} = \text{OFR} \left(1 + 0.8 \times N \times \frac{[T1 + T2 + \dots + Ta]}{a \times 100} \right)$$

where

NFR = NEW fee rate in EUR,

OFR = OLD fee rate in EUR,

Ta = annual salary increase under collective bargaining for each sector of the economy and collective bargaining region

a = number of increases under collective bargaining during the term of the present contract, and

N = calculation period middle of the term of the present contract to the middle of the term of the new contract in years

5.26. Annexes to the Terms and Conditions

The following annexes constitute an integral part of these Terms and Conditions:

1. GIZ Corporate Design Manual (for contractors)
2. GIZ Code of Conduct
3. Information sheet on security precautions
4. Contact information in the event of an emergency or crisis (to be completed by contractors)
5. Reachability form (to be completed by assigned experts)
6. Personal data sheet (optional, may be completed by assigned experts)
7. HIV/AIDS workplace programme
8. GIZ rules for inventorising and handing over equipment and materials
9. Record of surrender of equipment and materials
10. Justification of contract award
11. Specimen agreement and guidelines on local subsidies
12. Guarantees
 - 12.1 Performance guarantee (template)
 - 12.2 Advance payment guarantee (template)
 - 12.3 Defects liability guarantee (template)
13. Notes on accounting procedures
14. Electronic invoice forms
15. Report formats (in German only)

The relevant forms, documents and explanations of the above annexes to the Terms and Conditions can be found on the GIZ website www.giz.de under Procurement, Important documents.