

# **General Purchase Conditions (Local): - as at March 2023 - for supplying services, materials and equipment on behalf of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH in South Africa, Lesotho, and Eswatini**

## **1. Applicability, Components of the Contract**

### **1.1. Applicability of the General Purchase Conditions**

Subject to Section 1.2, these General Purchase Conditions apply to all goods and services supplied by the Contractor to the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH as the contracting party.

The Contractor must prepare its tender based on these General Purchase Conditions. A contract is established between the parties, subject exclusively to GIZ's General Purchase Conditions, once an order is issued by GIZ, after which any amendments to the contract require the approval of GIZ in text form. Any general terms and conditions of business and/or payment specified by the Contractor and attached to the latter's order confirmation or made available in any other way do not apply unless GIZ has expressly agreed to them in advance in text form. GIZ's General Purchase Conditions apply even if GIZ accepts the goods and/or services in full knowledge of, and without objecting to, any conflicting or differing conditions of the Contractor.

### **1.2 Components of the contract**

The contract is made up exclusively of the following components:

1) GIZ's written order with all annexes thereto; 2) the technical tender submitted by the Contractor, excluding any general terms and conditions of business and/or payment attached by the Contractor; 3) these General Purchase Conditions; 4) the [Code of Conduct for Contractors of GIZ](#). In the event of discrepancies between individual components of the contract, the documents listed above apply in the given order.

## **2. Procedures governing Supply, Performance and Transport**

### **2.1 Packing and marking**

All items must be packed and where appropriate marked in accordance with the specific requirements for the goods, the type of shipment, the form of transport and the legal and climatic conditions in South Africa, Lesotho, and Eswatini. Subject to these packing specifications, the Contractor must, wherever possible, use eco-friendly and easily recyclable packaging. Items should be packaged using only the minimum amount of material required.

The Contractor is liable for correct packing and marking and for any damage attributable to inadequate or defective packing or marking. If third parties are engaged by the Contractor to carry out packing/marketing, the Contractor shall be liable for their faults. GIZ or the forwarding agent contracted by GIZ is entitled but not obliged to refuse packages which do not comply with the above conditions or to demand subsequent

performance by the Contractor (remedy or replacement) or, if the Contractor fails to provide subsequent performance within the stipulated period, to remedy the deficiencies itself or arrange for the deficiencies to be remedied or procure a replacement, in all cases at the expense of the Contractor.

### **2.2 Delivery terms**

'Delivery terms' means the Incoterms agreed in the contract, any amended or supplemented Incoterms in their amended or supplemented form, or, where no Incoterms have been agreed, any other individually agreed delivery terms.

### **2.3 Delivery documents**

The term 'delivery documents' means the documents listed under this Section 2.3. and in the order, as well as all other accompanying documents which are required in order to deliver the goods to the location of use without any trouble or interruption in accordance with the respective conditions.

The Contractor must make the delivery documents available at the required point in time, at the latest when the goods are handed over to GIZ.

In addition to quoting GIZ's order number, the packing list must state the precise content, the gross and net weights and the complete markings of each package. An additional copy of the list must be included in each package.

### **2.4 Additional documents**

The technical inspection certificates or official approval or registration certificates or certificates of origin or similar certificates specified in detail in GIZ's written order must be delivered to GIZ at the latest together with the delivery documents.

Two copies each of the operating instructions and any necessary assembly instructions, in English, must be delivered together with the goods. If additional foundation layout plans and circuit diagrams are required in order to prepare for installations, such documents are to be submitted to GIZ in duplicate, quoting GIZ's order number, as soon as the written order has been received.

### **2.5 Transport**

If the Contractor is responsible for transport, any assistance with the transport of consignments which is provided by GIZ or the recipient of the goods or services in South Africa, Lesotho, and Eswatini does not release the Contractor from its obligation to ensure the proper transport of these to the place of delivery.

### **2.6 Partial deliveries**

Partial deliveries require GIZ's prior consent in text form. They must be identified as such in all shipping and delivery documents and in the marking on the packages and must be consecutively numbered.

### **2.7 Delivery dates**

Goods and/or services may be delivered before the agreed date only with the prior consent of GIZ, in text form.

## **3. Payment Terms and Prices**

### **3.1 Prices**

The agreed prices are fixed prices and exclude any subsequent claims by the Contractor for additional payment and any price increases of any kind. The prices include all packing costs, ancillary costs, costs for drawing up or obtaining the delivery documents specified in Section 2.3 and the additional documents specified in Section 2.4, transport costs, assembly, installation, all customary accessories and any accessories required in order to prepare the items for use or operation.

The Contractor undertakes to make use of any possible exemption from value-added tax. If and insofar as goods and services are subject to value-added tax, the Contractor must show the tax separately in the invoice.

### **3.2 Payment terms and assignment**

#### **3.2.1 Due date**

The purchase price is payable by the contractually agreed payment date following receipt by GIZ of a proper itemised commercial invoice (Section 3.2.2), the delivery documents specified in Section 2.3 and the additional documents specified in Section 2.4. If advance payments or partial payments are agreed, payment must be made within the agreed periods and upon presentation of the agreed documents and collateral.

If partial deliveries are made without the prior consent required under Section 2.6, the total purchase price is not due until the payment conditions are met for the goods and services as a whole, including the final partial delivery or final partial service.

#### **3.2.2 Commercial invoice and evidence of shipment**

The commercial invoice must be made out to GIZ and must quote GIZ's full order number. A separate commercial invoice must be made out for each shipment. If advance payments are agreed, they must be invoiced in the commercial invoice against which an advance payment is offset, and deducted once more from the overall amount.

#### **3.2.3 Assignment**

Claims against GIZ may be assigned only with the prior consent of GIZ in text form.

#### **3.2.4 Offsetting claims and rights of retention**

The Contractor may offset only such claims as are undisputed or established as having legal force. GIZ is entitled to exercise the offsetting rights and rights of retention available to it under law.

## **4. Transfer of Risk and of Ownership**

Price and performance risks are transferred in accordance with the delivery terms (as defined in Section 2.2 above) but no later than the point at which ownership of the goods is transferred from the Contractor to GIZ.

Unless otherwise agreed, ownership of the goods shall be transferred from the Contractor to GIZ at whichever of the times listed below occurs first: transfer of risk or full payment of the purchase price (with the exception of any agreed share for assembly/installation or work and materials and any agreed warranty retention amount). If, at that time, the goods have not yet been delivered, the Contractor must hold the goods in safekeeping for GIZ free of charge and/or hereby assigns to GIZ any present and future claims against third parties to the surrender of the goods.

Retention of title to the goods must be agreed by both parties in text form in a separate document.

Parts or tools made available by GIZ or by the recipient named in the contract remain the property of either GIZ or the recipient. Any processing or alterations by the Contractor are carried out on behalf of GIZ or the named recipient.

## **5. Breaches of Contract, Warranty, Default and Liability**

### **5.1 Default**

The Contractor is in default if it does not provide the service owed by the contractually agreed delivery date. If the Contractor is in default, GIZ is entitled to all statutory claims without limitation. If the Contractor is in default, GIZ is entitled to impose a contractual penalty amounting to 0.2 per cent of the agreed purchase price per calendar day, up to a maximum of 5 per cent of the agreed purchase price (including packing and freight costs, plus value-added tax where applicable). GIZ is entitled to claim a contractual penalty up to the time at which final payment is made, even if this right was not reserved upon acceptance of the goods. The contractual penalty will be deducted from more extensive claims for damages.

### **5.2 Warranty and assurances**

The goods and services to be provided must comply with the generally acknowledged rules of technology. They must be of excellent quality. The Contractor warrants that all goods and services are free from defects and that they fulfil the characteristics as agreed in the contract. Unless otherwise specified by GIZ in text form, all goods must be new.

In the case of a contract for work and materials, the Contractor warrants that the materials used (with the exception of materials provided by GIZ) and the manufacture, construction and planning (with the exception of manufacture, construction and planning activities performed by GIZ) are free of defects and fulfil the agreed characteristics.

The Contractor also warrants that the goods and services are suitable for use at the location of use with due regard for the local climatic, technical and legal conditions and that they meet all the relevant technical standards (for example, EN, ISO, DIN, and VDE). The location of use of the goods is specified in GIZ's written order or, if the location of use is not explicitly stated, it is Pretoria, Maseru, or Mbabane.

The Contractor warrants that the goods and services have no defects of title and do not breach any copyrights, industrial or intellectual property rights or any other rights of third parties.

### **5.3 Claims for defects**

In case of defects, GIZ is entitled as a minimum to assert all its statutory rights.

In the event of disagreement over whether goods and services are defective, the Contractor bears the burden of proof for demonstrating that the said goods or services are free of defects.

GIZ is also entitled to assert claims for damage incurred by the user of the goods and services which arise due to defects or to failure on the part of the Contractor to comply with other contractual obligations.

The defects liability period for asserting warranty or other compensation claims in respect of goods which have been repaired or replaced commences once again if the Contractor was obliged to render subsequent performance. The defects liability period is suspended for the period during which goods or services are unavailable on account of defects.

### **5.4 Examination of goods and lodging of complaints**

To comply with the statutory obligation to examine goods and lodge complaints in respect of defects in due course, it is sufficient if GIZ examines the goods at the location of use. It is sufficient if the inspection is carried out with the resources available at the location of use. In the event of partial deliveries, the goods need not be examined until the final partial delivery has arrived at the location of use. If it is agreed that the goods are to be installed, assembled or placed into operation, GIZ is not required to inspect the goods until these steps have been carried out. If several goods of the same type are delivered, it is sufficient to inspect a random sample of the goods. If random checks reveal defects, GIZ may assert claims for defects in relation to all of the goods and services.

Complaints in respect of defects must be lodged with the Contractor without undue delay as soon as such defects are discovered. Notice of defects in goods and services is given in good time if lodged within 30 calendar days of whichever of the following occurs latest in each case: 1) arrival at the location of use; 2) completed installation, assembly or commencement of operation. In the case of hidden defects, notice of defect is given in good time if lodged within 15 calendar days of such defects being discovered.

If the Contractor fraudulently conceals a defect, it is not entitled to plead that GIZ breached its obligation to examine the goods and to lodge a complaint in respect of defects. The same applies if the Contractor was unaware of the defect at the time of delivery due to gross negligence.

### **5.5 Liability**

The Contractor is liable for all its own faults and those of persons it uses to fulfil its obligations (vicarious agents) and of manufacturers. The Contractor is also liable for any culpable damage resulting from its actions or those of its vicarious agents even if such damage is merely incidental to the fulfilment of the order.

## **6. Prevention of the Financing of Terrorism and Compliance with Embargoes**

The Contractor must not use any remuneration obtained from GIZ in order to provide funds or other economic resources directly or indirectly to third parties which are included on a sanctions list issued by the United Nations and/or the EU.

When implementing the contract, the Contractor may enter into and/or maintain business relations only with third parties which are reliable and to whom no statutory ban on entering into contractual or business relations applies. When implementing the contract, the Contractor must also comply with embargoes and other trade restrictions imposed by the United Nations, the EU or the Federal Republic of Germany.

The Contractor must notify GIZ without delay and on its own initiative if the Contractor, a member of its official managing body and/or other administrative bodies, its shareholders and/or staff is included on a sanctions list issued by the United Nations or the EU. This provision also applies if the Contractor becomes aware of an event which leads to such a listing.

The Contractor must notify GIZ without delay and on its own initiative of any violation of the provisions stipulated in this Section 6. In the event of such a violation, GIZ is entitled to withdraw from or terminate the contract without prior notice. This does not affect GIZ's rights under Section 8 of these General Purchase Conditions.

## **7. Obligations related to the Supply Chain**

### **7.1 Code of Conduct for GIZ Contractors**

The Contractor shall guarantee with regard to its own business activities that it acts in accordance with the Code of Conduct for Contractors of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH ('Code of Conduct'), which is annexed to these General Purchase Conditions and is a component of the contract, and warrants that it will appropriately address the provisions of the Code of Conduct along the supply chain if GIZ establishes the existence of a human-rights or environment-related risk and notifies the Contractor thereof.

The Contractor is obliged to hold GIZ harmless from third-party claims resulting from a breach of the Code of Conduct unless the Contractor can prove that it is not responsible for the breach.

### **7.2 Preventive measures**

The Contractor must take suitable and appropriate measures to prevent and minimise the risk of breaching the provisions of the Code of Conduct. If GIZ identifies (new) risks during performance of the contract, additional preventive measures must be taken. GIZ is entitled to instruct the Contractor to take specific measures.

### **7.3 Ensuring access to the complaints procedure in the supply chain**

The Contractor shall ensure unhindered access for all of its employees to the complaints procedure set up at GIZ. In particular, the Contractor shall not undertake any actions which hinder, prevent or complicate access to the complaints procedure. This also applies to indications that human-rights or environment-related obligations have been violated due to the actions of an indirect supplier.

#### 7.4 Warranted controls

GIZ is entitled to check whether the Contractor complies with the provisions of the Code of Conduct if compliance risks have been identified and the Contractor has been informed of them. The corresponding control measures must be appropriate and give due consideration to the Contractor's justified concerns. In particular, control measures include: comprehensive disclosure; on-site checks by GIZ or a commissioned third party; mandatory certification in line with recognised standards. All control measures are restricted to compliance with expected human-rights and environment-related standards.

#### 7.5 Participation in training courses

If GIZ identifies compliance risks related to the Code of Conduct, the Contractor shall be obliged at GIZ's request to prove that it has taken part in the training courses carried out by GIZ, which aim to ensure compliance with the human-rights and environment-related obligations set out in the Code of Conduct and to guarantee that they are adequately addressed in the further supply chain. Participation is not necessary if GIZ agrees and if the Contractor confirms in writing to GIZ that it (i) complies with the provisions of the Code of Conduct and (ii) verifiably conducts its own training courses.

#### 7.6 Obligations to provide information and documents

The Contractor is obliged on request to procure and provide the information and documents which GIZ needs in order to meet all of the regulatory requirements resulting from the contractual relationship. Regulatory requirements in this context may result in particular, but not exclusively, from the following legislation:

the German Act on Corporate Due Diligence Obligations in Supply Chains (LkSG)

the EU Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)

#### 7.7 Legal consequences in the event of violations of the Code of Conduct

If the Contractor breaches any of the obligations set out in the Code of Conduct, GIZ is entitled to suspend performance of the contract or optionally to withdraw from or terminate the contract if the breach is not remedied after setting a reasonable deadline. There is no need to set a deadline in the event of a serious, persisting or repeated breach. If the Contractor breaches an obligation under the Code of Conduct, the Contractor is additionally obliged to pay damages unless it can prove that it is not responsible for the breach. The payment of damages also includes appropriate compensation for reputational damage.

If the Contractor breaches an obligation under the Code of Conduct, GIZ is furthermore entitled to exclude the Contractor from future competitive award procedures for a period which is limited to the duration of the breach and to the extent appropriate.

The Contractor is obliged to pay a contractual penalty for each breach of the Code of Conduct; the amount of this penalty (i) depends on the nature and severity of the breach, (ii) is established by GIZ after due consideration and (iii) does not exceed EUR 50,000. If a pecuniary advantage

granted by the Contractor as a form of corruption is greater than EUR 50,000, the Contractor must pay a contractual penalty equal to this sum. Any further rights to claim damages on the part of GIZ shall remain unaffected. However, contractual penalties which have already been paid shall be deducted from such claims for damages.

### **8. General Provisions, Rights of Termination and Withdrawal**

#### **8.1 Retention of documents, right of inspection and duty of disclosure**

The Contractor must keep contract-related records for ten years after the goods and/or services have been formally accepted and must provide all such records for inspection by GIZ on request.

GIZ is entitled to inspect at any time the progress made and results achieved during the implementation of the contract. The Contractor must ensure that the documents required for this purpose are available at all times and must provide the required information. At the request of GIZ, the Contractor must provide information to other institutions or to persons and organisations commissioned by GIZ and must facilitate any inspections; the Contractor undertakes to cooperate with any reasonable requests during such inspections.

#### **8.2 Confidentiality and publications**

Any and all data relating to the contract as well as any other information, such as submitted documents and exchanged information, of which the Contractor and its employees become aware in the course of performing the contract, must be treated as confidential during and beyond the term of the contract. This provision applies even if such documentation and information has not been explicitly designated as secret or confidential.

The Contractor must not make documents or work results of any kind, especially reports, accessible to third parties without obtaining prior written approval from GIZ. Third parties under this provision also include the ultimate commissioning party/client. The Contractor shall also not be permitted to make use of any such data and information for the Contractor's own purposes.

Written consent must be obtained from GIZ in text form before publishing any documents related to the subject matter of the contract. Consent is not required if the Contractor simply wishes to give a brief description of the contract and the work involved for public relations purposes. For the purposes of this provision, a statement noting the subject matter of the contract and the key results constitutes a brief description. The Contractor must always express in an appropriate way that its activities are being carried out on behalf of GIZ and must also name the ultimate commissioning party and any other financing providers.

For its part, GIZ is entitled to publish documentation together with name details; this applies even if the contractual relationship ends prematurely.

#### **8.3. Data privacy policy**

Within the framework of the contract, GIZ processes personal data only in accordance with the EU General Data Protection Regulation (EU GDPR) and other applicable data protection regulations. GIZ stores and processes personal data only to the extent required in connection with the contract. The Contractor shall have the right to view, erase or rectify the personal data and shall be entitled to contact GIZ (datenschutzbeauftragter@giz.de) or the responsible public authority for the purpose of enforcing these rights.

The Contractor shall comply with the requirements of applicable data protection regulations and take measures to ensure such compliance by its employees.

The Contractor warrants that any data transmitted to GIZ have been processed in accordance with the applicable data protection provisions and are exempt from any third-party rights which would prejudice the use of these data within the purpose of this contract. The Contractor shall indemnify GIZ against all claims arising from the violation of data protection regulations and shall reimburse GIZ for all costs incurred in connection with its corresponding legal defence or the imposition of government sanctions.

Should applicable data protection law contain special principles which must be adhered to when providing work and services (for example, implementation of technical requirements in a privacy-friendly way by means of Privacy by Design and Privacy by Default), the Contractor shall place particular emphasis on ensuring compliance with such principles.

Should the contractor process personal data for GIZ as set out in Article 28 GDPR, this shall take place on the basis of a relevant agreement.

#### **8.4 Use of subcontractors**

The Contractor remains liable to GIZ for all its obligations under the contract even when using subcontractors. The Contractor must oblige all its subcontractors to comply with those provisions of the contract which are relevant to them.

#### **8.5 Rights of termination and withdrawal**

GIZ is entitled to all statutory rights of termination and withdrawal without limitation. Furthermore, GIZ is entitled to withdraw from the contract if the Contractor becomes insolvent, if an application to initiate settlement, insolvency or liquidation proceedings is filed, a liquidation settlement is reached, a decision on a restructuring plan is taken or a comparable measure is being carried out under a different legal system.

#### **8.6 Applicable law**

The contract and all rights and obligations under or in connection with the contract are subject to the law of the Republic of South Africa, excluding the applicability of the United Nations Convention on Contracts for the International Sale of Goods, dated 11 April 1980, and other regulations within the meaning of Article 3, No. 2 of the Introductory Act of the German Civil Code.

#### **8.7 Place of jurisdiction**

The place of jurisdiction is the Republic of South Africa. GIZ may also bring legal action against the Contractor before the competent court at the location of the Contractor's registered office.

#### **8.8 Text form**

Text form is required for the contract and for any contract amendments, supplements and material communications (including orders placed by GIZ) unless the parties have agreed alternative provisions and unless a stricter format is stipulated in law. The requirement for text form is met where a legible declaration naming the person making the declaration is supplied on a durable medium (for example, GIZ's contract award platform, email, fax).

#### **8.9 Partial invalidity**

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