

UNIDO GENERAL CONDITIONS

Purchase Order for Equipment and Services

Article I. Conclusion of Contract

This Contract shall be concluded at the time and date the acknowledgement copy of this Purchase Order form, duly countersigned by the Seller, reaches the United Nations Industrial Development Organization, attention "Purchase Unit" (hereinafter referred to as "UNIDO"), provided that such acknowledgement copy reaches UNIDO within the time fixed in this Contract or, if no time is fixed, within a reasonable time.

Article II. United Nations Convention on Contracts for the International Sale of Goods

Questions concerning matters arising under this Contract, but not settled in it, shall be settled in conformity with the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980), which shall be applicable to this Contract. The applicable language version of the Convention shall be the version in which this Contract is written.

Article III. Delivery

The Seller shall hand over the goods, and UNIDO shall take over the goods, at the place or places of delivery specified in this Purchase Order form. Unless otherwise stipulated in the Purchase Order form, the goods shall be DDU (Delivered Duty Unpaid).

Article IV. Payment

1. Unless otherwise stipulated in this Purchase Order form UNIDO shall make payment:

- (a) For goods to be delivered to UNIDO in Vienna within 30 days of:
 - (i) Taking over the goods; and
 - (ii) Receiving the invoice and any other documents specified in this Contract, whichever is later;

(b) For goods to be delivered elsewhere, upon shipment and within 30 days of receipt of:

- (i) The Seller's invoice for the goods;
- (ii) Copies of the customary shipping documents; and
- (iii) Any other document specified in this Contract, whichever is the later.

2. The Seller shall also deliver the customary shipping documents to the consignee.

3. Unless otherwise authorized by UNIDO, a separate invoice must be submitted in respect of each shipment under this Contract and such invoice must bear the Purchase Order Number appearing on the top right hand corner of this Purchase Order Form.

4. The prices herein may not be increased, except by express written agreement of UNIDO. UNIDO shall not pay any charge for late payments unless expressly agreed to in writing. Time in connection with any costs discounts offered will be computed from the date of receipt by UNIDO of full documentation as specified by this Contract.

5. Payment for any goods pursuant to this Contract shall not be deemed an acceptance of the goods.

Article V. Payment for services

In the case of services, UNIDO shall make payment upon satisfactory performance of the services and within 30 days of receipt of the Seller's invoice and such other documents or reports as have been specified in this Contract.

Article VI. Tax exemption

The Seller's price shall reflect any tax exemption to which UNIDO is entitled by reason of the privileges that UNIDO enjoys. If it is subsequently determined that any taxes that have been included in the price are not required to be paid or, if having been paid, any such taxes are subject to refunding, UNIDO shall deduct the amount from the contract price. Payment of such corrected amount shall constitute full payment by UNIDO. In the event any taxing authority refuses to recognize UNIDO's exemption from such taxes, the Seller shall immediately consult with UNIDO to determine a mutually acceptable procedure for settling the amount involved.

Article VII. Warranty and packing

1. The Seller must deliver goods that are: (a) of the quantity, quality and description required by this Contract and (b) free from any right or claim of a third party including rights based on industrial property.

2. The Seller undertakes that the goods furnished under this Contract shall be new and unused and free from defects in workmanship or materials.

3. The Seller shall pack the goods with sound materials and with every care, in accordance with the normal commercial standards of export packing for the type of goods specified in this Contract. Such packing materials used must be adequate to safeguard the goods while in transit. The Seller shall be responsible for any damage or loss which can be shown to have resulted from faulty or inadequate packing.

4. The Seller shall be responsible for the professional and technical competence of his employees and shall select, for work under this Contract, reliable individuals who will perform effectively in the implementation of the Contract, comply with the laws of the Government, respect the local customs and conform to a high standard of moral and ethical conduct.

Article VIII. Specifications

In the case of goods called for on the basis of specifications forming part of this Contract, UNIDO shall have the right to declare this Contract avoided if the goods do not conform to such specifications.

Article IX. Examination

The duly authorized representatives of UNIDO shall have the right before payment to examine the goods called for under this Contract at the Seller's stores, during manufacture, in the ports or in the places of shipment, and the Seller shall provide all facilities for such examination. UNIDO may issue a written waiver of examination at its discretion. Any examination carried out by representatives of UNIDO or any waiver thereof shall not prejudice the implementation of other relevant provisions of this Contract concerning obligations assumed by the Seller, including technical specifications.

Article X. Export licences

If an export licence or any other governmental authorization is required for the goods, it shall be the obligation of the Seller to obtain such licence or governmental authorization. In the event of failure to obtain such licence or authorization within reasonable time, UNIDO may declare this Contract avoided.

Article XI. Exemptions

1. Neither Party shall be considered to be liable for failure to perform any of its obligations under this Contract if it proves that such failure was due to an impediment beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of this Contract or to have avoided or overcome it or its consequences.

2. The term "impediment", as used herein shall include unforeseeable events, not within the control of either Party, such as, in particular, acts of God, laws or regulations, strikes, lock-outs or other industrial disturbances, acts of the public enemy, wars whether declared or not, blockades, embargoes, insurrections, riots, epidemics, landslides, earthquakes, storms, lightning, floods and washouts, civil disturbances and explosions.

3. If either Party considers that any such impediment has occurred, which affects performance of its obligations, it shall promptly notify the other Party giving full particulars in writing of such impediment, including its probable duration and its effect on the Party's ability to perform. In the event the delay or failure subject of this clause extends for more than sixty days after the notification, the Party able to perform shall then have the right, by giving written notice to the non-performing Party, to declare the Contract avoided.

Article XII. Independent contractor

The Seller shall have the legal status of an independent contractor. Any person assigned by the Seller to perform services under this Contract shall remain in the employment of the Seller. The Seller and his employees shall conform to all applicable laws, regulations and ordinances promulgated by legally constituted authorities of the Government(s) of the country/countries in which the contract work is to be performed.

Article XIII. Assignment and withdrawal of personnel in the field

The Seller shall not assign any personnel other than those referred to in this Contract for the performance of work in the field without the prior written approval of UNIDO. Upon written request by UNIDO, the Seller shall withdraw from the field any personnel provided under this Contract and shall replace such personnel by others acceptable to UNIDO, if UNIDO so requests.

Article XIV. Sub-contractors

In the event the Seller requires the services of sub-contractors, the Seller shall obtain the prior written approval and clearance of the UNIDO for all sub-contractors. UNIDO's approval of a sub-contractor shall not relieve the Seller of any of its obligations under this Contract, and the terms of any sub-contract shall be subject to and in conformity with the provisions of this Contract.

Article XV. Social security and insurance

In compliance with the labour laws of the country of the Seller, the Seller shall:

(a) Provide and thereafter maintain appropriate workmen's compensation and liability insurance, with respect to all employees who are hired for work to be performed under this Contract.

(b) Provide and thereafter maintain in an appropriate amount against public liability for death, bodily injury or damage to property arising from the operation in the country in which the Contract work is to be performed of motor vehicles, boats or airplanes owned or leased by the Seller.

Article XVI. Indemnification

The Seller shall indemnify, hold and save harmless and defend at its own expense UNIDO, its officials, agents, servants and employees from and against all suits, claims, demands and expenses arising out of acts or omissions of the Seller or his employees, agents, or sub-contractors in the performance of this Contract. This requirement shall extend to claims or liabilities in the nature of workmen's compensation and to claims or liabilities arising out of the use of patented inventions or devices.

Article XVII. Title rights

1. The United Nations or UNIDO, as the case may be, shall be entitled to all property rights including but not limited to patents, copyrights and trademarks, with regard to material which bears a direct relation to, or results from the services provided by the Seller under this Contract. At the request of UNIDO, the Seller shall take all necessary steps, prepare and process all necessary documents and assist in securing such property rights and transferring them to the United Nations and UNIDO in compliance with the requirements of the applicable law.
2. Title to any equipment and supplies which may be furnished by UNIDO or the United Nations shall rest with UNIDO or the United Nations as the case may be and any such equipment and supplies shall be returned to UNIDO at the conclusion of this Contract or when no longer needed by the Seller. Such equipment and supplies, when returned to UNIDO, shall be in the same condition as when delivered to the Seller, subject to normal wear and tear.

Article XVIII. Conflict of interest

1. The Seller shall, in connection with the performance of this Contract, neither seek nor accept instructions from any authority external to UNIDO. The Seller shall refrain from any action which may adversely affect UNIDO and shall fulfill his commitments with full regard for the interests of UNIDO.
2. The Seller shall not admit any staff member of UNIDO to any direct or indirect benefit arising from this Contract or the award thereof. The Seller agrees that breach of this provision shall constitute a fundamental breach of this Contract.
3. No employee of the Seller assigned to perform work under this Contract shall engage, directly or indirectly, either in his/her own name or through the agency of another person, in any business, profession or occupation in the country/countries in which the contract work is to be performed nor shall he/she make loans to or investments in any business, profession, or occupation in the said country/countries.

Article XIX. Facilities, privileges and immunities of seller and seller's personnel

In the country/countries in which the contract work is to be performed, UNIDO shall use its best efforts to obtain for the Seller and its personnel (except Government nationals employed locally), to the extent granted by the Government(s) to the UNIDO staff members, such facilities, privileges and immunities as the Government has agreed to grant to contractors and to their personnel performing services for the United Nations Development Programme within the country/countries concerned. Such facilities, privileges and immunities shall include exemption from or reimbursement of the cost of any taxes, duties, fees or levies which may be imposed in the country/countries on salaries or wages earned by the Seller's foreign personnel in connection with the execution of the work under this Contract and on any equipment, materials and supplies which the Seller may bring into the country/countries in connection with the work under this Contract or which, after having been brought into the country/countries, may be subsequently withdrawn therefrom.

Article XX. Waiver of facilities, privileges and immunities

Any provision, whether in an Agreement, Project Document or any other instrument, to which the Government(s) of the country/countries in which the Contract work is to be performed is (are) party/parties and by which the Government(s) confers benefits upon the Seller and its personnel in the form of facilities, privileges, immunities, or exemptions by reason of its performance of services for UNIDO under this Contract may be waived by UNIDO where, in its opinion, such facilities, privileges or immunities would impede the course of justice and can be waived without prejudice to the successful completion of the work under this Contract or to the interest of the United Nations Development Programme or UNIDO.

Article XXI. Assignment

The Seller shall not assign, transfer, pledge or make other disposition of this Contract or any part thereof or of any of the Seller's rights, claims or obligations under this Contract except with the prior written consent of UNIDO.

Article XXII. Insolvency

Should the Seller become insolvent or should control of the Seller change by virtue of insolvency, UNIDO may, without prejudice to any other right or remedies, suspend the performance of its obligations by giving the Seller notice in writing thereof to the Seller.

Article XXIII. Bankruptcy

Should the Seller be adjudged bankrupt, or should the Seller make a general assignment for the benefit of its creditors, or should a receiver be appointed on account of the Seller's insolvency, UNIDO may, without prejudice to any other right or remedy it may have, declare this Contract avoided.

Article XXIV. Advertising

Unless authorized in writing by UNIDO, the Seller shall not advertise or otherwise make public the fact that he is furnishing goods or services to UNIDO. The Seller shall not use the name, emblem or official seal of UNIDO or any abbreviation of the names of the United Nations or of UNIDO for advertising or for any other promotional purpose.

Article XXV. Discretion

The Seller is required to exercise utmost discretion in all matters relating to this Contract. Unless required in connection with the performance of this Contract or where specifically authorized by UNIDO, the Seller shall not communicate at any time to any person, government or authority external to UNIDO any information which has not been made public and which is known to him by reason of his association with UNIDO. The Seller shall not, at any time, use such information to private advantage. These obligations do not lapse upon completion of performance under this Contract or termination of this Contract by UNIDO.

Article XXVI. Notice

Any notice given in connection with this Contract shall be in the English or French language and shall be deemed to be validly given if sent by registered mail, by fax or by cable to the other Party at the address of either Party set out in the heading of the Purchase Order Form.

Article XXVII. Validity

The invalidity in whole or in part of any article or paragraph thereof shall not affect the validity of the remainder of such article or paragraph of this Contract.

Article XXVIII. Seller's failure to perform

If the Seller's failure to perform any of its obligations under this Contract amounts to a fundamental breach of this Contract, UNIDO may, by written notice to the Seller, inform him of the nature of the failure and declare this Contract avoided. Alternatively, UNIDO may fix an additional period of reasonable length for the performance by the Seller of its obligations. If the Seller has not remedied the failure within such additional period fixed by UNIDO, UNIDO may then, by written notice to the Seller, declare this Contract avoided. If the Contract is declared avoided and if UNIDO, in a reasonable manner and within a reasonable time thereafter, buys goods in replacement, UNIDO may recover from the Seller, as damages, the difference between the price under this Contract and the price in the substitute transaction as well as any other recoverable damages.

Article XXIX. Termination

1. UNIDO may declare this Contract terminated in whole or in part, and at any time, upon giving thirty (30) days' notice in writing to the Seller. In the event such termination is not attributable to a cause entitling UNIDO to declare this Contract avoided, UNIDO shall be liable for damages which shall not exceed the loss, excluding loss or profit, suffered by the Seller as a consequence of the termination.
2. UNIDO's liability shall extend, however, to full payment in respect of goods shipped and/or taken over and/or work already accomplished, for the cost of repatriation of the Seller's personnel, for other necessary final expenses of the Seller, and for the cost of such urgent work as is essential and as the Seller is asked by UNIDO to complete.
3. The Seller shall keep expenses at a minimum and shall not undertake any forward commitment from the date of receipt of UNIDO's notice of termination.

Article XXX. Arbitration

Any dispute, controversy or claim arising out of or in relation to this Contract or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force. The appointing authority shall be the International Chamber of Commerce. The number of arbitrators shall be one, provided the amount claimed by any of the Parties in the arbitration does not exceed US\$200,000. The place of arbitration shall either be Vienna, Austria, or a place mutually agreed between the Parties. The language to be used in the arbitral proceedings shall be the language of this Contract.

Article XXXI. Privileges and immunities

Nothing contained in this Contract shall be deemed a waiver express or implied, of any privilege or immunity which UNIDO may enjoy, whether pursuant to the Convention on the Privileges and Immunities of the United Nations or any other convention or agreement.

Article XXXII. Amendments

No modification to this Contract shall be valid unless mutually agreed between the Parties and confirmed by a written amendment signed by their authorized representatives.