



VALTIOVARAINMINISTERIÖ

General Terms of Public Procurement in Supply Contracts

JYSE 2014 SUPPLIES

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Introduction

On 22 December 1993, the Ministry of Trade and Industry approved the General Terms of Public Procurement (JYSE 1994) in accordance with the Decree on Public Procurement (1416/93). As the name suggests, the terms have been used not only in central government but also in local government and other public procurement units. The Decree on Public Procurement (1416/93), which had formed the basis for the approval of the terms, was repealed when the new Act on Public Procurement (348/2007) entered into force on 1 June 2007.

As part of the general guidance on procurement activity and the development thereof, the Ministry of Finance established on 18 November 2008 a working group on the General Terms of Public Procurement, whose task was to update and renew the General Terms of Public Procurement introduced in 1994. The working group arrived at a solution by which separate terms of contract were prepared for services and supplies: JYSE 2009 SUPPLIES AND JYSE 2009 SERVICES.

After JYSE 2009 SUPPLIES had been in force for a few years, the Ministry of Finance established a working group to examine the need for updating and amending the terms. The working group, appointed in late 2013, completed its task on 30 June 2014. In JYSE 2014 SUPPLIES, most changes were made to the following paragraphs:

Price and price adjustments - the terms were modified to increase flexibility

In the previous JYSE 2009 SUPPLIES, the price was basically fixed. Price adjustments were only possible if the contracting parties had separately agreed on the possibility of adjusting the price.

Under JYSE 2014 SUPPLIES, the price remains fixed for the first 12 months only. Thereafter, the contracting parties may propose a price adjustment corresponding to the general cost trend. The contracting parties can negotiate prices for three months. Under JYSE 2014 SUPPLIES, both contracting parties have the right to give notice of terminating the procurement contract if the price adjustment negotiations fail. A price adjustment will not enter into force if the procurement contract is terminated before the price adjustment enters into force, and the prices already in force will apply during the notice period.

Concepts and definitions have been specified and the structure clarified

In addition to changes in contents, the definitions of certain concepts, such as subcontractor, customer and supplies, were clarified when revising JYSE 2014. Structural improvements include combining individual paragraphs concerning the same issue in the same chapter.

Maximum amount of liability for damages

In JYSE 2014 SUPPLIES, the maximum amount of liability for damages is defined for both contracting parties at five times the calculated value of the procurement contract. No upper limit for damages was set in the previous JYSE 2009 SUPPLIES.

The aim was to prepare JYSE 2014 SUPPLIES so that the terms would suit as many different types of procurements as possible. When preparing an invitation to tender, the procurement unit should assess whether the procurement in question mainly involves supplies or services and then select the terms of procurement that best suit the contract.

However, depending on the subject of acquisition, the procurement units must consider whether all provisions of JYSE 2014 SUPPLIES are applicable to the subject in question. If the parties wish to deviate from JYSE 2014 SUPPLIES, the procurement units must specify in their invitations to tender the extent to which the terms in JYSE 2014 SUPPLIES will be deviated from.

These terms can be freely used and modified on a case-by-case basis.

Issues to be observed in applying JYSE 2014 SUPPLIES

Value-added tax

In offers, the price is generally stated exclusive of value-added tax (VAT 0%). In accordance with JYSE 2014 SUPPLIES, the price does not include value-added tax. This does not, however, influence the duty to pay value-added tax. The supplier has the right to invoice the value-added tax associated with the supplies from the customer.

Advance payment

Any advance payments are subject to a separate agreement. JYSE 2014 SUPPLIES include provisions on the lodging of security for any advance payment made.

Price and price adjustments

Under JYSE 2014 SUPPLIES, the price only remains fixed for the first 12 months, after which the contracting parties may propose a price adjustment corresponding to the general cost trend.

Both the supplier and the customer may propose price adjustments. Prices may be adjusted for the first time when 12 months have passed since the procurement contract entered into force, unless a fixed price has been agreed for a longer period or it has been agreed that the contracting parties have the right to propose price adjustment at an earlier date. Both contracting parties may propose a price adjustment when at least 12 months have passed from the previous price adjustment proposal by the same contracting party.

Approval by the other contracting party is required for any price adjustment proposals to enter into force. Price adjustment proposals must correspond to the general cost trend of the supplies in question. The proposal must be submitted no later than three months before the proposed price enters into force. If the other contracting party does not approve the proposed change, the contracting parties may negotiate a price adjustment. If the contracting parties cannot unanimously agree on the price, both parties have the right to terminate the procurement contract with six months' notice. The procurement contract must be terminated in writing before the entry into force of the new price in accordance with the price adjustment proposal. The contracting parties have therefore approximately three months' time to agree on price adjustments. After the price adjustment has entered into force, the procurement contract cannot be terminated due to the price adjustment that has entered into force.

Unlike the terms for price adjustments in the previous JYSE 2009 SUPPLIES, under JYSE 2014 SUPPLIES, both contracting parties have the right to terminate the procurement con-

tract if price adjustment negotiations have failed. The price adjustment will not enter into force if the procurement contract is terminated before the price adjustment enters into force, and the prices already in force will apply during the notice period. During the notice period, the customers have the possibility to begin preparing a new procurement.

Use of index clauses

Should the contracting parties wish to use index clauses, these should be agreed on separately.

International trade

According to JYSE 2014 SUPPLIES, contractual disputes relating to supply contracts shall be resolved in Finland in the Court of First Instance. It is expressly stated in JYSE 2014 SUPPLIES that the connecting factor rules of Finnish law shall not be applied to procurement contracts based on JYSE 2014 SUPPLIES. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not be applied to procurement contracts made on the basis of JYSE 2014 SUPPLIES. These terms and their use should be assessed on a case-by-case basis in international trade.

Sale of Goods Act

The sale of movable property is regulated in the Sale of Goods Act (355/1987). Insofar as the terms of JYSE 2014 SUPPLIES do not otherwise separately prescribe, the provisions of the Sale of Goods Act shall apply.

Options

The term 'option' in JYSE 2014 SUPPLIES refers to a purchase option for additional supplies made in a procurement notice or an invitation to tender, or an option relating to additional supplies or the extension of the contract period. When submitting a tender in competitive tendering, the supplier is committed to the terms stated in the invitation to tender, such as an option. The use of an option is at the sole discretion of the customer. If the customer decides to order additional supplies mentioned in a procurement notice or an invitation to tender from a supplier, or decides to extend the contract period by exercising an option mentioned in the competitive tender documents, the supplier is obliged to supply the goods in question.

Minimum delivery and invoicing charges

In accordance with Paragraph 5.4 of JYSE 2014 SUPPLIES, the supplier shall have no right to levy minimum delivery or invoicing charges. Suppliers should therefore take costs arising

from possible small deliveries into consideration in the price of supplies. The procurement unit should consider, on a case-by-case basis, whether minimum delivery charges should be permitted in certain sectors.

Guarantee

According to JYSE 2014 SUPPLIES, the guarantee shall be 24 months, unless otherwise agreed. Another guarantee period may be agreed, however, and in many cases it is justified to agree a shorter or longer guarantee period.

Deliveries in case of disturbances or emergencies

JYSE 2014 SUPPLIES includes no specific terms and conditions regarding deliveries in exceptional circumstances. Public administration actors must ensure that even outsourced activities are managed as well as possible under all circumstances (Act on preparedness/Valmiuslaki section 12, 1552/2011). Critical functions must be identified and the invitation to tender shall, if necessary, include the duty to prepare in order to safeguard the continuity of operations.

Damages

Under JYSE 2014 SUPPLIES, only direct damages shall be compensated in principle, and the maximum amount of liability for damages is defined as five times the calculated value of the procurement contract. Under JYSE 2014 SERVICES, direct and indirect damages refer to the classification into direct and indirect damages pursuant to section 67 of the Sale of Goods Act (355/1987). Under these terms, the aforementioned limitations of liability will not apply if the other contracting party has caused the damage wilfully or through gross negligence, violated the confidentiality obligations or violated intellectual property rights.

In certain procurement contracts it may be appropriate to deviate from the maximum amount of liability for damages specified in JYSE 2014 SUPPLIES. If the parties do not wish to limit the liability for damages regarding the maximum amount of compensation by way of agreement, terms 14.4 and 14.5 must be deleted.

Defect notification and claim period

It is stated in JYSE 2014 SUPPLIES that the supplier should be notified of any defects within a reasonable time of the defect being detected, without specifying the time for submitting a claim in any detail. Since procurement units will purchase very different types of supplies on the basis of contracts based on JYSE 2014 SUPPLIES, the reasonable claim periods differ significantly from each other. If the contracting parties consider it necessary to agree on more specific claim periods, these should be agreed separately.

General Terms of Public Procurement in Supply Contracts (JYSE 2014 SUPPLIES)

1 Definitions

- 1.1 Subcontractor
A third party contributing to the fulfilment of contractual obligations referred to in the procurement contract.
- 1.2 Document
Documents include operating instructions, manuals, guidelines and other documents required for using the supplies.
- 1.3 Procurement contract
A contract between the customer and the supplier for the delivery of supplies in accordance with the terms of contract. Procurement contract means the documents referred to in chapter 21.
- 1.4 Handover
The moment when the supplies have been handed over to the customer in accordance with the delivery terms.
- 1.5 Change
A change to or additional work agreed with regard to the original scope or content of the delivery.
- 1.6 Contractual penalty
A penalty separately agreed by the contracting parties which the supplier is obliged to pay to the customer in cases of breach of contract separately specified by the contracting parties. The customer shall have the right to contractual penalty without having to demonstrate the losses to the customer that arose from the supplier's breach of contract.
- 1.7 Supplies
The supplies that are the subject of the procurement contract and the related services, documents and intellectual property rights, if any, to the agreed extent.
- 1.8 Customer
The procurement unit acquiring the supplies on the basis of this procurement contract.

- 1.9 **Supplier**
The company or other operator which has undertaken to deliver the supplies for the customer.
- 1.10 **Liability for risk**
Liability for the destruction, disappearance, deterioration or diminution of the supplies beyond the other contracting party's control.
- 1.11 **Delay penalty**
A penalty that the supplier is obliged to pay to the customer in the event of delay caused by the supplier.
- 1.12 **Defect**
If the supplies do not meet the requirements set in chapter 4, they are defective.

2 Contact persons

- 2.1 Both contracting parties shall nominate a contact person whose task it is to supervise and monitor the implementation of the procurement contract and to communicate on issues relating to its implementation. Unless otherwise agreed, the contact person has no right to change the procurement contract. A contracting party must inform the contact person of the other contracting party without delay and in writing if a contact person changes.

3 Subcontracting

- 3.1 The supplier bears overall responsibility for meeting the obligations under the procurement contract, regardless of whether the supplier is using subcontractors.
- 3.2 The supplier has the right to use subcontractors for performing duties under the procurement contract. The supplier shall be responsible for the work of the subcontractor as if it were its own and for ensuring the subcontractor's compliance with obligations under the procurement contract.
- 3.3 The supplier has no right to change a subcontractor named in the procurement contract or a subcontractor contributing to the fulfilment of fundamental contractual obligations without the customer's consent.
- 3.4 If, however, a subcontractor named in the procurement contract or a subcontractor contributing to the fulfilment of fundamental contractual obligations is unable to contribute to the fulfilment of obligations under the procurement contract for reasons independent of the supplier or through force majeure, the supplier has the right to replace the original subcontractor with another subcontractor able to offer corresponding resources and quality that meets with the customer's approval. The customer may only refuse to accept a replacement subcontractor proposed by the supplier

for a justified reason. If the supplier is unable, within a reasonable period of time, to propose a replacement subcontractor that the customer can approve, the customer shall have the right to terminate the procurement contract with six (6) months notice.

- 3.5 Upon request of the customer, the supplier shall provide an account of the subcontractors it uses.
- 3.6 Should the customer so require, the supplier is obliged to replace a subcontractor who is subject to the mandatory criteria for exclusion referred to in section 53 of the Act on Public Contracts (348/2007), or discretionary criteria for exclusion referred to in section 54(1)(3-5), even if the criteria arose after the beginning of the contractual relation. If it is impossible to replace the subcontractor, the customer has the right to terminate the procurement contract with immediate effect.

4 Properties of supplies

- 4.1 The type, quantity, quality and other properties of supplies must correspond to that which has been agreed. The supplies must also correspond to the information provided on them to the supplier.
- 4.2 Unless otherwise agreed, the supplies must be suitable for the purpose for which such supplies are generally used or be suitable for the specific purpose for which the supplies are intended to be used if the supplier has been made aware of this purpose. The quality of supplies must at least correspond to any samples and specimens delivered to the customer in advance.
- 4.3 The supplies must fulfil the regulations of the European Union's mandatory legislation and of Finnish laws and decrees, as well as regulations issued by the authorities with respect to, for example, structure, equipment, occupational and fire safety, and electrical safety.
- 4.4 The supplies must be accompanied by all certificates, permits and other documents that are to be acquired by the supplier and which are needed for using the supplies.
- 4.5 The supplier must deliver to the customer drawings and instructions and other information and documents included in the contract which are needed for the installation, repair, maintenance and use of the supplies. The information and documents must be in the Finnish language unless the customer has approved the delivery of these in another language.
- 4.6 The supplier shall guarantee the availability of maintenance and spare parts for the supplies at reasonable prices and terms in the prevailing circumstances. Unless otherwise agreed, maintenance and spare parts must be available for a period corresponding to the general useful life of the supplies.
- 4.7 The supplier may, with the consent of the customer, replace the supplies specified in the procurement contract with other supplies. The replacement supplies must fulfil the requirements stipulated in the procurement contract and their properties must correspond with those of the original supplies. The supplier must deliver replacement supplies at a price no greater than that of the original supplies.

5 Price

- 5.1 The price shall be fixed for 12 months from the beginning of the contract period unless otherwise agreed. The price does not include value-added tax.
- 5.2 The supplier shall invoice value-added tax in accordance with the Value-Added Tax Act in force.
- 5.3 The price shall include all costs incurred from providing the supplies and service, including travel and accommodation costs, daily allowances, overtime compensation and any indirect taxes and fees, excluding value-added tax, payable by the supplier and applicable at the deadline for tenders.
- 5.4 Unless otherwise agreed, the supplier shall not be entitled to levy minimum delivery or invoicing charges.
- 5.5 Any advance payment shall be considered a fixed part of the contract price.
- 5.6 The supplier shall have the right to take into consideration in the price direct costs arising from new public fees decreed by the authorities or increases of existing fees that take place after the submission of the tender and directly influence the supplies provided for the customer, provided that they were not known about when making the tender and that the supplier is able to demonstrate grounds for the price change. In that case, the price of the supplies shall change accordingly from the date when the abovementioned changes enter into force. The supplier has the aforementioned right even in the case where the price is fixed. Should the customer so demand, the supplier is also obliged to observe in the price any changes caused by the elimination or reduction of such fees.
- 5.7 During the contract period, the supplier has the right to adjust the price in relation to the general cost trend for the service. The supplier must deliver a price adjustment notification in writing at least three (3) months before the price adjustment enters into force. A price adjustment may enter into force at the earliest after 12 months have passed from the beginning of the contract period or from a previous price adjustment made at the initiative of the supplier. The supplier must present to the customer an appropriate and justified explanation of the cost trend and the reasons for the price adjustment.
- 5.8 During the contract period, the customer has the right to propose a price adjustment corresponding to the general cost trend for the supplies. The customer must deliver a price adjustment proposal in writing at least three (3) months before the price adjustment enters into force. A price adjustment can enter into force at the earliest after 12 months from the beginning of the contract period or from a previous price adjustment made at the customer's initiative. Upon request, the customer must present an appropriate and justified explanation of the cost trend and the reasons for the price adjustment.
- 5.9 If the contracting parties are unable to agree unanimously on a price adjustment, both parties have the right to terminate the procurement contract with six (6) months' notice. Notice must be given in writing before the new prices enter into force. Prices valid before the price adjustment proposal was submitted will apply during the notice period.

6 Terms of payment

- 6.1 The supplier will primarily use electronic invoices in invoicing the customer, unless otherwise agreed.
- 6.2 The due date of electronic invoices is 21 days from the arrival of an acceptable invoice. If the supplier sends an invoice on paper to the customer, the due date is 30 days from the arrival of an acceptable invoice.
- 6.3 Unless otherwise agreed, the supplier shall be entitled to send an invoice for agreed payments when the supplies have been delivered. Regular payments shall be invoiced at agreed invoicing intervals in arrears. Invoices must include an itemisation of the grounds for invoicing.
- 6.4 If the customer fails to pay an invoice by the due date, the supplier shall have the right to charge interest on arrears in accordance with the Interest Act (633/1982) and reasonable collection costs.
- 6.5 The supplier shall have the right to cease fulfilment its contractual obligations if a clear and uncontested payment is delayed for more than thirty (30) days and the delayed payment is substantial. The supplier must notify the customer in writing of such a cessation at least fifteen (15) days before implementing it. The notification can be made immediately in the case of neglect.
- 6.6 The customer shall have the right to withhold from an unpaid sum costs arising from the repair of defective supplies or from the procurement of new, corresponding supplies due to a delay of supplies, as well as any delay penalty under the procurement contract or other possible contractual penalty and guarantee period security alongside interests accumulated for the advance payment in case of delay or termination.

7 Security

- 7.1 If the customer is required under the procurement contract to make an advance payment, the supplier must, before the advance payment is made, post security to the satisfaction of the customer, which must be at least fifteen (15) per cent greater than the advance payment. The security must be valid for at least one month beyond the delivery time specified in the procurement contract. The supplier must extend the validity of the security in the event of the delivery being delayed.
- 7.2 If security for the guarantee period has been agreed, the supplier must before the guarantee period begins post security to the customer's satisfaction which must be at least fifteen (15) per cent of the contract price, excluding value-added tax. The security must remain valid for at least one month beyond the expiry date of the guarantee period.

7.3 A bank deposit made in the customer's name or an absolute suretyship granted by a sound financial or insurance institution or other security acceptable to the customer shall primarily be accepted as security for any advance payment or guarantee period.

7.4 The supplier shall be responsible for all costs arising from acquiring the security.

8 Handover of supplies and transfer of liability for risk

8.1 The supplier shall hand over the supplies to the customer at the time specified in the procurement contract. The supplies or part thereof must not be handed over before the agreed time without the customer's consent.

8.2 Unless otherwise agreed, the delivery terms are "Delivered to a place specified by the customer" (TOP, Finnterms 2001).

8.3 The liability for risk transfers to the customer when the supplies have been handed over to the customer in accordance with the delivery terms.

8.4 If the supplies are not handed over at the right time and this is due to the customer or a factor on the part of the customer, liability for risk shall be transferred to the customer when the supplier has performed what the handover requires from the supplier, and the customer has been notified of the matter in writing. The supplier may not, without the customer's consent, insure at the customer's cost supplies whose risk lies with the customer under the procurement contract.

8.5 The supplier shall be liable for such supplies, parts and accessories of the customer that the customer has transferred to the supplier's possession for storage, repair or further processing.

9 Inspections prior to handover, supervision and acceptance inspections

9.1 The customer has the right to inspect the supplies prior to their handover.

9.2 The inspections and control performed by the customer before handover will not limit the supplier's obligations and liability.

9.3 After the handover of the supplies, the customer shall perform an acceptance inspection as soon as circumstances permit. The supplies will be deemed approved unless the customer makes a claim concerning a defect in them within a reasonable period.

9.4 The supplier and customer both have a general obligation to cooperate in furthering inspections and the acceptance inspection. Each contracting party is responsible for their expenses arising from inspections.

- 9.5 Any defects perceived in inspections and the acceptance inspection must be removed by the supplier at its own expense without unreasonable delay. The customer is under no obligation to reimburse the supplier the costs arising from supplies that become unserviceable or lose value in the course of a normal inspection.
- 9.6 If there is a defect in the supplies, the supplier will be responsible for all costs arising to the customer from repeating the inspection, handling and transport.

10 Delay

- 10.1 If a contracting party realises that it will be delayed in the delivery or in its obligations or considers a delay probable, the delaying contracting party must, immediately and in writing, notify the other contracting party of the delay and its impact on the fulfilment of the procurement contract. In the event of delay on the supplier's part, the supplier must notify the customer of a new delivery time as soon as possible.
- 10.2 A delay in installation and start-up as well as a delay in the supply of other information necessary for use or other information required by the procurement contract will be regarded as equivalent to a delay in delivery.
- 10.3 If the delivery is delayed for a reason caused by the supplier, the customer has the right to a delay penalty. The customer shall have the right to a delay penalty without having to demonstrate that the supplier's delay would have resulted in losses for the customer. Unless otherwise agreed, the delay penalty shall be one (1) per cent of the value, excluding value-added tax, of the delayed delivery for every beginning seven (7) day period by which the supplier exceeds the agreed due date. The delay penalty will be charged for a maximum of ten (10) weeks. In addition to the delay penalty, the customer has the right to compensation for damages for losses caused by the supplier's delay, in accordance with chapter 14.
- 10.4 If the customer has made an advance payment and delivery is delayed for a reason caused by the supplier, the supplier will be obliged to pay annual interest for the delay period according to the Interest Act for the part of the advance payment that corresponds to the value of the delayed supplies.
- 10.5 On the basis of delay, the customer has the right to withhold payment for the supplies. The customer may not, however, withhold a sum that apparently exceeds the claims to which he is entitled on the basis of the delay.
- 10.6 If the supplier's performance is delayed and the delay is of essential significance for the customer with regard to the nature of the supplies, the customer shall have the right, at the supplier's expense, to acquire substitute supplies of a corresponding standard from a third party (right to cover purchase). The customer shall seek to inform the supplier about using the right before acquiring the substitute supplies.
- 10.7 A procurement contract can be terminated on the basis of substantial delay in accordance with paragraph 12.7.

- 10.8 The customer has the right to withhold interests and costs referred to in paragraphs 10.3, 10.4 and 10.6, in accordance with paragraph 6.6, due to a delay in supplies.

11 Guarantee

- 11.1 The guarantee period shall be 24 months, unless otherwise agreed. The guarantee period begins from the day on which the supplies were handed over to the customer. Should the customer find the supplies defective in the acceptance inspection, the guarantee will only begin from the day on which the supplier has remedied the defect.
- 11.2 The guarantee will cover all defects that appear during the guarantee period. The guarantee will not, however, cover defects that arise from the supplies being used contrary to operating instructions or otherwise incorrectly.
- 11.3 The supplier is obliged, without delay and at its own expense, to remove all defects that appear during the guarantee period or to deliver new supplies to replace the defective ones. Repairs under guarantee also include amendments corresponding to the repair in documents relating to the supplies.
- 11.4 Unless otherwise agreed, the guarantee period of the supplies will be extended by the amount of time that the supplies could not be used due to a defect. The length of the guarantee period will, however, be at most twice that of the original guarantee period.
- 11.5 If, during the guarantee period, a defect appears in the supplies and there is justified reason to assume that the same defect will also appear in other supplies (typical defect), the supplier is obliged to remedy this defect in all supplies that have been and will be delivered.
- 11.6 The customer must deliver supplies for repair under guarantee to the location in Finland indicated by the supplier. The supplier will be responsible for costs relating to the repair under guarantee as well as for expenses arising from the delivery and return of the supplies for repair under guarantee.
- 11.7 If the supplier fails to fulfil its warranty obligations within a reasonable time of the customer having informed about a defect, the customer has the right to have the necessary repairs made by a third party and demand the costs incurred as damages from the supplier in accordance with Section 14. The customer must inform the supplier in advance of the intention to have the repairs made by a third party. The customer has the right to demand a price reduction instead of repairs.
- 11.8 Even after the guarantee period, the supplier is obliged, without delay after being notified, to remove, at its expense, defects appearing in the supplies which were present in the supplies when risk transferred to the customer and which the customer could not reasonably have noticed in the acceptance inspection or during the guarantee period.

12 Defect, price reduction and cancellation of the contract

- 12.1 The defectiveness of supplies shall be assessed based on the properties of the supplies when liability for risk is transferred to the customer. The supplier is responsible for a defect that was present in the supplies at this time, even if the defect is detected later.
- 12.2 If the supplies have a defect, the customer must inform the supplier about the defect within a reasonable period of the defect being detected or of the time it should have been detected.
- 12.3 The supplier must inform the customer about receipt of the notification of defect and initiation of measures no later than 14 days after receiving the notification.
- 12.4 If a defect observed in the supplies is one that prevents taking the supplies into their intended use, the customer is entitled to withhold payment of the purchase price until the supplier has removed the defect.
- 12.5 If there is a defect in the supplies, the supplier will examine the cause of the defect at its own expense, and rectify it without delay. The supplier may be released from liability by demonstrating that the defect did not arise from a factor within the supplier's responsibility. In such a case, the supplier is entitled to charge for investigating and rectifying the defect in accordance with the usual price list.
- 12.6 If the supplier has not repaired a defect or supplied a replacement product in accordance with agreed terms and conditions, the customer shall have the right to a price reduction from the supplier.
- 12.7 Each contracting party may cancel the procurement contract completely or partly if the other contracting party has substantially violated its contractual obligations or it is evident that a substantial breach of contract will take place. A substantial breach of contract shall be deemed to be, for example, that the supplies do not correspond to those agreed and the defect, or the consequences the defect caused to the customer, are more than minor and the defect, despite the customer's reminder, is not immediately remedied or the defects occur repeatedly. A substantial delay in performance by a contracting party or repeated delays also constitute a substantial breach of contract.
- 12.8 If the customer has made an advance payment, the supplier shall, when the procurement contract is cancelled, pay back to the customer the advance payment it received plus interest calculated according to the Interest Act from the date the advance payment was made, to the repayment date.
- 12.9 If a defect caused by the supplier cannot be remedied or if the supplier fails to remedy the defect within a reasonable period of time, the customer shall have the right, at the supplier's expense, to have the supplies repaired by a third party or acquire substitute supplies of a corresponding standard from a third party (right to cover purchase). The customer shall seek to inform the supplier about using the right before making the cover purchase.

- 12.10 The customer has the right to withhold interests and costs referred to in paragraphs 12.6, 12.8 and 12.9, in accordance with paragraph 6.6, due a defective supply.

13 Force majeure

- 13.1 Force majeure is deemed to be an unusual and relevant event, occurring after the signing of the procurement contract and preventing the fulfilment of the contract, which the contracting parties had no reason to take into account when signing the procurement contract and which is beyond the control of the contracting parties, and whose consequences cannot be prevented without unreasonable additional cost or waste of time. Such an event may be war, rebellion, internal unrest, expropriation or confiscation for public needs, import or export ban, natural catastrophe, interruption of public transport or energy distribution, a strike or other industrial action, fire or other corresponding event of unusual and significant impact beyond the control of the contracting parties.
- 13.2 A delay of a subcontractor shall be deemed to be force majeure only in case the subcontractor's delay is the result of an obstacle referred to in paragraph 13.1 and the subcontracting cannot be performed elsewhere without unreasonable waste of time or costs.
- 13.3 If the fulfilment of a contractual obligation is delayed due to force majeure, the period for fulfilling the contractual obligation shall be extended for as long as is reasonable, considering all the circumstances influencing the case.
- 13.4 Each contracting party must notify the other contracting party immediately about the occurrence of force majeure and also when force majeure ceases, after which the contracting parties must, at the latest, agree on its impact on the delivery.
- 13.5 Each contracting party may cancel the procurement contract completely or partly if the fulfilment of the contract due to the continuation of force majeure is delayed by more than four (4) months.

14 Damages

- 14.1 The customer and the supplier shall have the right to receive damages for direct losses arising from the other contracting party's breach of contract.
- 14.2 If the procurement contract is terminated for a reason attributable to the supplier on the basis of chapter 15, and losses arise to the customer from this, the customer shall have the right to damages for direct losses arising from the premature ending of the contract.
- 14.3 The customer shall have the right to receive damages for delay or other losses arising from the supplier's breach of contract insofar as the amount of losses exceeds any

delay penalty payable to the customer and any other contractual penalty separately agreed by the contracting parties.

- 14.4 Unless otherwise agreed, the contracting parties' liability for damages is at most five (5) times the calculated value of the procurement contract.
- 14.5 The calculated value of the procurement contract refers to the value of the supplies that are the subject of the procurement contract between the customer and the supplier. In a framework agreement, the calculated value of the procurement contract is the total value of acquisitions that the customer has and will make from the supplier on the basis of the framework agreement. In procurement contracts of a continuous nature, or framework agreements, the calculated value of a procurement contract shall be the average purchases made per month, multiplied by the number of months corresponding to the contract period. With regard to procurement contracts valid until further notice, the calculated value of a procurement is determined on the basis of a 48-month contract period. If the loss occurs during an option period, the months of both the actual contract period and the contract's option period shall be taken into account when defining the calculated value of the procurement contract.
- 14.6 The limitations of liability specified in this chapter will not apply if the other contracting party has caused the damage wilfully or through gross negligence, violated the confidentiality obligations or violated intellectual property rights. In such case, the injured contracting party has the right to compensation for indirect losses as well.

15 Termination of the procurement contract in special situations

- 15.1 The customer has the right to terminate the procurement contract with immediate effect if the supplier is burdened by a mandatory criteria for exclusion referred to in section 53 of the Act on Public Contracts (348/2007), or discretionary criteria for exclusion referred to in section 54(1)(15-6), even if the criteria arose after the beginning of the contractual relation.
- 15.2 The customer shall have the right to give notice of terminating the procurement contract with immediate effect if the supplier's financial or other circumstances are perceived to have changed substantially so that it cannot be assumed that the supplier will fulfil its contractual obligations and the supplier gives no reliable explanation about the fulfilment of its obligations. The termination shall be made within a reasonable time of the customer being informed about the existence of grounds for termination.
- 15.3 Before giving notice of termination, the customer must notify the supplier about the threat of termination and give the supplier an opportunity to provide an explanation within a reasonable period of time.
- 15.4 If the customer terminates the procurement contract on the basis of paragraphs 15.1

or 15.2, the supplier shall have the right to receive full payment for supplies delivered up to the time the contract is terminated, but shall not be entitled to other compensation as a result of the termination of the contract.

16 Intellectual property rights

- 16.1. Unless otherwise agreed, intellectual property rights to the supplies or related material will not be transferred to the customer, with the exception of the right of ownership to the supplies. All material that the customer and supplier hand over to one another before or after the signing of the contract will remain the property of the transferor. The customer will, however, have an irrevocable right of use to the material transferred to it by the supplier where the material will be used for a purpose related to the use of the supplies. The right of use includes the right to use, copy and make or commission changes to the material. When making or commissioning changes to material handed over by the supplier, the customer must ensure that none of the supplier's business or professional secrets are disclosed. The customer has the right to transfer material to the party to whom the customer's tasks are transferred, with equal rights and obligations.
- 16.2. The supplier is responsible for ensuring that supplies or related material provided by it do not, when used in accordance with the procurement contract, violate a third party's patent, copyright or other intellectual property rights valid in Finland.
- 16.3. If any claims are presented against the customer based on intellectual property rights relating to use of the supplies or related material, the supplier is obliged to meet these claims on the customer's behalf at its own expense. The supplier will be responsible to the customer for ensuring that no legal costs, damages, other compensations payable to a third party or other liabilities towards a third party are incurred by the customer through claims or obligations arising from intellectual property rights relating to the supplies or related material.

17 Confidentiality

- 17.1. The contracting parties shall undertake to keep secret such confidential material and information that they receive from each other and which under law must be kept secret, and to undertake not to use them for purposes other than in accordance with the procurement contract.
- 17.2. The transfer of information to an authority or other party on the basis of an obligatory official order shall not be deemed a violation of the obligation to maintain secrecy.
- 17.3. The supplier shall not use the procurement contract or the customer's name in marketing without the customer's consent. Unless otherwise agreed, the supplier may, however, use the procurement contract as reference information when making tenders to procurement units referred to in procurement legislation.

- 17.4 The obligations referred to in this chapter continue after the procurement contract period.

18 Transfer of the contract, changes and options

- 18.1 Without the customer's consent, the supplier shall not have the right to transfer the contract to a third party, even partially. The customer shall have the right to transfer the procurement contract to a third party to whom the customer's tasks are transferred in full or partially.
- 18.2 Changes to the contract must be made in writing. Changes made in an electronic format shall be deemed changes in writing to the contract.
- 18.3 Changes relating to the supplies and their impact on the delivery schedule or price must be agreed in writing before measures are initiated.
- 18.4 If the procurement involves an option, the customer decides on whether to use it. The terms of the procurement contract apply to the option.

19 Duty to help and assist should the supplier change

- 19.1 In the event of a change of supplier, the supplier is obliged to help and assist the customer in transferring the contractual obligations to the new supplier. The supplier has the right to charge for work arising from this in accordance with its price list.
- 19.2 The duty to help and assist begins before the termination of the procurement contract, when notice of termination has been given or the procurement contract has been cancelled or when the customer notifies that it is initiating a procurement that applies to supplies under this procurement contract. Unless otherwise agreed, the obligation will continue at most until 12 months have passed since the termination of the procurement contract.

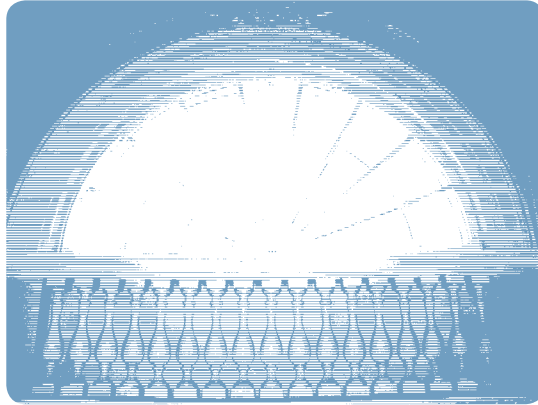
20 Settlement of disputes and applicable law

- 20.1 Issues relating to the procurement contract will be resolved primarily through negotiations between the contracting parties.
- 20.2 If a dispute cannot be resolved through negotiation, it will be submitted for resolution in a Court of First Instance in the customer's domicile.
- 20.3 The laws of Finland apply to the procurement contract. The connecting factor rules of Finnish law or the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not, however, apply to the procurement contract.

21 Order of validity of procurement contract documents

21.1 The procurement contract documents complement each other. Should the contract documents conflict, they shall be adhered to in the following order of validity, unless otherwise agreed:

1. Contract
2. Invitation to Tender
3. General Terms of Public Procurement in Supply Contracts
(JYSE 2014 SUPPLIES)
4. Tender



MINISTRY OF FINANCE
Snellmaninkatu 1 A, Helsinki
P.O. Box 28, FI-00023 GOVERNMENT
Tel. +358 0295 16001 (switchboard)
Fax +358 9 160 33123

Official e-mail: valtiovarainministerio@vm.fi
Communications vm-viestinta@vm.fi
firstname.lastname@vm.fi

www.vm.fi