

1) A bidder has asked to modify his bid, can I accept?

Category

[Contract signature](#)

Under the CERN GCIT Clause 20, the bid shall be valid for six months from the closing date.

The bidder shall not be allowed to modify his bid during the validity period except as provided for in the GCIT and CPR. Clarifications may, nevertheless, be requested by CERN and result in a modification of the bid. The successful bidder shall enter into a contract on the basis of his bid and shall be liable for any costs resulting for CERN from his failure to do so (GCIT Clause 5).

Legal Implications

Allowing the bidder to modify his bid after the opening of the bids would constitute an infringement of the principles laid down in Section 2 of the CPR, including fair competition. However, once the lowest compliant or best-placed bidder has been identified and the ranking established, the successful bidder may reduce the price of his bid as a result of the clarification discussions/negotiation with CERN.

Actions to Take

Remind the bidder in writing of the applicable conditions, referring to the GCITC that was part of the IT file.

Relevant Clauses and Links

Clause 20 of GCITC, Article 7.2 CPR

Open A bidder requests the application of his own general conditions, what should I do? configuration options

2) A bidder requests the application of his own general conditions, what should I do?

Category

[Contract signature](#)

In principle, CERN orders and contracts should be executed in accordance with the GCCC, which take into account CERN's international status and are designed to adequately protect CERN's interests.

Legal Implications

A bidder's own general conditions are unlikely to protect CERN's status and legal interests in the manner in which the GCCC do.

Actions to Take

Try to convince the bidder to accept the application of the GCCCT explaining CERN's status as an IGO by using the following wording : « *CERN orders and contracts shall be executed in accordance with the General conditions of CERN contracts. The reason for this is that CERN is an Intergovernmental Organization governed by public international law, which status has been recognized by its Member States. The aim is to guarantee the functioning of CERN without interference by individual Member States and independently from national authorities. In accordance with its status, CERN is granted immunity from national jurisdiction and execution. Legal disputes are therefore not submitted to national courts but to international arbitration* ».

Should this not be possible, the bid may, depending on the case, be considered non-compliant. In the event of doubt, contact your IPT Legal Adviser.

Relevant Clauses and Links

Clause 1, Clause 4.2 GCCC

Read more:

[The supplier sends an order confirmation referring to its own general conditions, what should I do?](#)

[Where in the documents priority order should I insert agreed modified contractual conditions?](#)

[Under what circumstances can I accept to modify the GCCC ?](#)

Open A bidder requests the reference to his national law in the contract, can I accept ? configuration options

3) A bidder requests the reference to his national law in the contract, can I accept?

Category

[Contract signature](#)

CERN is an intergovernmental organisation governed by public international law, which status has been recognized by its Member States. As such, CERN is entitled to establish its own internal rules necessary for its proper functioning, including the GCCC. The latter foresee that in case a contract provision is ambiguous or unclear or when a matter is not specifically covered by the contract, reference shall be made to Swiss substantive law.

The aim is to guarantee the functioning of CERN without interference by individual Member States and independently from national authorities.

In accordance with its international status, CERN is granted immunity from national jurisdiction and execution. Legal disputes are therefore not submitted to national courts but to international arbitration.

Legal Implications

Accepting the application of a national law, may result in CERN being exposed to a legal system, which will not adequately protect CERN's interests. Moreover this may place CERN in a difficult position *vis à vis* some of its Member States.

Actions to Take

In the event that the bidder requests the application of specific national regulations (standards and norms in the field of safety, civil engineering, etc...) he cannot deviate from, their application shall be considered and discussed. Refer to your IPT Legal Adviser.

Relevant Clauses and Links

Clause 34

Open A problem arises during the execution of the contract: may I use the tools of the GCCC ? configuration options

4) A problem arises during the execution of the contract: may I use the tools of the GCCC ?

Category

[Contract execution](#)

GCCC apply for contractual matters and only if they have been accepted by the contractor.

The GCCC are "general" while the conditions defined in the contract itself and its annexes, including the technical specification, are specific. Specific terms always prevail over general terms. However, when there's no specific term in the contract, the GCCC will apply per default.

Legal Implications

tbc

Actions to Take

You can refer to a clause of the GCCC as long as the matter concerned is not specified otherwise in the contract itself. Do not "repeat" clauses of the GCCC in the technical specification or contract. They constitute the legal framework of the contract and will be automatically applicable if not specified otherwise in the contract.

Relevant Clauses and Links

Clause 1 - Clause 4

Open Can I end a contract at any time? configuration options

5) Can I end a contract at any time?

Category

[End of contract](#)

Yes, you can terminate a contract forthwith, at any time, if the conditions for early termination are fulfilled, for example in cases of force majeure, gross negligence or wilful misconduct of the contractor, breach of contract or bankruptcy/insolvency of the contractor. In addition, CERN is entitled, at any moment, to terminate a contract at will but shall compensate the contractor for all costs wholly and necessarily incurred by him in the performance of the contract.

Legal Implications

tbc

Actions to Take

In case you consider that the contract you are in charge of shall be terminated before its end date, you shall, together with the technical officer discuss the conditions and consequences of such termination. In principle, early termination is the consequence of a longer process. Keep track of all correspondance and relevant documents, in particular if you detect a non-compliance with the contract.

Relevant Clauses and Links

Clauses 28 to 30

Open Can I sign an EULA, SLA or similar Agreement submitted by the bidder?
configuration options

6) Can I sign an EULA, SLA or similar Agreement submitted by the bidder?

Category

[Contract signature](#)

In some cases, mostly in the IT field, CERN will be requested to sign an agreement submitted by the bidder as a condition for entering into a contractual relationship (e.g. End-User Agreement, SLA, etc.).

Where this cannot be avoided (e.g. there are no competitors that CERN can use as alternative suppliers who do not require signature of such an agreement, or the project is of such importance for CERN that it simply has to go ahead, etc...), you must ensure that CERN's interests and status as an intergovernmental organization (i.e. with specific privileges and immunities) are nevertheless adequately protected in the agreement.

Legal Implications

By signing a document, CERN accepts the provisions in that document, which may be less protective than our own regulations.

It is therefore necessary for CERN to inform the contractor about our particular status as an IGO and to specify to which extent the GCCC will prevail.

Actions to Take

EULA, SLA or similar Agreement submitted by the bidder for signature by CERN will be mentioned at the end of the list of priority of contractual documents (1. IT/PE ; 2. GCCC ;...) together with the following text:

«Please be aware that, in view of CERN's status as an intergovernmental organization, notwithstanding anything to the contrary contained in the Agreement, any dispute, controversy or claim arising out of or relating to the contract or the relationship between the parties created by this contract shall be submitted to arbitration and governing law, in accordance with clauses 34 and 35 of the General conditions of CERN Contracts . Further, please be advised that, in any case, CERN's signature of the contract does not imply a waiver by CERN of its privileges and immunities granted to it in accordance with its status as an intergovernmental organization. Should there be any conflict between the Agreement and the provisions contained in the above-listed documents, the parties agree that the terms of the latter shall prevail.»

Relevant Clauses and Links

Clause 1, Clause 4, Clause 36

Can modifications to the GCCC agreed in respect of one contract with a supplier be automatically applied to future contracts with the same firm?

Category

[Contract signature](#)

Any modification of the GCCC agreed between the CERN and a supplier in respect of a particular contract shall be agreed on a case-by-case basis, ie. the modification is only applicable for the purpose of that contract and not additional future contracts with that supplier.

Legal Implications

Agreeing to automatically apply specific modifications to the GCCC to all contracts/orders with a particular supplier/service provider would infringe the principles laid down in Article 2 of the CERN Procurement Rules.

Actions to Take

In the event that CERN accepts to apply modifications to the GCCC in respect of a specific contract or order and these are to be set out in a separate document other than the order or contract itself, then it should be specified clearly in such document that such modifications apply only to the particular order or contract concerned.

Relevant Clauses and Links

Clause 1, clause 36

Open Can payment take place before CERN has accepted the supply? configuration options

7) Can payment take place before CERN has accepted the supply?

Category

[Contract signature](#)

Payment by CERN for a supply has the result that the supply is deemed accepted in accordance with clause 21.2 GCCC. Consequently, the contractual warranty period begins (clause 25 GCCC).

If the supplier requests payment before CERN has been able to accept the supply (for example if CERN's acceptance can only be issued after a long testing period), CERN may, exceptionally accept to pay provided that the contract foresees enough financial leverage to protect CERN's interests in the event of any problems with the supply: e.g. bank guarantees, non-payment in respect of subsequent delivered batches until accepted, A ...

Legal Implications

A payment before acceptance, without suitable financial guarantees or protective measures being in place for CERN, may result in CERN experiencing difficulties in exercising its rights under the contract.

Actions to Take

Negotiate on the basis of clauses 21 and 25 and/or contact your IPT Legal Adviser

Relevant Clauses and Links

Clause 21, clause 23

8) Can the contractor request a compensation in case of early termination by CERN?

Category

[End of contract](#)

In case of a contract termination at will by CERN, CERN shall compensate the contractor for all costs wholly and necessarily incurred by him in the performance of his obligations under the contract prior to the date on which the termination takes effect. The total amount of such compensation shall not exceed, for supplies, the part of the contract price unpaid by CERN and for services, the amount payable for the provision of the services for a period of three months.

Legal Implications

tbc

Actions to Take

Notify the contractor in writing that CERN wants to terminate the contract.

Relevant Clauses and Links

Clauses 29 and 30.

Open Can the transfer of risk in the supply take place before acceptance of that supply by CERN? configuration options

9) Can the transfer of risk in the supply take place before acceptance of that supply by CERN?

Category

[Contract signature](#)

Legal ownership of the supply, including the risks in the supply, transfer to CERN upon acceptance (clause 21.6 GCCC).

Consequently, in principle, CERN does not accept to bear the risks for a supply that has not yet been delivered and/or accepted.

Legal Implications

If the risk in a supply is transferred to CERN before delivery and/or acceptance of that supply, the potential difficulty for CERN is that the contractor will not be liable in the event that a risk subsequently materialises with the supply.

Actions to Take

Explain CERN's position to the Contractor and, if necessary, contact your IPT Legal adviser.

Relevant Clauses and Links

Clause 21

Open CERN has terminated a contract earlier, does the warranty clause still apply? configuration options

10) CERN has terminated a contract earlier, does the warranty clause still apply?

Category

End of contract

Even in case of early termination, some clauses of the contract survive and continue to bind the parties.

Legal Implications

tbc

Actions to Take

Notify the (former) contractor in case of defect during the warranty period. Refer to clause 32 in the termination letter.

Relevant Clauses and Links

Clause 25, Clause 32

Open Contractor's failure may impact the LHC planning, what shall I do? configuration options

11) Contractor's failure may impact the LHC planning, what shall I do?

Category

[Contract execution](#)

Except in case of gross negligence or wilful misconduct on its part, the contractor will only be liable for the direct loss and damage resulting from his acts and omissions in relation to the contract. Such liability will be limited under the contract except in cases as defined under clause 27.3 of the General conditions of CERN contracts.

Legal Implications

The qualification of the damage as direct or indirect will have an impact on CERN's indemnification by the contractor.

Actions to Take

Contact your IPT Legal Adviser

Relevant Clauses and Links

Clause 27, 30.2

Open How do I go about formally recording agreed modifications to the GCCC? configuration options

12) How do I go about formally recording agreed modifications to the GCCC?

Category

[Contract signature](#)

Modifications to the GCCC shall be agreed by the Parties and specified in a separate document. That separate document needs to be mentioned in the order or contract, and given priority above the GCCC in the list of priority of the contractual documents.

Legal Implications

If modifications to the GCCC are agreed by the Parties, but are not formally recorded, then CERN may end up in a dispute with the supplier/service provider as to whether they apply.

If modifications to the GCCC are agreed by the Parties and are formally recorded but are not given priority over the GCCC in the list of priority of the order of documents, then the unmodified GCCC will apply to the contract rather than the modified terms, again exposing CERN to the risk of dispute.

Actions to Take

In all circumstances, contact your IPT Legal Adviser for advice.

Relevant Clauses and Links

Clause 1, 36

13) How do I notify the contractor in case of bad performance under the contract ?

Category

[Contract execution](#)

In cases where the contractor fails to perform the contract in accordance with the contractual provisions, CERN shall communicate such default or failure to the contractor forthwith. Such communication will be made in writing by the Procurement officer in charge, on the basis of the information provided by the Technical officer. Bearing in mind that the situation could lead to an early termination of the contract, evidence of the facts will be requested.

Legal Implications

Failure by the Procurement officer to document the case and to notify the contractor in writing may result in CERN losing the opportunity to exercise its rights.

Actions to Take

Previously make sure that all the protection mechanisms foreseen in the contract against a failure by the contractor are in force (bank guarantee, etc...). Make any communication to the contractor in writing and to the attention of the person designated as the official representative of the contractor. Always indicate the contract reference. Keep track of any exchange with the contractor and any relevant documentation.

Relevant Clauses and Links

Clauses 7, 30

Open Is CERN entitled to pay directly a subcontractor ? configuration options

14) Is CERN entitled to pay directly a subcontractor ?

Category

[Contract execution](#)

According to the "step-in" clause 8.3 of the General Conditions of CERN Contracts, in exceptional cases and under specific conditions, if a CERN contractor fails to pay his subcontractors, CERN may pay the subcontractor directly in view of ensuring the service continuity and reduce the negative impact on the contract performance. Any sub-contracting includes the contractor's agreement that, in the event of a breach of the performance of any of his obligations towards the subcontractor(s), CERN shall be entitled to exercise the contractor's rights and perform his obligations under the sub-contract(s).

Legal Implications

Make sure to have asked yourself all pertinent questions (actions to take) as a payment directly to the subcontractor might not release CERN from his liability to pay the contractor.

Actions to Take

Contact your IPT Legal adviser and make sure that you have verified the following aspects: has CERN already paid his contractor ? What would be the consequences for CERN if the subcontractor is not paid? Has the services been performed/supplies have been delivered and if yes, what about their conformity with the contract (reason for non-payment by the contractor?)?

Any request for direct payment addressed by a subcontractor shall immediately be forwarded to your IPT legal adviser.

Relevant Clauses and Links

Clause 8.3

[Can a subcontractor request direct payment from CERN in case of failure of the contractor?](#)

Open On which date does the contract effectively start? configuration options

15) On which date does the contract effectively start?

Category

[Contract signature](#)

In principle, the contract start date (CSD) is the date on which the contract is signed by the last of the contract parties to sign. In this context it should be noted that a letter of intention or a contract notification date is not a formal date of entry into force of the contract.

Except where agreed otherwise, the relationship between CERN and the future contractor during the period from the contract adjudication until the effective entry into force of the contract shall be governed by the GCCC.

Legal Implications

The contractual provisions and parties' obligations become effective on the CSD, not on the contract notification date.

Actions to Take

Include in the technical specification the following sentence: "*The relationship between CERN and the future contractor during the period from the contract adjudication until the effective entry into force of the contract shall be governed by the General conditions of CERN contracts*".

Relevant Clauses and Links

Clause 2

Open Should I define penalties in the order? configuration options

16) Should I define penalties in the order?

Category

[Contract signature](#)

Should you want to be able to apply penalties in respect of a future order or contract, they have to be defined and specified clearly in the invitation to tender documents, or in the order/contract itself.

The GCCC offers a legal framework for a penalty mechanism to apply should CERN so wish, but do not provide for a penalty mechanism to apply by default.

Legal Implications

Unless specifically defined in the invitation to tender documents or order/contract, no penalties will be applicable.

Actions to Take

If a penalty mechanism is required, define the penalties and the mechanism in the IT-DO documents, order or contract.

Relevant Clauses and Links

Clause 28

Read more:

[When and how can I apply penalties?](#)

Open The bidder/contractor is proposing a subcontractor, shall I authorise it?
configuration options

17) The bidder/contractor is proposing a subcontractor, shall I authorise it?

Category

[Contract execution](#)

Any permission given by CERN to subcontract shall apply exclusively to the specified obligations and subcontractors. In any event, supplies and services representing more than 50% of the contract price shall not be sub-contracted to a single sub-contractor, obligations to be performed on the CERN site shall not be sub-sub-contracted and the management of the contract shall not be subcontracted.

Legal Implications

A subcontractor who has not been authorised, will not be recognised as such. In the case of service contracts or delivery of supply to CERN, a non-authorised subcontractor will not be allowed to access the CERN site.

Actions to Take

Verify if the proposed subcontractor is not "blacklisted" at CERN or known in relation with a past contractual dispute. The subcontractors proposed by the bidder and authorised by CERN shall be named in the contract.

Relevant Clauses and Links

Clause 8

Open The contractor does not deliver the supply on time, what shall I do? configuration options

18) The contractor does not deliver the supply on time, what shall I do?

Category

[Contract execution](#)

Supplier announces, before delivery date, that he will not be able to deliver

Supplier doesn't deliver at said date - penalties?

Legal Implications

tbc

Actions to Take

Notify the contractor forthwith in writing. Discuss the alternative options with the technical officer in charge.

Relevant Clauses and Links

Clauses 19, 28, 29

Open The contractor does not use the CERN Bank Guarantee template, can I accept this? configuration options

19) The contractor does not use the CERN Bank Guarantee template, can I accept this?

Category

[Contract execution](#)

The bank guarantee shall be issued by a bank approved by CERN, for the amount stipulated in the contract and in the exact format specified in Annex I of the GCCC. However, an alternative bank guarantee document provided by a contractor's bank may be acceptable if it ensures an adequate protection of CERN's interests.

Legal Implications

An inappropriate or insufficient bank guarantee will not protect adequately CERN's interests.

Actions to Take

Contact your IPT Legal adviser. Inform the contractor that CERN will not be able to pay the first invoice (and the next) as long as he does not submit the bank guarantee in the requested or accepted format.

Relevant Clauses and Links

Clause 24, Annex 1

Open The contractor wants to renegotiate the prices after signature of the contract, is it acceptable? configuration options

20) The contractor wants to renegotiate the prices after signature of the contract, is it acceptable?

Category

[Contract execution](#)

By signing the contract, the contractor has confirmed his acceptance of its provisions and he is fully conversant with all the requirements of the contract and all the conditions associated with the performance of his obligations under the contract and that the price is sufficient to meet such requirements and obligations.

Legal Implications

Renegotiating the prices following contract signature would be discriminatory towards the other bidders.

Actions to Take

Do not accept to renegotiate the prices, except if foreseen in the contract (Price revision).

Relevant Clauses and Links

Clauses 2, 3, 22

Open The contractor wants to renegotiate the prices because laws have changed, can I accept? configuration options

21) The contractor wants to renegotiate the prices because laws have changed, can I accept?

Category

[Contract execution](#)

Under Swiss law there is no general provision regarding the adaptation of contracts to changes in legislation but, based on the principle of good faith, the courts consider that unpredictable changes with a significant negative impact on one of the parties should give rise to an appropriate amendment reinstating a "balance" between the legitimate interests of the parties.

In principle, the consequences of a change in law on the contract shall be discussed between the parties on a case by case basis.

Legal Implications

A substantial and unpredictable change in law may impact the contractual conditions in such a way that the contractor or/and CERN's interests are objectively undermined.

Actions to Take

In this context and if the contractor insists on a clause to be inserted, you may use the following wording:

"In case an unpredictable change in applicable laws results in an significant increase of the cost related to the Contractor's performance of its obligations under the contract CERN and the Contractor shall agree in good faith and on the basis of relevant substantiating documents on the amendments necessary to mitigate the consequences for the parties of such change."

Relevant Clauses and Links

Clause 22

Open The contractor's personnel is not adequately qualified, what shall I do? configuration options

22) The contractor's personnel is not adequately qualified, what shall I do?

Category

[Contract execution](#)

The contractor shall ensure that the personnel he assigns to the performance of a contract is adequately qualified and trained. Should he not comply with this obligation, CERN has the right to request the replacement of the personnel concerned and to apply penalties as the case may be.

Legal Implications

The assignment by the contractor of non-adequately qualified personnel constitutes a breach of his obligation to provide human resources as defined in the contract. This non-conformity gives rise to CERN's right to claim remedial measures and/or compensation.

Actions to Take

Notify the contractor in writing about the fact that the personnel he has assigned to the performance of the services does not fulfil the contractual requirements. Request the replacement of the personnel concerned in accordance with the deadlines defined in the contract. Evaluate the impact it may have had on the invoiced price for the service concerned and apply penalties as the case may be.

Relevant Clauses and Links

Clauses 3, 28, 29

Open The supplier sends an order confirmation referring to its own general conditions, what should I do? configuration options

23) The supplier sends an order confirmation referring to its own general conditions, what should I do?

Category

[Contract signature](#)

CERN orders stipulate : *"You are kindly requested to return to CERN a signed copy of the present order within five working days of its reception. Without any response from you within this deadline, the order will be considered accepted."* Should the supplier send a written notification to the Procurement officer within five working days requesting the application of his own conditions, CERN shall reply forthwith

to notify that the order shall be performed according to the GCCC and not their own conditions.

Legal Implications

If CERN does not promptly reply to the supplier that the GCCC are applicable to the contract, then the general conditions of the supplier may apply in case of dispute.

Actions to Take

The Procurement officer should, within five working days after reception of any order confirmation containing a request by a supplier/service provider to apply its own contract conditions, reply to them in writing, using the following wording:

"(...) We acknowledge receipt of your above-mentioned letter/email and herewith remind you that the above-mentioned order shall be performed in accordance with the General Conditions of CERN Contracts, which take into account CERN's status as an intergovernmental organization. (...)"

Relevant Clauses and Links

Clause 4 GCCC

Read more:

[Where in the documents priority order should I insert agreed modified contractual conditions?](#)

[Under what circumstances can I accept to modify the GCCC ?](#)

[A bidder requests the application of his own general conditions, what should I do?](#)

Open To what extent can I modify the thresholds in the liability clause?
configuration options

24) To what extent can I modify the thresholds in the liability clause?

Category

[Contract signature](#)

The liability thresholds may, in certain circumstances, be modified on the basis of a contract-specific risk analysis or other particular circumstances.

In any event, only the contractual liability can be limited under the contract.

Legal Implications

In the event that liability thresholds are modified in favour of the supplier and against CERN's interests, CERN could suffer a loss that will not be compensated.

Actions to Take

In all circumstances regarding modification of liability thresholds, the advice of the IPT Legal Adviser should be sought.

Relevant Clauses and Links

Clause 27

Open Under what circumstances can I accept to modify the GCCC ? configuration options

25) Under what circumstances can I accept to modify the GCCC ?

Category

[Contract signature](#)

The GCCC have been approved by the CERN Member States, represented in the Finance Committee. They have been elaborated taking into account CERN's status of Intergovernmental Organisation, in particular in view of questions of applicable law and dispute settlement. In principle therefore, the GCCC should not be modified and should be applied in their entirety. However, if modifications are inevitable and appear to be reasonable in the specific context, it is necessary nonetheless to ensure that CERN's interests and status of Intergovernmental organisation are adequately protected.

The GCCC may be modified or adapted only on a case by case basis.

Legal Implications

Modifications of the GCCC shall be avoided since such modifications may not adequately protect CERN's interests.

Actions to Take

In all circumstances, contact your IPT Legal Adviser.

Relevant Clauses and Links

Clause 4.2, Clause 36 GCCC

Read more:

The supplier sends an order confirmation referring to its own general conditions, what should I do?

Where in the documents priority order should I insert agreed modified contractual conditions?

A bidder requests the application of his own general conditions, what should I do?

Open Use restrictions imposed by the licence provider configuration options

26) Use restrictions imposed by the licence provider

Category

Licence agreements

Use restrictions may be related to intellectual property, category/status of users (which is of high relevance at CERN), fields of activities or (final) purpose. In order to ensure that CERN's needs will be covered adequately, the rights of use of the licence must be clearly defined in the agreement.

Legal Implications

If the licence provider imposes restrictions of use preventing CERN from fulfilling its needs, the agreement may lose its purpose and not be of any interest for CERN. Furthermore, if CERN breaches the use restrictions, the licence provider will be entitled to claim as usually foreseen in the agreement.

Actions to Take

The scope of the rights of use must be clearly addressed before signing the agreement so as to ensure that CERN's needs can be met. In case of doubt, contact your IPT Legal Adviser.

Relevant Clauses and Links

Can I sign an EULA, SLA or similar Agreement submitted by the bidder?

Intellectual Property indemnification and third party claims

Open What happens after the end of the contract? configuration options

27) What happens after the end of the contract?

Category

[End of contract](#)

Once a contract has ended, for whatever reason, some rights and obligations will still continue to apply. The provisions concerning confidentiality, intellectual property, equipment made available by CERN, bank guarantee, warranty, liability, governing law and arbitration continue to bind the parties in so far and for as long as may be necessary.

Legal Implications

tbc

Actions to Take

Notwithstanding termination of the contract, the Procurement officer in charge shall notify the former contractor forthwith in writing in case there's a breach of any surviving provision of the contract (ex: default of equipment during warranty period, etc...).

Relevant Clauses and Links

Clauses 13, 14, 24, 25, 27, 34, 35

28) What is the difference between a subcontractor and a member of a combination of firms?

Category

[Contract signature](#)

Subcontractors and members of combinations of firms are two different types of supplier/service provider that are subject to different legal regimes.

A subcontractor has no direct contractual relation with CERN, whereas a member of a combination of firms is, together with the other members of that combination of firms, a party, which has entered into a direct contract with CERN. Each member in a combination of firms is jointly and severally liable for the performance of that contract.

Legal Implications

The status of a supplier/sub-contractor will determine which legal regime applies to it for the execution of a contract. The status of a firm can be ascertained from the terms of the contract.

Actions to Take

Discuss during the start-up meeting, and in accordance with CERN's needs, whether or not, and under which conditions, CERN should accept subcontracting and/or combinations of firms.

Relevant Clauses and Links

Clause 5, clause 8, Definitions

Open What measures can I take if the contractor fails to comply with the contract?
configuration options

29) What measures can I take if the contractor fails to comply with the contract?

Category

[Contract execution](#)

In the event of non-compliance, the contractor should first be given the opportunity to take remedial measures.

Should the contractor nevertheless fail to take appropriate remedial measures, CERN can suspend payments or, to the extent that it has not yet been paid, deduct the disputed amount from the contractor's invoice.

If, despite these actions, the contractor's default continues to go unremedied, CERN shall, subject to a prior written formal notice to the contractor, be entitled to exercise other rights it may have under the contract, including the right to have the non-compliant contractual obligation carried out by a third party at the original contractor's cost.

On this basis, the procurement and technical officers shall decide whether to terminate the contract or not. All communications between CERN and the contractor on the topic must be done in writing by the Procurement officer.

Legal Implications

Taking measures against a contractor without an appropriate contractual legal basis may be unenforceable and harm CERN's interests.

Actions to Take

The procurement officer shall keep track of any exchange with the technical officer and the contractor and verify all contractual aspects, including the invoices and payments, the existence and validity of any bank guarantees, the applicable contractual provisions (penalties?) and the circumstances having given rise to the contractor's default.

The technical officer shall create a file with all relevant documents (i.e. email exchanges, reports, test results, etc.).

The procurement and technical officers shall meet to discuss the facts of the case and define a strategy taking into account the circumstances of the case, the impact of the contractor`s non-compliance on CERN, the existence of potential alternative suppliers in the market,...

Always have any formal notice of non-compliance to a contractor verified by the IPT Legal Adviser.

Relevant Clauses and Links

Clauses 5.3, 6.2, 8.5, 9.2, 10.2, 11.2, 12.2, 19.5, 19.6, 21.4, 23.3, 24.4, 25.3, 25.5, 27, 28, 29, 30.

Read more:

[When and how can I send a notice letter to the contractor?](#)

What shall I do if a subcontractor requests direct payment from CERN ?
configuration options

30) What shall I do if a subcontractor requests direct payment from CERN ?

Category

[Contract execution](#)

The contractor shall be liable for the performance of the subcontracted obligations and shall hold CERN free and harmless from, and indemnify it for any loss or damage, including legal costs, arising from any claim related to the performance of such obligation.

Legal Implications

In the event CERN pays a subcontractor, CERN may not be released from its obligation to pay the contractor.

Actions to Take

If you receive a direct payment request from a subcontractor (in particular the French Law of 31 December 1975 on subcontracting), contact your IPT Legal Adviser with all the factual information concerning the case.

Relevant Clauses and Links

Clause 8.4

[Is CERN entitled to pay directly a subcontractor ?](#)

Open When and how can I apply penalties? configuration options

31) When and how can I apply penalties?

Category

[Contract execution](#)

Penalties shall be applied as defined in the order or contract (or in the contract referred to in the order). Should no penalties have been defined therein, you will not be able to apply any penalty under the order or contract, even if the contractor is in breach.

Legal Implications

Applying penalties (where they exist) to the contractor may entail further consequences on the contractual relationship between CERN and the contractor, including a potential escalation that may lead to an early termination of the contract.

Actions to Take

In case you have not defined any penalty in the order or contract, you may be in a position to consider early termination. Please contact you IPT Legal Adviser.

Relevant Clauses and Links

Clauses 28, 29, 30

Read more:

[Should I define penalties in the order?](#)

Open When and how can I send a notice letter to the contractor? configuration options

32) When and how can I send a notice letter to the contractor?

Category

[Contract execution](#)

A notice letter shall be the last step of a discussion process between the parties in view of settling the contractual issue concerned amicably. Once all aspects have been discussed and there is no other option than considering an early termination of the contract, the Procurement officer shall prepare a notice letter. In parallel, alternative solutions shall be discussed with the Technical Officer for ensuring the performance of the service or delivery of the supply concerned beyond termination of the contract. This letter is the formal condition, which entitles CERN to terminate a contract before its ending date. It shall state clearly the requirements to be fulfilled by the contractor, specifying that he shall take any necessary remedial measures. The letter shall further indicate a reasonable deadline (usually four weeks). Failure by the contractor to remedy the situation within the notified deadline will entitle CERN to terminate the contract forthwith. The consequence of such termination shall be clearly specified in the notice letter.

NB: in principle, no discussions shall take place between the parties during the notice period and no additional/new aspects shall be raised following reception of the notice letter by the contractor.

Legal Implications

Sending the notice letter to the contractor is a formal condition for CERN to be entitled to exercise its right to terminate a contract earlier.

Actions to Take

Contact your IPT legal adviser as soon as a matter arises and submit the draft notice letter for review before dispatch (template available on request).

Please make sure that you have verified the following aspects:

- Does the contract/order foresee penalties, if yes has the maximum amount been applied?
- Have the invoices been paid? Is there a bank guarantee, if yes what is its validity period?
- Is there another firm that could deliver the supply/provide the service under acceptable conditions?
- What would be the consequences for CERN if the contractor does not remedy the situation as requested in the notice letter?
- Does CERN have the intention to terminate the contract?

Relevant Clauses and Links

Clauses 28, 29, 30

Open When and how can I terminate an order or a contract? configuration options

33) When and how can I terminate an order or a contract?

Category

[End of contract](#)

If the contractor fails to comply with his obligations under the contract, you shall first try to settle the issue on an amicable basis. The second step will be to apply penalties, if any defined in the contract. In case penalties apply, once the maximum amount has been reached and provided no remedial measures have been taken by the contractor, CERN will send a notice letter. Such letter shall specify a deadline after which CERN shall be entitled to terminate the contract. The letter shall state the consequences of such termination.

Legal Implications

tbc

Actions to Take

Contact your IPT Legal Adviser

Relevant Clauses and Links

Clauses 28, 29, 30

Open When can CERN request the intervention of a third party ? configuration options

34) When can CERN request the intervention of a third party ?

Category

[Contract execution](#)

CERN may request the intervention of a third party in the following cases:

1. During the warranty period: pursuant to clause 25.3 of the GCCC, if the contractor fails to take measures to remedy the defects notified by CERN, or if these measures are insufficient to ensure conformity of the supply/service with the contract, CERN is entitled to carry out these remedial measures by itself or through a third party of its choice. The cost of having these remedial measures carried out by CERN or a

third party shall be borne by the contractor. The contractor shall always be notified of the existence of the defects/non-conformities and given the opportunity to remedy them in a first instance, as the immediate intervention of CERN or a third party might otherwise impact the warranty given by the contractor on the supply/service.

2. After termination of the contract by CERN except in case of termination at will: pursuant to clause 30.2 of the GCCC, CERN is entitled to include the cost of having the contractual obligations of the contractor performed by a third party in its compensation, and this subject to prior formal notice sent to the contractor.

Legal Implications

Should CERN not notify the contractor in due time and terms, CERN may lose its right to have the costs of the third party's intervention borne by the contractor.

Actions to Take

A notification shall be sent to the contractor, giving him the opportunity to remedy by himself. A third party may only intervene after the deadline notified to the contractor has passed.

Make sure that the contractor has been given reasonable opportunity to remedy any non-compliance with the contract. As the case occurs, stipulate in the formal notice letter that CERN reserves the right to have the contractual obligations concerned performed by a third party of its choice, at the contractor's costs.

The procurement officer shall verify whether CERN has sufficient financial leverage on the contractor before engaging any costs (check validity of the bank guarantee, suspend the payment of invoices sent by the contractor, etc).

Relevant Clauses and Links

Clause 25.3, clause 30.2 GCCC

Read more:

[When and how can I send a notice letter to the contractor?](#)

Open When does a supply become CERN property? configuration options

35) When does a supply become CERN property?

Category

[Contract execution](#)

Title in a supply transfers to CERN upon acceptance of the supply by CERN.

Title in a supply should be distinguished from the transfer of risk in transportation, which is regulated by the INCOTERMS 2010, or otherwise regulated by specific conditions in the order and contract.

Legal Implications

The transfer of title in a supply to CERN entails the transfer of rights and obligations related to that supply, as opposed to the risks of transportation which are covered by the applicable INCOTERM or contractual terms.

Actions to Take

Should the contractor refuse to accept the provisions of clause 21.6, refer the case to your IPT Legal Adviser.

Relevant Clauses and Links

Clause 19, clause 21.6

Open Where in the documents priority order should I insert agreed modified contractual conditions? configuration options

36) Where in the documents priority order should I insert agreed modified contractual conditions?

Category

[Contract signature](#)

In the event that CERN and the contractor agree on modifications to the GCCC, such modified conditions shall be drafted in a separate document, which shall prevail over the GCCC. It must therefore appear above the GCCC in the list of priority of documents.

Legal Implications

Failure to insert the separate document above the GCCC in the list of priority will result its non-applicability.

Actions to Take

Ensure that the document detailing the modifications appears above the GCCC in the list of priority and is specific to the contract/order concerned.

Furthermore, as this document prevails over the GCCC, particular attention should be paid to the content of the document specifying such modifications: i.e. it should clearly identify the GCCC clauses that are being modified, it should only mention those modifications and should not repeat or reformulate the general provisions of the GCCC that are not being modified.

Relevant Clauses and Links

Clause 4, clause 36 GCCC

Read more:

[The supplier sends an order confirmation referring to its own general conditions, what should I do?](#)

[Under what circumstances can I accept to modify the GCCC ?](#)

[A bidder requests the application of his own general conditions, what should I do?](#)

Open Which laws are meant under clause 10? configuration options

37) Which laws are meant under clause 10?

Category

[Contract execution](#)

The term "laws" shall mean all CERN rules and regulations relevant for the execution of the contract and all laws, treaties, rules, regulations and orders of any local, national or other authority having jurisdiction over the contractor. This includes the rules referred to in the document "Working on the CERN site" (ex: CERN safety rules) where they apply. They also include national laws the contractor is subject to .

Legal Implications

CERN does not want to endorse illegal behaviour of its business partners.

Actions to Take

Define clearly in the technical specification the CERN rules and regulations applying to the contract, together with a link enabling the contractor to find them.

Relevant Clauses and Links

Definitions, Clause 10

Open Who should sign the contract in the case of a combination of firms?
configuration options

38) Who should sign the contract in the case of a combination of firms?

Category

Contract signature

If the contract is being placed with a combination of firms, the contract shall be signed by the authorized signatory(-ies) of each member of the combination of firms.

Each member of the combination of firms shall be jointly and severally liable for the performance of the contractor's obligations under the contract.

The contractor shall not, without prior permission in writing by the CERN Procurement Service change the nominated lead firm, nor the composition of the combination of firms, nor the percentage shares allocated to each member.

Legal Implications

In the event that the contract is not signed by the authorised representatives of each member of the combination of firms, it may constitute a non-compliance with formal requirements, or be a sign that the combination of firms has changed.

In both cases CERN should promptly enquire about the reason for the missing signature.

Actions to Take

Indicate each member of the combination of firms in the contract. Verify that the members of the combination of firms who will sign the contract are the same as the ones who have signed the bid.

Relevant Clauses and Links

Clause 5