



MINISTRY OF FINANCE

## General Terms of Public Procurement in Service Contracts

# JYSE 2014 SERVICES

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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 The Decree on Public Procurement (1416/93), which had formed the basis for the approval of the terms, was repealed when the new Act on Public Procurement (348/2007) entered into force on 1 June 2007.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 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 SERVICES, most changes were made to the following paragraphs:

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

In the previous JYSE 2009 SERVICES, 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 SERVICES, 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 SERVICES, 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.

### *Compensation for damages to the service user arising from a breach of contract*

JYSE 2014 SERVICES include a new section, under which the service provider is obliged to compensate any damages to the service user arising from the service provider's breach of contract. This provision was introduced in order to clarify the service provider's liability for damages and the procedures related to the processing of the claim for compensation between the customer and the service provider. The aim is that rather than the customer acting as intermediary in the process, the service provider will handle the matter directly with the user of the service.

### *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 service, were clarified when revising JYSE 2014 SERVICES. Structural improvements include combining individual paragraphs concerning the same issue in the same chapter.

The aim was to prepare JYSE 2014 SUPPLIES and SERVICES 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.

### *Maximum amount of liability for damages*

In JYSE 2014 SERVICES, 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 SERVICES.

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

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### Value-added tax

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

### Advance payment

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

### Price and price adjustments

Under JYSE 2014, 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 service provider 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 service 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 agree unanimously 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 SERVICES, under JYSE 2014 SERVICES, both contracting parties have the right to terminate the procurement contract 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.

## Options

The term 'option' in JYSE 2014 SERVICES refers to a purchase option for additional services made in a procurement notice or an invitation to tender, or an option relating to additional services or the extension of the contract period. When submitting a tender in competitive tendering, the service provider 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 services from a service provider that are mentioned in a procurement notice or an invitation to tender, or decides to extend the contract period by exercising an option mentioned in the competitive tender documents, the service provider is obliged to supply the service in question.

## Damages to the service user

Under chapter 17 of JYSE 2014 SERVICES, the service provider is obliged to compensate any damages to the service user that arise from the service provider's breach of contract. Service user is defined in paragraph 1.6. Limitations of liability specified in chapter 16 do not apply to this liability. Chapter 17 on the rights of service users clarifies the service provider's liability for damages and procedures related to the processing of claim for compensation between the service provider and the customer. The aim is that rather than the customer acting as an intermediary in the process, the service provider will handle the matter directly with the service user.

The service provider and the customer may establish rights for the service user in the procurement contract. Under chapter 17, the service user is entitled to compensation for damages from the service provider for any damage caused by the service provider due to a breach of contract. The duty of care required from the service provider should, if necessary, be defined in the procurement contract. General principles relating to contractual liability, including the wronged party's contributory negligence to the damage or the damage being caused by a reason independent of the service provider, limit such service provider's liability or discharge from it. The service provider and the customer can only agree to the advantage, not injury, of a third party.

## Language to be used in service provision

In these terms, the services are defined as being provided in the Finnish language. If service is required in another language, paragraphs 4.5 and 6.3 shall be amended accordingly.

## Service levels and personnel

In the invitation to tender or procurement contract, the procurement unit should carefully specify the service to be acquired and its quality, including possible service level requirements. In addition, the procurement unit should, when necessary, determine the specific training and competence requirements set for personnel to be used in providing the service.

## Documents and registers related to the service

Whenever the public administration purchases services from a private company or private service provider, it is important to agree on the responsibilities of keeping a register and maintaining documents related to the services purchased. The contract must specify on whose behalf the service provider acts and who acts as the controller (register keeper) with regard to the personal data files and documents generated in the course of the activities. Responsibilities and procedures related to the protection, processing and disclosure of material generated in the course of the activities must be recorded in the contract. In addition to the provisions laid down in chapter 21 of JYSE 2014 SERVICES regarding confidentiality and processing of personal data, it should be agreed on how and when the documents will be transferred to the customer's archive (e.g. termination of activities, ending of customer relationship, etc.) In addition, any costs incurred from the transfer of information should be agreed on (e.g. documents that are to be stored permanently.)

## Minimum delivery and invoicing charges

Pursuant to JYSE 2014 SERVICES, the service provider shall have no right to levy minimum delivery or invoicing charges. Therefore, service providers should take costs arising from possible small deliveries into consideration in the price of supplies.

## Deliveries in case of disturbances or emergencies

JYSE 2014 SERVICES 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 SERVICES, 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), despite the fact that the Sale of Goods Act is not applicable to procurement of services. 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 SERVICES. If the parties do not wish to limit the liability for damages regarding the maximum amount of compensation, the customer must notify any deviation from paragraphs 16.4 and 16.5 of the terms.

### **Defect notification and claim period**

It is stated in JYSE 2014 SERVICES that the service provider 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. Because procurement units purchase services that vary greatly in type, reasonable claim periods differ significantly. If the contracting parties consider it necessary to agree more specific claim periods, these should be agreed separately.



# General Terms of Public Procurement in Service Contracts (JYSE 2014 SERVICES)

## 1 Definitions

- 1.1 Subcontractor  
A third party contributing to the provision of the services referred to in the procurement contract.
- 1.2 Procurement contract  
A contract between the customer and the service provider for the provision of services in accordance with the terms of contract. Procurement contract means the documents referred to in Chapter 25.
- 1.3 Change  
A change to or additional work agreed with regard to the original scope or content of the service.
- 1.4 Service  
The service that is the subject of the procurement contract and the related goods, documents and service documentation and intellectual property rights , if any, to the agreed extent.
- 1.5 Service documentation  
The service documentation shall include, for example, service process descriptions, manuals and instructions as well as material within the service provider's maintenance responsibility required for providing and developing the service.
- 1.6 Service user  
The service user refers to third parties who have the right to benefit from or use the services referred to in the procurement contract.
- 1.7 End result of the service  
The report, plan, research results or other performance arising as the end result of service provision.

- 1.8 **Service provider**  
Company or other operator which has undertaken to provide a service for the customer.
- 1.9 **Contractual penalty**  
A penalty separately agreed by the contracting parties which the service provider 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 the contractual penalty without having to demonstrate the losses to the customer that would have arisen from the service provider's breach of contract.
- 1.10 **Customer**  
The procurement unit acquiring the service on the basis of this procurement contract.
- 1.11 **Delay penalty**  
A penalty that the service provider is obliged to pay to the customer in the event of delay caused by the service provider.
- 1.12 **Defect**  
If the service does not meet the requirements set in chapter 4, it is 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 service provider bears overall responsibility for meeting the obligations under the procurement contract, regardless of whether the service provider is using subcontractors.
- 3.2 The service provider has the right to use subcontractors in providing the service. The service provider 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 service provider 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 provision of services under the procurement contract for reasons independent of the service provider or through force majeure, the service provider 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 service provider for a justified reason. If the service provider is unable, within a reason-

able 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 service provider shall provide an account of the subcontractors it uses for the provision of the service.
- 3.6 Should the customer so require, the service provider 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 Service properties

- 4.1 The service must correspond to the agreed specifications throughout the entire contract period. The service must also correspond to the information provided for the customer regarding the content, performance or other issues related to service quality.
- 4.2 The service must suit the purpose for which such service is usually employed. The quality of the service shall at least correspond to any sample and demonstration of it provided for the customer in advance.
- 4.3 The service 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.
- 4.4 The service provider shall provide the services prudently, with care and with such expertise that can reasonably be assumed from an expert service provider.
- 4.5 The service shall be provided in the Finnish language, unless otherwise agreed. The persons providing the service must have the language skills required for performing the duties.

## 5 Monitoring service quality and right of inspection

- 5.1 The service provider shall monitor the implementation of the service and service quality and shall report to the customer on factors relating to the provision of the service in the agreed manner. The service provider undertakes to develop its operations during the contract period in order to improve service quality. Should the customer so require, the service provider must monitor service quality with the aid of a customer feedback system.
- 5.2 The customer shall perform quality monitoring in accordance with its own needs. The service provider must supply the information requested by the customer for quality monitoring purposes by the agreed deadline.

- 5.3 The customer and service provider shall meet at agreed intervals in service monitoring meetings. The contracting parties shall process matters relating, for example, to service implementation, quality, claims, customer feedback and future service needs.
- 5.4 During the contract period, the customer shall have the right to inspect, and at its own cost, commission through an independent third party inspections to investigate whether the service complies with requirements and whether the service provider has operated in accordance with the procurement contract. The customer or the customer's representative shall have the right to access premises in which the service is provided as well as to interview personnel involved in providing the service and to familiarise itself with those documents of the service provider in respect of which familiarisation is necessary to evaluate the minimum requirements set for operations and the quality of the service. The customer shall have the right to inspect only information that relates to the fulfilment of the contractual obligations of this procurement contract.
- 5.5 The customer must provide advance notification of an inspection visit. The service provider shall have the right, for a justified reason, to postpone an inspection visit by maximum 14 days from the date proposed by the customer.
- 5.6 The service provider shall have the right to demand that the party performing the inspection signs a confidentiality agreement relating to the inspection. The confidentiality agreement shall not prevent the reporting of the results of the inspection to the customer or contain financial sanctions or damages clauses deviating from this contract.

## **6 Other obligations and responsibilities of the service provider**

- 6.1 The service provider shall undertake to cooperate with any other service providers and suppliers providing services to the customer at any given time so as to enable the overall service configuration to function as flexibly as possible for the customer, and without interruption. The service providers' cooperation must be arranged so as not to disclose their business or professional secrets.
- 6.2 Should the need for cooperation change during the procurement contract period and this result in additional costs for the service provider, the contracting parties must agree on the sharing of costs before initiating activity that gives rise to additional costs.
- 6.3 The service provider shall maintain documentation relating to services. Unless otherwise agreed, the service documentation must be in the Finnish language.
- 6.4 The service provider must maintain a list of cases of loss in which losses have been caused to the customer, service user or a third party. The service provider is obliged to notify the customer of such losses.

## 7 Personnel to be used in service provision

- 7.1 The service provider shall use individuals possessing suitable competence and experience for providing the service. The service provider must avoid changes of personnel employed for providing the service. Changes of personnel must not impair service quality.
- 7.2 If the customer requires that the personnel involved in providing the service must be identified, the identified persons will provide the services covered by the procurement contract. The service provider has no right to replace an identified person without the customer's consent. If, however, an identified person is unable to contribute to the provision of services under the procurement contract for reasons independent of the service provider or through force majeure, the service provider has the right to replace the person with another that possesses the corresponding expertise and that meets with the customer's approval. The customer may only refuse to accept a substitute proposed by the service provider for a justified reason. If the service provider is unable, within a reasonable period of time, to propose a substitute that the customer can approve, the customer shall have the right to terminate the procurement contract with six (6) months' notice.
- 7.3 Should the customer so demand, the service provider must, without delay and any charge, replace a person involved in providing the service who is lacking the adequate professional skills or is otherwise unsuitable for the position in question.
- 7.4 The service provider or its personnel shall not be in an employment or public office relationship with the customer when handling tasks according to the contract.
- 7.5 When working in the customer's premises, the personnel used in providing the service must comply with the customer's instructions and regulations relating to security, data protection and general behaviour as well as other instructions and regulations. The customer must notify the service provider in advance about all procedural obligations intended for the compliance of personnel used in providing the service. The service provider shall retain work management and supervision responsibility for its personnel, unless personnel hire or transfer of work management and supervision responsibility have been separately agreed on.
- 7.6 If a transfer of business takes place between the contracting parties in which personnel in the customer's employment transfer to the service provider's employment or the invitation to tender requires that personnel in the customer's employment transfer to the service provider's employment on their former terms of employment, statutory provisions on the transfer of business shall be applied to the transferring personnel.
- 7.7 If an employee of the service provider or its subcontractor is a person referred to in paragraph 3(2a) of the Aliens Act (301/2004), and this person works on the customer's premises or work site, the service provider is responsible for ensuring that the employee in question holds an employed person's residence permit or another document that grants a residence permit.

## 8 Customer's obligation to cooperate

- 8.1 The customer shall be responsible for ensuring that the tasks within the customer's responsibility are performed in accordance with the procurement contract.
- 8.2 The customer must give the service provider sufficient and correct information for the provision of the service.
- 8.3 The customer must ensure that the service provider's personnel can, when necessary, access the customer's premises or equipment as agreed.

## 9 Price and price alterations

- 9.1 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.
- 9.2 The service provider shall invoice value-added tax in accordance with the Value-Added Tax Act in force.
- 9.3 The price shall include all costs incurred from providing the service, including travel and accommodation costs, daily allowances, overtime compensation and any indirect taxes and fees, excluding value-added tax, payable by the service provider and applicable at the deadline for tenders.
- 9.4 Unless otherwise agreed, the service provider shall not be entitled to levy minimum delivery or invoicing charges.
- 9.5 Any advance payment shall be considered a fixed part of the contract price.
- 9.6 The service provider 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 services provided for the customer, provided that they were not known about when making the tender and that the service provider is able to demonstrate grounds for the price change. In this case, the price of the service shall change accordingly from the date when the aforementioned changes enter into force. The service provider has the aforementioned right even in case the price is fixed. Should the customer so demand, the service provider is obliged to observe in the price also changes caused by the elimination or reduction of such fees.
- 9.7 During the contract period, the service provider has the right to adjust the price in relation to the general cost trend for the service. The service provider must deliver a price adjustment proposal 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 a previous price adjustment made at the initiative of the service provider. The service provider must

present to the customer an appropriate and justified explanation of the cost trend and the reasons for the price adjustment.

- 9.8 During the contract period, the customer has the right to propose a price adjustment corresponding to the general cost trend for the service. 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 have passed from the beginning of the contract period or 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.
- 9.9 If the contracting parties are unable to unanimously agree 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 apply during the notice period.

## 10 Terms of payment

- 10.1 The service provider will in the first place use electronic invoices in billing the customer, unless otherwise agreed.
- 10.2 The due date of electronic invoices is 21 days from the arrival of an acceptable invoice. If the service provider sends an invoice on paper to the customer, the due date is 30 days from the arrival of an acceptable invoice.
- 10.3 Unless otherwise agreed, the service provider shall be entitled to send an invoice for agreed payments when the service has been performed. Regular payments shall be invoiced at agreed invoicing intervals in arrears. Invoices must include an itemisation of the grounds for invoicing.
- 10.4 If the customer fails to pay an invoice by the due date, the service provider shall have the right to charge interest on arrears in accordance with the Interest Act (633/1982) and reasonable collection costs.
- 10.5 The service provider shall have the right to cease fulfilment of its contractual obligations if a clear and uncontested payment is delayed for more than thirty (30) days and the delayed payment is substantial. The service provider 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.
- 10.6 The customer shall have the right to withhold, from an unpaid sum, costs arising from the procurement of a new, corresponding service acquired due to a defective or delayed service, among others, and any delay penalty under the procurement contract or other possible contractual penalty and security set for the service perfor-

mance period and guarantee period security alongside interests accumulated for the advance payment in case of delay or termination.

## 11 Security

- 11.1 If the customer is required under the procurement contract to make an advance payment, the service provider 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 time when the service, which is the subject of the advance payment, has been performed. In the event of a delay on the part of the service provider in fulfilling its obligations, the service provider must extend the validity of the security.
- 11.2 If security has been agreed for the guarantee period, the service provider must post security to the customer's satisfaction before the guarantee period begins. Such security must be at least fifteen (15) per cent of the contract price, excluding value-added tax, or for a continuous service, its calculated price for a twelve (12) month period. The security must remain valid for at least one month beyond the expiry date of the guarantee period.
- 11.3 If security for the period of service performance has been agreed, the service provider must post security to the customer's satisfaction which must be at least fifteen (15) per cent of the acquisition price, excluding value-added tax, or for a continuous service, its calculated price for a twelve (12) month period. The security must remain valid for at least one month beyond the expiry date of the guarantee period.
- 11.4 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.
- 11.5 The service provider shall be responsible for all costs arising from acquiring the security.

## 12 Delay

- 12.1 If a contracting party realises that it will be delayed in its obligations or considers a delay to be 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 a delay on the part of the service provider, the service provider must notify the customer of a date for new service performance as soon as possible.
- 12.2 A delay in providing information, goods or service documentation required under the procurement contract shall be equivalent to a delay of the service.



- 12.3 If the service is delayed for a reason attributable to the service provider, the customer shall have the right to a delay penalty. The customer shall have the right to the delay penalty without having to demonstrate the losses that arose for the customer due to the service provider's delay. Unless otherwise agreed, the delay penalty shall be one (1) per cent of the value, excluding value-added tax, of the delayed service for every beginning seven (7) day period by which the service provider exceeds the agreed service performance date. The delay penalty shall 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 service provider's delay, in accordance with chapter 16.
- 12.4 If the customer has made an advance payment and the service is delayed for a reason attributable to the service provider, the service provider shall be obliged to pay annual interest according to the Interest Act for the delay period for the part of the advance payment that corresponds to the value of the delayed service.
- 12.5 On the basis of delay, the customer has the right to withhold payment for the service. The customer may not, however, withhold a sum that apparently exceeds the claims to which he is entitled on the basis of the delay.
- 12.6 If the service provider's performance is delayed and the delay is of essential significance for the customer with regard to the nature of the service, the customer shall have the right, at the service provider's expense, to acquire a substitute service of a corresponding standard from a third party (right to cover purchase). The customer shall strive to inform the service provider about using the right before acquiring the substitute service.
- 12.7 A procurement contract can be terminated on the basis of substantial delay in accordance with paragraph 13.6.
- 12.8 The customer has the right to withhold interests and costs referred to in paragraphs 12.3, 12.4 and 12.6, in accordance with paragraph 10.6, due to a delay in service.

### **13 Defect, price reduction and cancellation of the contract**

- 13.1 If the service has a defect, the customer must inform the service provider about the defect within a reasonable period of the defect being detected or should have been detected.
- 13.2 The service provider must inform the customer about receipt of the notification of defect and initiation of measures no later than 14 days after receiving the notification.
- 13.3 The customer has the right to withhold payment for the service on the basis of a defect. The customer may not, however, withhold a sum that apparently exceeds the claims to which he is entitled based on the defect.

- 13.4 If there is a defect in the service, the service provider will examine the cause of the defect at its own expense, and rectify it without delay. The service provider may be released from liability by demonstrating that the defect did not arise from a factor within the service provider's responsibility. In such a case, the service provider is entitled to charge for investigating and rectifying the defect in accordance with the usual price list.
- 13.5 If there is a defect in the service, the customer shall have the right to a price reduction from the service provider.
- 13.6 Each contracting party may cancel the 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, a service that does not correspond to that agreed and the defect, or the consequences it 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.
- 13.7 If the customer has made an advance payment, the service provider 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.
- 13.8 If a defect caused by the service provider cannot be remedied or if the service provider fails to remedy the defect within a reasonable period of time, the customer shall have the right, at the service provider's expense, to acquire a substitute service of a corresponding standard from a third party (right to cover purchase). The customer shall seek to inform the service provider about using the right before acquiring the substitute service.
- 13.9 The customer has the right to withhold interests and costs referred to in paragraphs 13.5, 13.7 and 13.8, in accordance with paragraph 10.6, due a defective service.

## 14 Force majeure

- 14.1 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.

- 14.2 A delay of a subcontractor shall be deemed to be force majeure only in the case where the subcontractor's delay is the result of an obstacle referred to in paragraph 14.1 and the subcontracting cannot be performed elsewhere without unreasonable waste of time or cost.
- 14.3 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.
- 14.4 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.
- 14.5 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.

## 15 Insurance

- 15.1 The service provider must have statutory and other insurance necessary for the provision of the service. The insurance must be valid for the entire contract period.
- 15.2 Unless otherwise agreed, the service provider must acquire liability insurance for its operations. The insurance must be sufficient in relation to the risks associated with providing the service. The service provider must on request deliver to the customer a certificate of the existence of the liability insurance before the signing of the contract.

## 16 Damages

- 16.1 The customer and the service provider shall have the right to receive damages for direct losses arising from the other contracting party's breach of contract.
- 16.2 If the procurement contract is terminated for a reason attributable to the service provider on the basis of chapter 18 or 19, 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.
- 16.3 The customer shall have the right to receive damages for delay or other losses arising from the service provider's breach of contract insofar as the amount of loss exceeds any delay penalty payable to the customer and any other contractual penalty separately agreed by the contracting parties.

- 16.4 Unless otherwise agreed, the contracting parties' liability for damages is at most five (5) times the calculated value of the procurement contract.
- 16.5 The calculated value of the procurement contract refers to the value of the service that is the subject of the procurement contract between the customer and the service provider. 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 service provider 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.
- 16.6 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 a case, the injured contracting party has the right to compensation for indirect losses as well.

## **17 Compensation for damages to the service user arising from the service provider's breach of contract**

- 17.1 The service provider is obliged to compensate damage it caused to the service user through acting in violation of the procurement contract between the customer and the service provider.
- 17.2 If the service provider is presented with a claim for compensation, the service provider will notify the customer about the claim for compensation without delay. The service provider will strive to agree on the amount of compensation with the party claiming compensation. If an agreement is reached about the amount of compensation, the service provider will pay the compensation directly to the service user and notify the customer without delay about the payment made. Should the service provider find that it is not liable for damages in the matter or no agreement can be reached concerning the amount of compensation, the service provider must inform the service user and customer about this, with justification, in writing within a reasonable time of the arrival of the claim for compensation.
- 17.3 If a claim for compensation has been presented to the customer due to the service provider's breach of contract, the customer shall inform the service provider without delay in writing about the claim for compensation it received. If the customer transferred the claim for compensation to the service provider for processing in order to pay compensation, if any, the customer shall inform the user of the service about it. The service provider is liable to pay compensation for damages caused to the service user due to a breach of contract within a reasonable time of being informed about

the claim for compensation, and inform the customer without delay in writing about compensation paid.

- 17.4 Should the service provider find that it is not liable for damages in the matter, it must inform the customer and the service user about this, with justification, in writing without delay. If the customer thereafter considers payment of damages on the basis of a claim for compensation presented by the service user, another opportunity shall be reserved for the service provider to be heard, before payment of compensation, concerning the grounds for liability presented by the customer and the amount of compensation. Should the service provider still consider the payment of compensation unfounded, the service provider shall present written justification to the customer for all information relevant in terms of the grounds and amount for liability for damages. If the customer thereafter pays damages to the service user, the service provider shall compensate to the customer the sum it paid to the service user in compensation, insofar as the service provider is liable for damages in the matter on the basis of this procurement contract.
- 17.5 If the customer is liable to pay damages and/or legal costs to the service user on the basis of the service provider's breach of contract, the service provider is liable to pay the customer an equal sum in compensation, including interest. In addition, the service provider must pay legal fees as regarded reasonable by the customer and other reasonable costs incurred from clarifying the matter, with interest.
- 17.6 The service provider is liable to inform the customer about all information relevant in terms of its breach of contract and the liability for damages based on it. If damage is caused to the customer due to this obligation being neglected, the service provider is liable to compensate to the customer the damage it caused.
- 17.7 The service provider is liable, at its own expense, to contribute to clarifying the damage caused to the service user.
- 17.8 If an action for damages presented by a service user becomes pending in a court of law against the customer or the service provider, the party concerned must inform the other contracting party without delay about the action for damages. The other contracting party must be reserved an opportunity to be heard concerning the main grounds for responding to the claim well in advance of a response being submitted to a court of law.
- 17.9 Limitations of liability as specified in chapter 16 shall not apply to liability for damages pursuant to this chapter.

## **18 Termination of the contract in special situations**

- 18.1 The customer has the right to terminate the procurement contract with immediate effect if the service provider 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)(18-6), even if the criteria arose after the beginning of the contractual relation.

- 18.2 The customer shall have the right to give notice of terminating the procurement contract with immediate effect if the service provider's financial or other circumstances are perceived to have changed substantially so that it cannot be assumed that the service provider will fulfil its contractual obligations and the service provider 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.
- 18.3 Before giving notice of termination, the customer must notify the service provider about the threat of termination and give the service provider an opportunity to provide an explanation within a reasonable period of time.
- 18.4 If the customer terminates the contract on the basis of paragraphs 18.1 or 18.2, the service provider shall have the right to receive full payment for services provided 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.

## 19 Contractor's obligations and liability

- 19.1 If a contract is covered by the Act on the Contractor's Obligations and Liability When Work is Contracted Out (1233/2006), the service provider must supply to the customer during the contract period, at twelve (12) month intervals, a certificate of tax payment or a tax liability certificate or a statement that a payment plan, approved by the tax recipient, has been made regarding tax liability as well as a certificate on the taking out of pension insurance and the payment of pension insurance premiums or a statement that a payment plan, approved by the premium recipient, has been made regarding outstanding pension insurance premiums.
- 19.2 If the service is performed by a posted employee in the service provider's employ, the service provider must submit a certificate to the customer about the determination of the posted employee's social security. The aforementioned 12-month interval does not apply to this certificate, which must be submitted without delay and in any case before the posted employee in question begins work.
- 19.3 The customer has the right to terminate the procurement contract with immediate effect if the service provider fails to submit within the deadline the accounts and certificates referred to in paragraphs 19.1 and 19.2, or the account or certificate reveals that the service provider has neglected the statutory obligations. Before cancelling the procurement contract, the customer must make a claim in writing to the service provider about the neglect and notify about the threat of the contract being cancelled unless the neglect is rectified within a reasonable period demanded by the customer.
- 19.4 In situations referred to in this chapter, the service provider shall have the right to receive full payment for services provided 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.

## 20 Intellectual property rights

- 20.1 Unless otherwise agreed, intellectual property rights to the end results or documentation of the service shall not be transferred to the customer. All material that the customer and service provider transfer to one another before or after the signing of the contract shall remain the property of the transferor. The customer shall, however, have an irrevocable right of use to the end results of the service as well as to other material transferred to it by the service provider for a purpose related to the use of service in accordance with the contract. Right of use shall include the right to use, copy and make or commission changes. When making or commissioning changes to material handed over by the service provider, the customer must ensure that none of the service provider'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.
- 20.2 The service provider shall be responsible for ensuring that services or related material provided by the service provider 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.
- 20.3 If any claims are presented against the customer based on intellectual property rights relating to the use of the service or related material, the service provider is obliged to meet these claims on the customer's behalf at its own expense. The service provider shall be responsible to the customer for ensuring that no legal costs, damages, other compensation 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 services or related material.

## 21 Confidentiality and processing of personal data

- 21.1 The contracting parties shall each ensure on their own part that, when the service is provided, confidentiality, obligation to observe confidentiality, data protection and valid statutes passed on the disclosure of confidential information are adhered to. In addition, the service provider must adhere to instructions given by the customer in handling and archiving documents and data.
- 21.2 When producing statutory or other equivalent tasks that are the customer's responsibility, valid provisions on public administration relating to confidentiality such as the Act of the Openness of Government Activities (621/1999) must be adhered to in service provision covered by the procurement contract.
- 21.3 The customer is the controller (register keeper) referred to in the Personal Data Act (523/1999). At the end of the commission relationship, the personal data registers

related to the relationship, in the possession of the service provider, are handed over to the customer.

- 21.4 The service provider is responsible for ensuring that no private or family secrets that come to its knowledge when the service is provided or otherwise in activities under the contract are divulged without permission.
- 21.5 The service provider may not, without the customer's permission, disclose information to third parties that may have to be kept secret, or contain personal data in register format.
- 21.6 The service provider is responsible for ensuring that the subcontractors it uses adhere to these provisions relating to confidentiality.
- 21.7 The service provider must explain the contents of the obligation to maintain secrecy to personnel that provide the service.
- 21.8 Should the customer so require, the service provider must prepare a list of the service provider's or its subcontractor's personnel participating in the provision of the service who have access to the customer's material or sensitive information relating to the customer or a third party. The list must be continuously updated.
- 21.9 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.
- 21.10 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.
- 21.11 The service provider shall not use the procurement contract or the customer's name in marketing without the customer's consent. Unless otherwise agreed, the service provider may, however, use the procurement contract as reference information when making tenders to procurement units referred to in procurement legislation.
- 21.12 The obligations referred to in this chapter continue after the procurement contract period.

## **22 Transfer of the contract, changes and options**

- 22.1 Without the customer's consent, the service provider 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.



- 22.2 Changes to the contract must be made in writing. Changes made in an electronic format shall be deemed changes in writing to the contract.
- 22.3 Changes relating to the service and their impact on the performance date of the service or price must be agreed in writing before measures are initiated.
- 22.4 If the procurement involves an option, the customer decides on whether to use it. The terms of the procurement contract apply to the option.

## **23 Duty to help and assist should the service provider change**

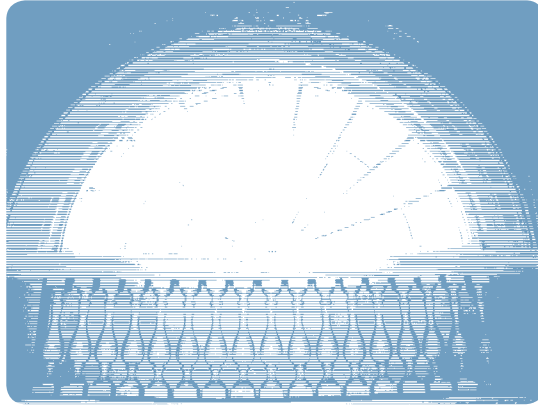
- 23.1 In the event of a change of service provider, the service provider is obliged to help and assist the customer in transferring the contractual obligations to the new service provider or for handling by the customer itself. The service provider has the right to charge for work arising from this in accordance with its price list.
- 23.2 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 services 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.

## **24 Settlement of disputes and applicable law**

- 24.1 Issues relating to the procurement contract will be resolved primarily through negotiations between the contracting parties.
- 24.2 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.
- 24.3 The laws of Finland apply to the procurement contract. The connecting factor rules of Finnish law shall not, however, apply to the contract.

## **25 Order of validity of procurement contract documents**

- 25.1 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 Service Contracts  
(JYSE 2014 SERVICES)
  - 4. Tender



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