



MINISTRY OF FINANCE

## General Terms of Public Procurement in Service Contracts

# JYSE 2014 SERVICES

April 2017/Updated version



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Ministry of Finance

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## INTRODUCTION

On 22 December 1993, the Ministry of Trade and Industry approved the General Terms of Public Procurement (JYSE 1994) by virtue of the Government 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. Government Decree on Public Procurement (1416/93), which had formed the basis for the approval of the terms, was repealed when the new Act on Public Procurement (348/2007) entered into force on 1 June 2007.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 development thereof, the Ministry of Finance established on 18 November 2008 a working group on the General Terms of Public Procurement which was tasked 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.

Once JYSE 2009 had been in force for a few years, the Ministry of Finance established a working group to examine the need to update and amend the terms. The working group completed its task on 30 June 2014.

After that time, the JYSE 2014 terms have also been updated in August 2016, at which time modifications required by procurement directives prior to the entry into force of new national procurement legislation were taken into account. After the entry into force of the new national procurement legislation (Acts 1397/2016 and 1398/2016) at the beginning of 2017, JYSE 2014 was updated in April 2017 to take into account the procurement legislation reform.

These terms may be freely used and modified on a case-by-case basis also in the future. Below is a summary of the latest modifications.

### JYSE 2014 SERVICES – version history

Version	Key changes
<b>Augusti 2016/ Updated version</b>	1.13 A definition of mandatory exclusion clauses was added for the duration of the transition period
	3.3 Service provider's obligation to provide information on subcontractors used in customer's premises added
	3.7 Obligation to replace a subcontractor, references
	6.5 Obligation to submit an extract from the criminal record (with a transition period)
	9.7 and 9.8 Terms on revising prices were clarified
	18.1 Termination of contract, exclusion clause
	18.3 References corrected
	18.4 Termination of procurement contract, material change to contract
	18.5 Termination of procurement contract, severe breaches
18.6 References corrected	
<b>April 2017 /Updated version</b>	1.13 Paragraph including a definition of a mandatory exclusion clause for the duration of the transition period deleted
	3.7 A reference to the new Procurement Act revised
	6.5 Deleted
	10.1 Electronic invoice introduced as the invoicing option
	10.2 Different terms of payment for electronic invoices and invoices on paper deleted
	18.1 A reference to the new Procurement Act revised
18.5 Wording specified	



## Issues to be observed when applying JYSE 2014 SERVICES

### Value added tax

In offers, the price is usually 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.

### Using index clauses

A separate agreement should be made if the contracting parties wish to use index clauses.

### 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 an extension of the contract period. When submitting a tender in competitive tendering, the service provider commits to the terms stated in the invitation to tender, such as an option. Whether the option is used is at the sole discretion of the customer. If the customer decides to order additional services mentioned in a procurement notice or an invitation to tender from a service provider or decides to extend the contract period by exercising an option mentioned in the competitive tender documents, the service provider is obliged to provide the service in question.

## **Damages to 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. The term 'service user' is defined in Clause 1.6. The 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 claims 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 damage 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 not attributable to the service provider, will limit the service provider's liability or discharge the service provider from the liability. 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, Clauses 4.5 and 6.3 shall be amended accordingly.

## **Service levels and personnel**

In the invitation to tender and procurement contract, the procurement unit shall specify with care the service to be acquired and its quality, including any service level requirements. Furthermore, the procurement unit shall, when necessary, determine any specific training and competence requirements set for the personnel to be used when providing the service.

## **Documents and registers related to the service**

Whenever a public administration unit purchases services from a private company or private service provider, agreeing on the responsibilities of keeping a register and maintain documents related to the services purchased is important. The contract shall 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 materials generated in the course of the activities shall 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 archives (e.g. when the activities are terminated or when the customer relationship ends, etc.). In addition, agreements on any costs arising from the transfer of information shall be made (such as documents that are to be stored permanently).

### **Minimum delivery and invoicing charges**

Pursuant to JYSE 2014 SERVICES, the service provider does not have any right to levy any minimum delivery or invoicing charges. Suppliers should therefore take costs arising from any small deliveries into consideration in the price of the services.

### **Deliveries in case of disturbances or exceptional circumstances**

JYSE 2014 SERVICES does not include any specific terms and conditions regarding deliveries under exceptional circumstances. Public administration actors shall ensure that even outsourced activities are managed as well as possible under all circumstances (section 12 of the Emergency Powers Act, 1552/2011). Critical functions shall 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. In JYSE 2014 SERVICES, 'direct and indirect damages' refer to the division into direct and indirect damages laid down in section 67 of the Sale of Goods Act (355/1987), even though the Sale of Goods Act is not applied to the acquisition of services. Under these terms, the aforementioned limitations of liability do not apply if the other contracting party has caused the damage wilfully or through gross negligence, violated the confidentiality obligations or violated any intellectual property rights.

In certain procurement contracts, deviating from the maximum amount of liability for damages specified in JYSE 2014 SERVICES may be appropriate. If the parties do not wish to limit the liability for damages regarding the maximum amount of compensation by way of agreement, a notification on this deviation from Clauses 16.4 and 16.5 shall be made.

### **Notification of defect and claim period**

JYSE 2014 SERVICES state that the service provider should be notified of any defects within a reasonable time of the defect having been detected without specifying any specific deadline for submitting a claim. As procurement units purchase a large number of different types of supplies, the reasonable claim periods differ significantly. If the contracting parties consider it necessary to agree on more specific claim periods, these should be agreed separately.

# General Terms of Public Procurement in 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 contractual terms. The term 'procurement contract' refers to the documents laid down in Chapter 25.

### 1.3 Amendment

An agreed change to the original scope or content of the service, or additional work.

### 1.4 Service

The service that is the subject of the procurement contract as well as the related goods, documents, service documentation and intellectual property rights, if any, to the agreed extent.

### 1.5 Service documentation

The service documentation includes but is not limited to service process descriptions, manuals and instructions as well as materials within the service provider's maintenance responsibility required for providing and developing the service.

### 1.6 Service user

The term 'service user' refers to a third party that has the right to benefit from or use the services referred to in the procurement contract.

### **1.7 End result of the service**

A report, a plan, research results or other performance arising as the end result of the provided service.

### **1.8 Service provider**

The company or other operator that has undertaken to deliver the service to the customer.

### **1.9 Contractual penalty**

A penalty separately agreed by the contracting parties which the service provider is obligated to pay to the customer in cases of a breach of contract separately specified by the contracting parties. The customer has the right to the contractual penalty without having to demonstrate the losses to the customer that have arisen from the service provider's breach of contract.

### **1.10 Customer**

The procurement unit acquiring the service on the basis of the procurement contract.

### **1.11 Delay penalty**

A penalty that the service provider is obliged to pay to the customer in the event of a delay attributable to 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 persons do not have the right to amend the procurement contract. A contracting party shall 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 provides the service itself or uses subcontractors.

3.2 The service provider has the right to use subcontractors when providing the service. The service provider is responsible for the work of a subcontractor as for its own and is obligated to ensure that the subcontractor complies with the obligations laid down in the procurement contract.

3.3 If the services are provided in facilities that are under the direct supervision of the customer and the service provider uses subcontractors to provide the service, the service provider shall submit to the client the names, contact details and legal representatives of the subcontractors before starting the provision of the service, unless this information has been stated in the procurement agreement. Furthermore, the supplier shall notify the client of any changes and additions to its subcontractors as referred to in this section.

3.4 The service provider does not have the right to replace a subcontractor named in the procurement contract or a subcontractor contributing to the fulfilment of material contractual obligations without the customer's consent.

3.5 However, if a subcontractor named in the procurement contract or a subcontractor contributing to the fulfilment of material contractual obligations is unable to contribute to the fulfilment of obligations under the procurement contract for reasons not attributable to the service provider or caused by a force majeure event, the service provider has the right to replace the original subcontractor with another subcontractor that is 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 to propose a replacement subcontractor that the customer can approve within a reasonable period of time, the customer has the right to terminate the procurement contract with six (6) months' notice.

3.6 Upon request from the customer, the service provider shall provide an account of the subcontractors it uses.

3.7 Should the customer so require, the service provider is obliged to replace a subcontractor who is subject to a mandatory criterion for exclusion referred to in legislation on public contracts or a discretionary criterion for exclusion referred to in section 81, subsection 1, points 3–11 of the Act on Public Procurement and Concession Contracts (1397/2016), even if the criterion has arisen after the beginning of the contractual relation. If replacing the subcontractor is not possible, the customer has the right to terminate the procurement contract with immediate effect.

## 4 Characteristics of the service

4.1 The service shall correspond to the agreed specifications throughout the contract period. The service shall also correspond to information provided to the customer regarding the content, performance or other issues related to service quality.

4.2 The service shall be suited for the purpose for which such services are usually applied. The quality of the service shall, at the minimum, correspond to any samples delivered to the customer in advance.

4.3 The service shall meet 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 expertise that can reasonably be expected from a competent service provider.

4.5 The service shall be provided in the Finnish language, unless otherwise agreed. The persons providing the service shall 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 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 shall monitor service quality with a customer feedback system.

5.2 The customer will perform quality monitoring in accordance with its own needs. The service provider shall supply any 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 to, for example, provision of the service, quality, claims, customer feedback and future service needs.

5.4 During the contract period, the customer has the right to, at its own cost, inspect or have an independent third party investigate whether the service complies with requirements and whether the service provider has operated in compliance with the procurement contract. The customer or the customer's representative has the right to access the premises in which the service is provided as well as to interview personnel involved in providing the service and to familiarise itself with documents of the service provider that are



necessary to evaluate the minimum requirements set for the operations and the quality of the service. The customer only has the right to inspect information that relates to the fulfilment of the contractual obligations of the procurement contract.

5.5 The customer shall provide an advance notification of an inspection visit. The service provider has the right to postpone an inspection visit by a maximum of 14 days from the date proposed by the customer for a justified reason.

5.6 The service provider has the right to demand that the party performing the inspection signs a confidentiality agreement regarding the inspection. The confidentiality agreement may not prevent the reporting of the results of the inspection to the customer or contain any financial sanctions or damages that are not laid down in the procurement contract.

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

6.1 The service provider undertakes to cooperate with any other service providers and suppliers providing services to the customer at any given time so as to enable a flexible overall service configuration for the customer without interruptions. The service providers' cooperation shall be arranged in a manner which ensures that none of the service providers' business or trade secrets be disclosed.

6.2 Should the need for cooperation change during the procurement contract period and this result in additional costs to the service provider, the contracting parties shall agree on the allocation of costs before initiating the activity that will give rise to additional costs.

6.3 The service provider shall maintain documentation relating to the service. Unless otherwise agreed, the service documentation shall be in the Finnish language.

6.4 The service provider shall maintain a list of cases of loss in which losses have been incurred by the customer, the service user or a third party. The service provider is obligated to notify the customer of any such losses.

## **7 Personnel to be used in the provision of the service**

7.1 The service provider shall use individuals possessing suitable competence and experience for providing the service. The service provider shall avoid changing of the employees who provide the service. Changes of personnel must not impair service quality.

7.2 If the customer requires that the personnel involved in providing the service are to be identified, the identified persons shall provide the services covered by the procurement contract. The service provider does not have the right to replace a named person without the customer's consent. If a named person is unable to contribute to the provision of the service under the procurement contract due to reasons not attributable to the service provider or due to a force majeure event, the service provider has the right to replace the person with another person who possesses the corresponding expertise and 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 to propose a substitute that the customer can approve within a reasonable period of time, the customer has the right to terminate the procurement contract with six (6) months' notice.

7.3 Should the customer so demand, the service provider shall, without delay and at no extra charge, replace a person involved in the provision of the service who lacks the adequate professional skills or is otherwise unsuitable for the position in question.

7.4 The service provider or its personnel are not in an employment relationship or public office relationship with the customer when handling the tasks according to the contract.

7.5 When working in the customer's premises, the personnel used when providing the service shall 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 shall notify the service provider in advance of any and all procedural obligations for the personnel used when providing the service. The service provider shall retain work management and supervision responsibility for its personnel, unless personnel hire or transfer of responsibility for work management and supervision has been separately agreed on.

7.6 If a transfer of business takes place between the contracting parties in which personnel in the customer's employ are transferred to the service provider's employment or the invitation to tender requires that personnel in the customer's employment are to be transferred to the service provider's employment using 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 section 3, subsection 2a of the Aliens Act (301/2004), and this person works at the customer's premises or worksite, the service provider is obligated to ensure that the employee

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 is responsible for ensuring that the tasks within the customer's responsibility are performed in accordance with the procurement contract.

8.2 The customer shall provide the service provider with sufficient and correct information for the provision of the service.

8.3 The customer shall ensure that the service provider's personnel can, when necessary, access the customer's premises or equipment as agreed.

## **9 Price and price amendments**

9.1 The price shall be fixed for a period of 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 currently valid Value Added Tax Act.

9.3 The price shall include all costs incurred from the provision of the service, including but not limited to travel and accommodation costs, daily allowances, overtime compensation as well as any indirect taxes and fees, excluding value-added tax, payable by the supplier and applicable at the time of the deadline for offers.

9.4 Unless otherwise agreed, the service provider is not entitled to levy any 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 has the right to take into consideration in the price direct costs arising from new public charges decreed by the authorities or increases of existing charges that take place after the submission of the tender and directly influence the service provided for the customer, provided that they were not known when the offer was prepared and that the service provider is able to justify the price change. In such a case, the price shall be revised accordingly from the date when said changes enter into force. The service provider has the aforementioned right even in the case the price is fixed. Should the customer so demand, the service provider is also obliged to observe in the price any changes caused by the elimination or reduction of such charges.

9.7 During the contract period, the service provider has the right to revise the price if the following prerequisites are met:

- the price adjustment is based on general cost development of the service;
- the reason for the price adjustment has arisen after signing of the procurement contract;
- the reason for the price revision has an immediate effect on the price of the service covered by the contract; and
- the reason for the price change is not attributable to the service provider's activities (apart from changes based on general salary development).

The service provider shall deliver a price adjustment proposal in writing at the latest three (3) months prior to the entry into force of the price adjustment. A price adjustment may enter into force at the earliest when 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 shall present to the customer an appropriate and justified explanation of the cost trend and the reasons for the price adjustment.

9.8 The customer also has the right to propose a price adjustment if the prerequisites laid down in Clause 9.7 are met. The customer shall deliver a price adjustment proposal in writing at the latest three (3) months prior to the entry into force of the price adjustment. A price adjustment may enter into force at the earliest when 12 months have passed from the beginning of the contract period or a previous price adjustment made at the initiative of the customer. Upon request, the customer shall 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 reach an agreement on a price adjustment, both parties have the right to terminate the procurement contract with six (6) months' notice. The notice shall be given in writing before the entry into force of the new prices. The prices valid before the price adjustment proposal was submitted shall apply during the period of notice.

## **10 Terms of payment**

10.1 The service provider shall use electronic invoices when invoicing the customer.

10.2 The due date of the electronic invoices shall be 21 days from the arrival of an acceptable invoice.

10.3 Unless otherwise agreed, the service provider is entitled to send an invoice for agreed payments when the service has been provided. Recurring payments shall be in-

voiced at agreed invoicing intervals in arrears. Each invoice shall 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 has the right to charge interest on arrears in accordance with the Interest Act (633/1982) plus reasonable debt collection costs.

10.5 The service provider has 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 material. The service provider shall notify the customer in writing of such a cessation at the latest fifteen (15) days before the start of the cessation. The notification may be made immediately after the case of neglect.

10.6 The customer has the right to withhold from an unpaid sum any costs arising from the procurement of corresponding services due to a delay in the service, as well as any delay penalty under the procurement contract or any other contractual penalty and warranty period security plus interest accumulated for the advance payment in case of a delay or termination.

## 11 Securities

11.1 If the customer is required under the procurement contract to make an advance payment, the service provider shall, before the advance payment is made, post a security to the satisfaction of the customer, which shall be at least fifteen (15) per cent greater than the advance payment. The security shall remain in force for at least one month after the provision of the service specified in the procurement contract. If the service provider is delayed in the fulfilment of its contractual obligations, the service provider shall extend the validity of the security.

11.2 If an agreement on a security for the warranty period has been made, the service provider shall, before the beginning of the warranty period, post a security to the customer's satisfaction that must be at least fifteen (15) per cent of the contract price excluding value added tax or in the case of continued service 15 per cent of the calculated service price for a period of 12 months. The security shall remain in force for at least one month after the end of the warranty period.

11.3 If an agreement on a security for period during which the service is provided has been made, the service provider shall post a security to the customer's satisfaction that must be at least fifteen (15) per cent of the contract price excluding value added tax or in the case of continued service 15 per cent of the calculated service price for a period of 12

months. The security shall remain in force for at least one month after the end of the provision of the service.

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 is responsible for all costs arising from the security.

## 12 Delays

12.1 If a contracting party realises that the fulfilment of a contractual obligation will be delayed or considers a delay probable, the delaying contracting party shall, immediately and in writing, notify the other contracting party of the delay and its impact on the fulfilment of the procurement contract. In the event of delay on the service provider's part, the service provider shall give the customer a new time for provision of the service as soon as possible.

12.2 A delay in the provision of any information, goods or service documentation required under the procurement contract shall be considered a delay of the service.

12.3 If the service is delayed for a reason attributable to the service provider, the customer has the right to a delay penalty. The customer has the right to receive the delay penalty without having to demonstrate that the service provider's delay has caused any losses for the customer. Unless otherwise agreed, the delay penalty shall be one (1) per cent of the value, excluding value added tax, of the delayed service for every beginning seven (7) day period by which the service provider exceeds the agreed service performance date. The delay penalty will be charged for a maximum of ten (10) weeks. In addition to the delay penalty, the customer has the right to compensation for damage 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 is obligated 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 The customer has the right to withhold payment for the service should it be delayed. The customer may not, however, withhold a sum that clearly exceeds the claims to which the customer is entitled on the basis of the delay.

12.6 If the service provider's performance is delayed and the delay is of material significance for the customer with regard to the nature of the service, the customer has the right to acquire a substitute service of a corresponding standard from a third party at the service provider's expense (right to cover purchase). The customer shall seek to inform the service provider of its decision to exercise this right before acquiring the substitutive service.

12.7 A procurement contract can be terminated on the basis of a material delay as laid down in Clause 13.6.

12.8 The customer has the right to withhold interests and costs referred to in Clauses 12.3, 12.4 and 12.6, in accordance with Clause 10.6, due to a delay in the service.

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

13.1 If the service is defective, the customer shall inform the service provider of the defect within a reasonable period of the defect having been detected or of the time it should have been detected.

13.2 The service provider shall inform the customer about receipt of the notification of defect and initiation of measures no later than 14 days after having received the notification.

13.3 The customer has the right to withhold payment for the service should there be a defect. The customer may not, however, withhold a sum that clearly exceeds the claims to which the customer is entitled on the basis of the delay.

13.4 If the service is defective, the service provider shall examine the cause of the defect at its own expense and rectify it without delay. The service provider may be released from this 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 the investigation and correction of the defect in accordance with its regular price list.

13.5 If the service is defective, the customer has the right to a price reduction from the service provider.

13.6 Each contracting party has the right to terminate the procurement contract in part or in whole if the other contracting party has materially violated its contractual obligations or it is evident that a material breach of contract will take place. Material breaches of contract include but are not limited to the service not complying with the agreement; the defect or its consequences to the customer being more than minor; the defect not being

immediately remedied despite reminders from the customer; or defects occurring repeatedly. A material delay in performance by a contracting party or repeated delays also constitute a material 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 refunding 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 has the right to acquire substitutive services of a corresponding standard from a third party at the supplier's expense (right to cover purchase). The customer shall seek to inform the service provider of its decision to exercise this right before acquiring the substitutive service.

13.9 The customer has the right to withhold interests and costs referred to in Clauses 13.5, 13.7 and 13.8, in accordance with Clause 10.6, due to defective service.

## **14 Force majeure**

14.1 A force majeure event is an unusual and relevant event that occurs after the signing of the procurement contract and prevents the fulfilment of the contract and that 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 events include war, rebellion, internal unrest, expropriation or confiscation for public needs, import or export ban, natural catastrophe, interruption of public transport or energy distribution, 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 a force majeure event only in case the subcontractor's delay is the result of an obstacle referred to in Clause 14.1 and another subcontractor cannot be used without unreasonable waste of time or costs.

14.3 If the fulfilment of a contractual obligation is delayed due to a force majeure event, the deadline for meeting the contractual obligation shall be extended for as long as is reasonable considering all the circumstances influencing the case.

14.4 Each contracting party shall notify the other contracting party immediately about the start and end of a force majeure event, and the contracting parties shall agree on its impact on the delivery at the latest at this point in time.



14.5 Each contracting party has the right to terminate the procurement contract in full or in part if the fulfilment of the contract due to the continuation of a force majeure event is delayed by more than four (4) months.

## 15 Insurance

15.1 The service provider shall take out statutory insurance policies and other insurance policies necessary for the provision of the service. The insurance policies shall be valid for the entire contract period.

15.2 Unless otherwise agreed, the service provider shall take out a liability insurance policy for its operations. The insurance shall be sufficient in relation to the risks associated with providing the service. Upon request, the service provider shall deliver to the customer a liability insurance certificate.

## 16 Damages

16.1 The customer and the service provider both 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 supplier on the basis of Chapter 18 or 19 and losses arise to the customer from this, the customer has the right to receive damages for direct losses arising from the premature termination of the contract.

16.3 The customer has the right to receive damages for a delay or any other losses arising from the service provider's breach of contract insofar as the amount of losses exceeds any delay penalty payable to the customer and any other contractual penalty separately agreed by the contracting parties.

16.4 Unless otherwise agreed, the contracting parties' liability for damages shall be at most five (5) times the calculated value of the procurement contract.

16.5 The term '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 the case of a framework agreement, the calculated value of the procurement contract is the total value of the services that the customer has purchased and will purchase from the service provider on the basis of the framework agreement. In the case of a procurement contract of a continuous nature or a framework agreement, 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. In the case of

a procurement contract valid until further notice, the calculated value of the procurement shall be 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 do 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 party has the right to demand compensation for indirect losses as well.

## **17 Compensation to the service user for damage caused by the service provider's breach of contract**

17.1 The service provider is obligated to compensate any damage it causes to the service user through a 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 shall notify the customer about the claim for compensation without delay. The service provider shall strive to agree on the amount of compensation with the party demanding compensation. If an agreement is reached regarding the amount of compensation, the service provider shall pay the compensation directly to the service user and notify the customer without delay about the payment made. If the service provider finds that it is not liable for the damage in the case or if no agreement can be reached concerning the amount of compensation, the service provider shall inform the service user and the 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 transfers the claim for compensation to the service provider for processing and for payment of any compensation, the customer shall inform the service user. The service provider is obligated to pay the compensation for damage to the service user due to a breach of contract within a reasonable time of having been informed of the claim for compensation, and to inform the customer without delay in writing about the compensation paid.

17.4 Should the service provider find that it is not liable for the damage in the case, it shall 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 damage. If the customer thereafter pays damages to the service user, the service provider shall pay the customer the sum it paid to the service user in compensation, insofar as the service provider is liable for the damage in the case on the basis of this procurement contract.

17.5 If the customer is obligated 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 obligated to pay the customer an equal sum in compensation, including interest. Furthermore, the service provider is obligated to pay for reasonable legal fees of the customer and other reasonable costs incurred from clarifying the matter, with interest.

17.6 The service provider is obligated to submit to the customer any and all information relevant in terms of the 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 obligated to compensate the damage caused to the customer.

17.7 The service provider is obligated to contribute, at its own expense, in the investigation of any damage caused to the service user.

17.8 If an action for damages presented by a service user against the customer or the service provider is instituted in a court of law, the party concerned shall inform the other contracting party about the action for damages without delay. The other contracting party shall 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 the court of law.

17.9 The limitation of liability as specified in Chapter 16 does not apply to the liability for damages pursuant to this chapter.

## **18 Termination of the contract under special circumstances**

18.1 The customer has the right to terminate the procurement contract with immediate effect if the service provider is burdened by a mandatory criterion for exclusion referred to in legislation on public contracts or a discretionary criterion for exclusion referred to in section 81, subsection 1, points 3–11 of the Act on Public Procurement and Concession Contracts (1397/2016), even if the criterion has arisen after the beginning of the contractual relation.

18.2 The customer has 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 materially so that it cannot be assumed that the service provider can meet 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 having been informed about the existence of the grounds for termination.

18.3 Before giving notice of termination by virtue of Clause 18.1 or 18.2 above, the customer shall notify the service provider regarding the impending termination and give the supplier an opportunity to submit an explanation within a reasonable period of time.

18.4 The customer has the right to terminate the agreement in part or in whole with immediate effect if a material change has been made to the contract which, on the basis of the legislation on public contracts, would have required a new procurement process.

18.5 The customer has the right to terminate the agreement with immediate effect if the procurement contract with the service provider should not have been signed in the first place because the Court of Justice of the European Union has, in proceedings in accordance with article 258 of the Treaty on the European Union, stated that the customer has been in severe breach of obligations in accordance with treaties and procurement directives.

18.6 If the customer terminates the contract by virtue of Clause 18.1, 18.2, 18.4 or 18.5 above, the service provider has the right to receive full payment for the services delivered before the procurement contract termination date, but the service provider does not have the right to receive any other compensation for the termination of the procurement contract.

## **19 Contractor's obligations and liability**

19.1 If the contract is covered by the Act on the Contractor's Obligations and Liability When Work is Contracted Out (1233/2006), the service provider shall submit to the customer during the contract period every twelve (12) months 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 debt 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 shall 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 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 Clauses 19.1 and 19.2 above, or if an account or certificate reveals that the service provider has neglected its statutory obligations. Before terminating the procurement contract, the customer shall submit a notice in writing to the service provider about the neglect, informing the service provider about the threat of the contract being terminated unless the neglect is rectified within a reasonable period laid down by the customer.

19.4 In situations referred to in this chapter, the service provider has the right to receive full payment for services provided up to the time the contract is terminated, but is not entitled to any 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 will not be transferred to the customer. All materials that the customer and service provider hand over to one another before or after the signing of the contract will remain the property of the assignor. However, the customer shall have an irrevocable right to use the end results of the service as well other materials transferred to it by the service provider for a purpose related to the use of service in accordance with the contract. The right of use includes the right to use, copy and make or commission modifications of the materials. When making or commissioning modifications of the materials handed over by the service provider, the customer shall ensure that none of the service provider's business or trade secrets are disclosed. The customer has the right to transfer the materials to a party to whom the customer's tasks are transferred, with equal rights and obligations.

20.2 The service provider is responsible for ensuring that the services provided or the related materials will 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 use of the materials, the service provider is obliged to meet these claims on the customer's behalf at its own expense. The service provider is obligated to ensure that no legal costs, damages, other compensations payable to a third party or other liabilities towards a third party are incurred by the customer through claims or obligations arising from intellectual property rights relating to the service or the related materials.

## **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, all currently valid statutory regulations on confidentiality, obligation to observe confidentiality, data protection and the disclosure of confidential information are followed. Furthermore, the service provider shall follow the customer's instructions on the processing and archiving of documents and data.

21.2 If the service provider produces 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), shall be followed in the provision of the services governed 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 that are in the possession of the service provider shall be handed over to the customer.

21.4 The service provider is obligated to ensure 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 obligated to ensure that the subcontractors it uses adhere to these provisions relating to confidentiality.

21.7 The service provider shall explain the contents of the confidentiality obligation to the employees who provide the service.

21.8 Should the customer so require, the service provider shall 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 materials or sensitive information relating to the customer or a third party. The list shall be continuously updated.

21.9 The contracting parties undertake to keep secret confidential materials and information that they receive from each other that by law must be kept secret and undertake not to use the materials and information for purposes other than those laid down in the procurement contract.

21.10 Transfer of information to an authority or other party on the basis of a mandatory official order shall not be deemed a violation of the confidentiality obligation.

21.11 The service provider may not use the procurement contract or the customer's name in any marketing materials without the customer's consent. Unless otherwise agreed, the service provider may, however, use the procurement contract as reference when submitting offers to procurement units referred to in procurement legislation.

21.12 The obligations laid down in this chapter shall remain in force after the procurement contract period.

## **22 Assigning or amending the contract and options**

22.1 Without the customer's consent, the service provider does not have the right to assign the contract to a third party, even in part. The customer has the right to assign the procurement contract to a third party to whom the customer's duties are transferred in full or in part.

22.2 All amendments to the contract shall be made in writing. Amendments made in electronic format shall also be deemed amendments in writing.

22.3 Agreements on amendments relating to the service and their impact on the delivery schedule or price shall be made in writing before the changes are made.

22.4 If the procurement involves an option, the customer decides on whether to use it. The terms of the procurement contract shall apply to the option.

## **23 Duty to assist in case of change of service provider**

23.1 In the event of a change of service provider, the service provider is obligated 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 a notice of termination has been given or the procurement contract has been terminated or when the customer notifies that it is initiating a procurement that applies to services under this procurement contract Unless otherwise agreed, the obligation shall remain in force at the most until 12 months have passed since the termination of the procurement contract.

## **24 Dispute resolution and applicable law**

24.1 Any and all issues relating to the procurement contract shall be primarily resolved through negotiations between the contracting parties.

24.2 If a dispute cannot be resolved through negotiation, it will be submitted for resolution to the court of first instance at the customer's registered office.

24.3 The procurement contract is governed by Finnish law. However, the connecting factor rules of Finnish law do not apply to the procurement contract.

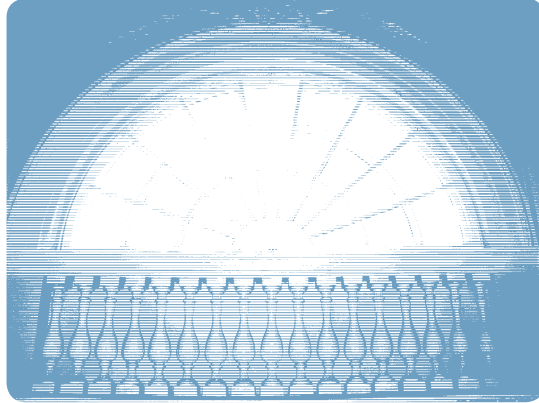
## **25 Order of validity of procurement contract documents**

25.1 The procurement contract documents complement each other. Should there be any conflict between the contract documents, they shall be applied 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. Offer







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