

**GENERAL TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS
THE ORGANISATION FOR THE PROHIBITION OF CHEMICAL WEAPONS (OPCW)**

Technical Secretariat

April 2001

The contract shall be governed by the following General Terms and Conditions for the Purchase of Goods, together with its incorporated attachments or annexes if any. Any departure from these General Terms and Conditions shall only be valid if mutually agreed between the Parties in writing.

1. DEFINITIONS

In these 'General Terms and Conditions for the Purchase of Goods (hereinafter referred to as 'General Terms and Conditions') the following definitions shall apply for the interpretation of contracts:

'OPCW' or 'Organisation' means the Organisation for the Prohibition of Chemical Weapons, represented by the Director-General or his duly authorised representative.

'Contractor' means the supplier of goods or services named in the contract, represented by an official duly authorised to undertake contractual obligations on behalf of the supplier.

'contract' means the contract relating to the purchase of goods or services between the Organisation and the Contractor and includes these General Terms and Conditions.

'Parties' means the Contractor and the Organisation collectively, and 'Party' means either one of them.

'Goods' means any goods or services supplied, or to be supplied, to the Organisation by the Contractor (or any of the Contractor's sub-contractors) pursuant to or in connection with the contract.

2. ENTRY INTO FORCE OF CONTRACTS

A contract shall enter into force on the day after both Parties have signed it. The contract shall be drawn up in English as the only authentic language, each Party receiving one original.

3. DELIVERY

The Contractor shall hand over the goods, and the Organisation shall take over the goods, at the address of the Organisation in The Hague, and within the delivery date stipulated in the contract. All manuals, instructions, display and any other information relevant to the goods shall be in English unless otherwise stipulated in the contract.

4. PAYMENT

Unless expressly stipulated otherwise in the contract, the Organisation shall make payment:

(a) For goods to be delivered to the Organisation in The Hague, within 30 days of: (i) taking delivery of the goods; or (ii) receiving the invoice and any other documents specified in contract, whichever is later;

(b) For goods to be delivered elsewhere, within 30 days of acknowledgement of receipt of: (i) the goods; (ii) the Contractor's invoice for the goods; (iii) copies of the customs transport documents; or (iv) any other document specified in the contract, whichever is later.

(c) The Contractor shall deliver the customs transport documents to the Organisation.

(d) Unless otherwise authorised by the Organisation, a separate invoice must be submitted for each contract of carriage necessary for the implementation of this contract.

(e) The price of the goods shall be as stated in the contract and may not be increased, except by express written agreement of the Organisation. The Organisation shall not pay any charge for late payment unless this has been expressly agreed to in writing.

(f) Payment shall not be made for goods which have not been accepted in terms of Article 17 of these General Terms and Conditions. Payment by the Organisation shall not be deemed as acceptance of goods.

(g) Payment shall be made in Dutch Guilders or Euros unless otherwise stipulated in the contract.

(h) Advance payment shall only be authorised by the Organisation where normal commercial practice or the interests of the Organisation require so.

5. PRIVILEGES AND IMMUNITIES

Nothing contained in the contract shall be deemed a waiver, express or implied, of any privilege or immunity that the

Organisation may enjoy pursuant to: (i) the Agreement between the Organisation and the Kingdom of the Netherlands concerning the Headquarters of the Organisation, signed at The Hague on 22 May 1997 ('Headquarters Agreement'); or (ii) any other agreement to which the Organisation is Party.

6. TAX EXEMPTION

The Organisation is exempted from taxes and duties in accordance with the provisions of the Headquarters Agreement. The Contractor's price shall reflect any tax and duty exemption to which the Organisation is entitled by reason of the privileges that it enjoys. If it is subsequently determined that any taxes and duties from which the Organisation is exempted have been included in the price paid by the Organisation, the amount of such taxes and duties shall be refunded by the Contractor. Alternatively, the Organisation may deduct such amount from the contract price and payment of such corrected amount shall constitute full payment by the Organisation.

7. LIABILITY OF THE CONTRACTING PARTIES

(a) The Organisation shall not under any circumstances or for any reason whatsoever be held liable for loss, damage or injury sustained by the Contractor or by any person acting on behalf of the Contractor during the performance of the contract. The Organisation shall not accept any claim for compensation or repairs in respect of any such damage. The Contractor shall insure against all risks or loss, damage or injury caused by the Contractor or by any person acting on behalf of the Contractor during the performance of the contract. The Contractor and any person acting on behalf of the Contractor shall during the performance of the contract comply with these General Terms and Conditions particularly those relating to confidentiality.

(b) Except in the case of force majeure, the Contractor shall be required to indemnify the Organisation for any loss, damage or injury that it may sustain from any act performed by the Contractor.

(c) The term force majeure, as used here, shall include, unforeseen events not within the control of either Party, such as laws or regulations, strikes, lock-outs or other industrial disturbances, acts of terrorism, wars, whether declared or not declared, blockades, embargoes, insurrections, riots, civil disturbances, explosions, epidemics, landslides, earthquakes, storms, lightning, floods and washouts. Any other event could be recognised as force majeure in arbitration proceedings instituted in relation to a dispute as mentioned in Article 25 of these General Terms and Conditions of Purchase.

(d) If either Party considers that force majeure affecting the performance of its obligations has occurred, it shall promptly notify the other Party, giving full particulars in writing, including its probable duration and its effect on the Party's ability to perform. However, once the condition of force majeure has been agreed by the Parties, the Parties shall be relieved of liability for non-performance of their obligations until it ends.

(e) The Contractor shall not be entitled to payment if it is prevented by force majeure from performing the tasks assigned to it. Part performance of any task shall result in pro-rata payment.

8. TERMINATION OF THE CONTRACT

(a) If the Contractor ceases to practise his profession or carry out his business wholly or for a large part; does not comply with any condition of the contract; applies for moratorium or applies to be declared insolvent; is granted a moratorium or declared insolvent; is declared bankrupt; offers a settlement in lieu of bankruptcy or if the property of the Contractor is attached; or if the Contractor is not a natural person and loses power of disposal over its capital or

part of it or loses its status as a legal person, is wound up or in actual fact is liquidated, the Organisation has the right to give notice of termination of contract immediately without notice of default.

(b) If any of the circumstances as mentioned in paragraph (a) of this Article should arise, the Contractor shall be in breach of this contract as a consequence.

(c) The Contractor shall be bound to compensate the Organisation for all damage, costs and loss of interest as a result of a situation as mentioned in paragraph (a) of this Article as a result of premature termination of the contract, even in the event that a moratorium is granted or the Contractor is declared insolvent. This damage shall include in any case all amounts due until the original agreed date of termination of the contract, as well as all costs incurred by the Organisation in legal and non-legal proceedings, including those for legal assistance with regard to any circumstances as referred to in paragraph (a) of this Article.

(d) The conditions in paragraphs (a), (b), and (c) of this Article do not exclude the right of the Organisation to exercise other legal rights, including its right to impose liquidated damages, demand payment or compensation for damages or for cancellation of the contract.

(e) The Organisation, at its own discretion, is legally and without intervention by the courts entitled to carry out itself or to have carried out any contractual obligation for which the Contractor is in default, at the expense and risk of the Contractor.

(f) Each contracting Party may, of its own volition and without being required to pay compensation, terminate the contract by serving formal notice two months in advance, unless the contract provides otherwise. Upon receipt of notice of termination by the Organisation, the Contractor shall take immediate steps to bring the work or service to a close in a prompt and orderly manner, the Contractor shall reduce expenses to a minimum and shall not undertake any further commitments under the contract from the date of receipt of such a notice.

If the contract is terminated by the Organisation, the Contractor shall be entitled to pro-rata payment for any tasks performed prior to such termination. Additional costs incurred by the Organisation, resulting either from termination by the Contractor or from Contractor's failure to complete satisfactory performance, may be withheld from any amount otherwise due to the Contractor from the Organisation under this or any other contract.

(g) In case of a breach of this contract by the Contractor, included but not limited to failure or refusal to make deliveries within the time limit specified, the Organisation may procure the goods from other sources and may hold the Contractor liable for any excess cost occasioned thereby. Furthermore, the Organisation may, by written notice, terminate the right of the Contractor to proceed with deliveries or such part or parts thereof as to which there has been a default.

9. LIQUIDATED DAMAGES

Without prejudice to the provisions on force majeure in these General Terms and Conditions, if the Contractor fails to deliver any or all of the goods within the time period specified in the contract, the Organisation may, without prejudice to any other rights and remedies, deduct from the price stipulated in the contract, as liquidated damages, a sum equivalent to 2% per week of the contractual price of the delayed goods for each week of delay until actual delivery, up to a maximum 10% of the contractual price.

10. THIRD PARTIES

(a) The Contractor shall not, without prior and express written approval of the Organisation, assign in whole or in part the rights and obligations arising out of the contract to third parties or sub-contract any part of the work required under this contract to third parties. (b) In the event where the Organisation authorises the Contractor to sub-contract part or all of the obligations under the contract to third parties, the Contractor shall nonetheless remain bound by its obligations to the Organisation under the contract. (c)

Save where the Organisation expressly authorises an exception, the Contractor shall be required to include in any sub-contract provisions enabling the Organisation to enjoy the same rights and guarantees in relation to sub-contractors as it enjoys in relation to the Contractor.

11. NON-WAIVER OF RIGHTS

Failure of, or delay by the Organisation in the exercise of any rights or remedies provided by the contract shall not be deemed a waiver of any rights of the Organisation, and shall not release the Contractor from fulfilling its obligations.

12. CONFIDENTIALITY

(a) The Contractor, or its employees, shall not use any information acquired or developed in the course of this contract for any purpose not authorised in writing by the Organisation. (b) The Contractor is required to exercise the utmost discretion during the performance of the contract. The Contractor may not communicate to any other person, government or authority external to the Organisation any information known to it by reason of his contractual relationship with the Organisation which has not previously been made public, except with written authorisation of the Organisation. Nor shall the Contractor at any time use such information to private advantage. (c) The obligations under this Article do not lapse upon cessation of this contractual agreement between the Contractor and the Organisation.

(d) The Contractor shall be liable for any breach of confidentiality or any indirect disclosure which could vitiate the interests of the Organisation. The extent of any such liability shall be directly proportional to the extent of the damage caused.

13. WARRANTY

The Contractor must deliver goods that are:

(a) of the quality, quantity and description required by this contract;

(b) free from any right or claim of a third party, including rights or claims based on copyright, patent or other industrial or intellectual property rights.

(c) new, unused and free from defects in design, workmanship or materials.

(d) Unless another period is specified in the contract for goods commonly offered with a Contractor's warranty, the Contractor warrants and certifies that he will repair or replace without expenses to the Organisation any components or goods which prove to be defective in design, workmanship, or materials within a period of one (1) year from the date such goods are placed in use, or 18 months after delivery, whichever is later.

(e) For the goods ordered, the Contractor shall maintain a reasonably constituted service Organisation to handle requests from the Organisation for technical assistance on maintenance, service repairs, and overhaul of the goods.

14. BANK GUARANTEE

If the Organisation so requests in the contract, the Contractor shall guarantee the due fulfilment of its obligations under the contract by providing an unconditional and irrevocable bank guarantee from an established bank of good standing for the amount determined in the contract.

15. PACKING

(a) The goods shall be packed and marked in a proper manner and in accordance with the instructions stipulated in the contract, any statutory requirements and any requirements of the transporters and manufacturers. In particular the goods shall be marked with the Purchase Order number issued by the Organisation, the net, gross and tare weights. The name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings. A documentation containing, as a minimum, the description of the goods (including accessories and attached spare parts) and its main sub-element, the user manual, and the maintenance and repair manual, shall also be provided with the goods.

(b) All packaging materials shall be considered non-returnable and shall be destroyed. The Organisation accepts no liability in respect of the non-arrival at the Contractor's premises of empty package materials returned by the Organisation unless the Contractor, within ten days of receiving notice from the Organisation that the package materials have been dispatched, notifies in writing the Organisation of such non-arrival.

16. INDEMNITY

The Contractor shall indemnify and defend the Organisation against :

(a) any action or proceeding based upon a claim that the goods, or part thereof, constitute an infringement of any patent, registered design or copyright and the Contractor shall pay all damages and costs awarded against the Organisation flowing from any such action or proceeding. However, in case there is found to be an infringement, the Contractor shall, at its own expense, either procure for the Organisation the right to continue using the goods, or modify them so they become non-infringing, or, with the approval of the Organisation, remove said goods and refund the order price, the transportation and the installation costs.

(b) all actions, suits, claims, demands, losses, charges, costs and expenses which the Organisation may suffer or incur as a result of, or in connection with, any breach of the packing obligations of the Contractor as mentioned in Article 15.

17. INSPECTION AND ACCEPTANCE

(a) The Organisation shall have the right, before payment, to examine the goods ordered under this contract on the premises of the Contractor, during manufacture, in the places of shipment, during transport, or upon delivery, and the Contractor shall provide, when possible, all facilities for any such examination. The Organisation may issue a written waiver of examination at its discretion. Examination carried out by the representatives of the Organisation or any waiver thereof shall not prejudice the implementation of other relevant provisions of the contract concerning obligations assumed by the Contractor, including technical specifications.

(b) In the case of goods ordered on the basis of specifications forming part of the contract, an acceptance inspection shall always be carried out by the Organisation upon receipt of the goods to ensure their conformity with the specifications. Goods not expressly accepted will be deemed as rejected. Written notice of acceptance or rejection of the goods shall be promptly transmitted to the Contractor. If the Organisation does not exercise its right to terminate the contract, the Organisation may postpone any payment due to the Contractor for such rejected goods until replacement by accepted goods. Unless within a reasonable time of receipt of notice of rejection the Contractor collects the rejected goods, the Organisation may dispose of them as the Organisation shall think fit (provided that if the Organisation sells such goods, the Organisation shall account to the Contractor for the net proceeds of such sale). (c) The Organisation shall bear the expenses of such inspections as mentioned in paragraphs (a) and (b) above.

(d) In case of rejection of the goods, a new inspection may be carried out by representatives of both Parties if promptly requested by the Contractor, and before the Organisation exercises any legal remedies. The Contractor shall bear the expenses of such an inspection. (e) The inspections shall be carried out in good faith.

18. TITLE

The contractor guarantees that the work provided or goods supplied by it are unencumbered by any third party's proprietary rights. Title to any goods or services shall pass to the Organisation upon delivery.

19. TRANSPORT AND FREIGHT

Unless otherwise stipulated, transport arrangements shall be undertaken by the Contractor who shall be responsible for payment of freight and insurance costs of the goods from the Contractor to the delivery address stipulated in the contract. Transport documents, including the packing list, shall be airmailed by the

Contractor to the Organisation. In particular, the Organisation shall receive, prior to delivery, the documents that are needed for taking over the goods.

20. CUSTOMS DECLARATION

(a) Where the Contractor is responsible for the customs clearance into the Netherlands and the goods are subject to import duties, a customs declaration (which may also, if necessary, include an import licence) shall be provided to the Contractor by the Organisation, exempting the Organisation from these charges.

(b) If the Organisation is responsible for the customs clearance into the Netherlands, the original transport documents, including the packing list, shall be airmailed by the Contractor to the Organisation.

21. EXPORT AND IMPORT LICENCES

(a) If any export licence or any other governmental authorisation is required for the export of goods, it shall be the obligation of the Contractor to obtain any such licence or governmental authorisation. In the event of failure to obtain such a licence or authorisation within a reasonable time, the Organisation may declare the contract invalid.

(b) If any import licence or any other governmental authorisation is required for the import of goods, it shall be the obligation of the Organisation to obtain any such licence or governmental authorisation.

22. ADVERTISING

Unless authorised in writing by the Organisation, the Contractor shall not advertise or otherwise make public the fact it is supplying goods or services to the Organisation. The Contractor shall not use the name, emblem or official seal of the Organisation or any abbreviation of the names of the Organisation for advertising or for any other promotional purpose.

23. AMENDMENTS AND ADDITIONS TO THE CONTRACT

The provisions of the contract and the annexes thereto may be amended or supplemented only by means of a supplementary written agreement signed by all of the Parties or their authorised representatives.

24. OFFICIALS NOT TO BENEFIT

(a) The Organisation warrants that no official or employee of the Contractor has been or shall be admitted by it to any direct or indirect benefit arising from this contract or the award thereof. Failure to comply with the foregoing provision shall constitute a material breach of this contract.

(b) The Contractor warrants that no official or employee of the Organisation has been or shall be admitted by it to any direct or indirect benefit arising from this contract or the award thereof. Failure to comply with the foregoing provision shall constitute a material breach of this contract.

25. SETTLEMENT OF DISPUTES

(a) Without prejudice to the privileges and immunities of the Organisation, any legal dispute relating to this contract shall be settled amicably by negotiation and in cooperation with the Host Country.

(b) Any dispute which cannot be settled by negotiation shall, without prejudice to the relevant privileges and immunities of the Organisation, at the request of either Party, be submitted at the seat of the Organisation to an Arbitration Board composed of: (i) two arbitrators, one being appointed by each of the parties; and (ii) a referee chosen by the two arbitrators.

(c) In the event of a disagreement as to the nomination of the referee or a Party's failure to appoint an arbitrator, these appointments shall be made by the Secretary-General of the Permanent Court of Arbitration in The Hague.

The Arbitration Board shall have its seat in The Hague and shall establish its own procedure.

(d) In the absence of contractual provisions, the arbitrators shall apply the UNCITRAL Arbitration Rules as in force on the day both Parties have signed the contract.

