



General and Special terms and Conditions of a Contract

Examples of general terms and conditions of a Contract

Some examples of general terms and conditions of a Contract are detailed below.

Legal status

This clause defines the legal status of the UN organisation as well as the other parties of the Contract. For example, a Supplier to a UN organisation is defined as being an “independent Supplier” and not an employee of a UN organisation. It also defines the status, privileges and immunities of a UN organisation.

Source of instructions

This clause defines that “the Contractor shall neither seek nor accept instructions from any authority external to the UN organisation concerned in connection with the performance under the concerned Contract”. This clause ensures that “the interest of the UN organisation is protected and that the Contractor shall refrain from any action that may adversely affect the UN organisation”.

Contractor’s responsibility for employees

This clause requires that the Contractor takes responsibility for its employees under the respective Contract, and that only competent and reliable personnel who have high ethical standards and respect local customs are selected. It also reserves the right for the UN organisation to screen and remove Contractor staff.

Assignment

This clause prevents the Supplier from assigning, transferring, pledging or making other dispositions of the Contract, parts thereof, or any rights, claims or obligations under the Contract to another party. The clause is intended to minimize the risk for the UN organisation in cases where financial failure or changes in the legal status of the Supplier would have an imminent effect on the Contract performance.

Sub-Contracting

This clause prescribes that, “the Contractor shall obtain the prior written approval of the UN organisation in case the Contractor wants to sub-Contract parts or all of the Contractual obligations to a third party”. This is in line with the clause on the Supplier’s responsibility of employees, and intended to ensure transparency regarding the parties to the Contract.

Officials not to benefit

This clause determines that the Supplier warrants that no official or representative of the United Nations has received or will be offered by the Supplier any direct or indirect benefit arising from or related to the performance of the Contract or the award thereof.

Purchase of goods

There is usually a set of clauses that defines the delivery, inspection, packing, transportation, warranties, acceptance, rejection, title and export licensing of goods. They are usually designed so that the terms and conditions of a main Contract or a purchase order would supersede them, in whole or in part. Nevertheless, these provisions otherwise provide a safety net of legal terms concerning the UN organisation's rights and remedies with respect to the acquisition of goods. Warranties, for example, offer the UN organisation remedies when manufacturing, workmanship or latent defects are discovered after products and services have been accepted.

Indemnification

This clause states that, "the Contractor shall indemnify, hold and safe harmless, and defend, at its own expense, the UN organisation from and against all suits, claims, demands, and liability of any nature or kind, arising out of acts of omission of the Contractor".

Insurance and liabilities to third parties

This clause requires the Supplier to maintain liability insurance for its equipment and property, and workmen's compensation for its workers. The clause aims to protect the UN organisation against possible claims as the result of injury or damages that might result from performance under the Contract.

Encumbrances / liens

An encumbrance is a claim attached to real property, such as a lien, mortgage or unpaid taxes.

A lien is a legal claim against the property of another as security for the payment of debt. A lien gives the lienholder the right to sell the property to satisfy the debt if it is not otherwise paid. On the other hand, a lien is removed when a Contract is paid.

This clause prevents the Supplier to cause or permit any lien, attachment or other encumbrance against any monies due or to become due for any work done or materials furnished under the Contract, or by reason of any other claim or demand against the Supplier.

Title to equipment

This clause prescribes that, "the property right for any equipment or supplies that may be furnished by the UN organisation shall rest with or be returned to the organisation at the conclusion of the Contract or when no longer needed by the Contractor".

Copyright, patents and other proprietary rights

This clause recognizes the principle that if intellectual property is created for a UN organisation, "it shall own" such property.

Use of name, emblem or official seal of the United Nations organisation

This clause prohibits the Supplier to disclose its Contractual relationship with a UN organisation for commercial purposes.

Confidential nature of documents and information

This clause constitutes a non-disclosure agreement between the parties to the Contract for any data compiled by or received by any of the parties under the Contract.

Force majeure; other changes in condition

This clause excuses delays or failure to perform that would otherwise constitute a Contract breach and that are beyond the control or influence of the Contracting parties.

Termination

This clause gives the right to terminate for any cause to each Contracting party provided a notice of impending termination is given to the party being terminated within a specific time frame that varies according to the type of requirement and duration of Contract. This minimizes the risk to a UN organisation and the Supplier by providing a means to ending its obligations in view of unforeseen circumstances while providing a means for the terminated party to cover its requirements or find other useful employment for its resources.

Settlement of disputes

This clause requires the resolution of disputes through UNICTRAL arbitration, when good faith negotiation, i.e. amicable settlement, fails to achieve agreement.

Privileges and immunities

This clause protects the privileges and immunities a UN organisation has and states that, “nothing in or related to the Contract shall be deemed a waiver to such privileges and immunities”.

Tax exemption

This clause states that the UN organisation is exempt from all direct taxes and custom duties as stated in the Convention on the Privileges and Immunities of the UN.

Observance of the Law

This clause stipulates that, “the Contractor shall comply with all laws, ordinances, rules and regulations bearing upon the performance of its obligations under the terms of the Contract”.

Authority to modify

Such clause defines the way a Contract may be modified, if appropriate.

Conduct of Contractors

The following three elements should be subject to control through general terms and conditions:

- prohibiting the Supplier from using child labour
- ensuring that the Supplier does not manufacture or distribute anti-personnel mines, or components thereof
- ensuring that the Supplier has put measures in place to prevent sexual exploitation and abuse.

Gifts and hospitality

This clause states that “Suppliers shall not offer gifts or hospitality to UN staff members. Recreational trips to sporting or cultural events, theme parks or offers of holidays, transportation, or invitations to extravagant lunches or dinners are also prohibited”.

Examples of special terms and conditions

Some examples of special terms and conditions of a Contract are detailed below.

Liquidated damages

Liquidated damages are a form of redress to be paid by the Supplier to the buyer in case of non performance or delayed delivery. For example, a fixed sum or percentage for each day the Supplier is late delivering the equipment to the port. The sum is usually an estimate of the loss likely to be suffered by the client as a result of non performance.

Method of payment

The standard payment term for all UN organisations is 30 days net. However, the payment method may be negotiated with the Supplier. Normally, UN organisations do not accept advance payments. For further information on the different payment methods see Unit 3.10 Contract Management.

Performance securities / bonds

A bond is a written financial instrument executed by a Supplier and a second party (the surety or sureties) to ensure fulfilment of the principal’s obligations to a third party (the obligee or buyer), identified in the bond. The UN organisations require bonds to be unconditional and irrevocable. If the principal obligations are not met, the bond ensures payment, to the extent stipulated, of any loss sustained by the obligee. Bonds fill the role of insurance policy for the buyer to mitigate risk of frivolous offers or non performance by the Supplier. Just like any insurance policy, the cost of the bond is a percentage of the face value of the policy and it is a cost borne by the Supplier.

Performance securities/bonds ensure the UN organisation against non performance by the Supplier. Performance bonds are used, for example, in works Contracts and highly sensitive consulting Contracts and are typically set at 10% of the value of the Contract.

These instruments are used in complex procurement where the cost of putting Contracts together are high and the impact of non performance by the Supplier could inflict serious damage to the UN organisation. When required, performance bonds are a condition of the Contract, and typically must be properly issued and accepted as a condition of effectiveness for the Contract.

Incoterms

In the case of equipment, goods and commodities, the purchase order or Contract must clearly indicate the point of transfer of responsibility for freight and risk from the Supplier to the buyer. The International Chamber of Commerce Incoterms – short for “International Commercial Terms” – are standard trade definitions most commonly used in international sales Contracts to address these important issues, with distinct divisions of responsibility for the following functions:

- packing goods for shipment
- export clearance
- transport from factory to port/airport of shipment
- international transport
- transport from port of arrival to final destination
- handling
- insurance during transport
- import clearance
- import duties.

The scope of Incoterms is limited to matters relating to the rights and obligations of the parties to the Contract of sale with respect to the costs and risks related to the delivery of goods sold. They specify where the Supplier delivers the goods, what costs the Supplier pays, and when the Supplier passes the transit risk to the buyer. The UN organisations typically use only a few of the Incoterms for the vast majority of its purchase of equipment, goods and commodities.