



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR EDUCATION AND CULTURE

Culture and Creativity
Library and e-resources centre

FRAMEWORK SUPPLY CONTRACT

FRAMEWORK CONTRACT No EAC/02/2015

The European Union (hereinafter referred to as 'the EU'), represented by the European Commission (hereinafter referred to as the 'lead contracting authority') and the following contracting authorities [*add the corresponding list*] (hereinafter collectively referred to as 'the contracting authority'), represented for the purposes of signature of this framework contract by Mr Michel Magnier, Director of Culture and Creativity,

of the one part, and

[*full official name*]

[*official legal form*]¹

[*statutory registration number*]²

[*full official address*]

[*VAT registration number*]

[(hereinafter referred to as 'the contractor'),] [represented for the purpose of the signing of this framework contract by [*name in full and function*,]]

[The parties identified above and hereinafter collectively referred to as 'the contractor' shall be jointly and severally liable vis-à-vis the contracting authority for the performance of this framework contract.]

of the other part,

¹ Delete if contractor is a natural person or a body governed by public law.

² Delete if the contractor is a body governed by public law. For natural persons, indicate the number of their identity card or, failing that, of their passport or equivalent.

HAVE AGREED

to the **special conditions**, the **general conditions for framework supply contracts**, the model order form and the following annexes:

Annex I Tender specifications (reference No [complete] of [date])

Annex II Contractor's tender (reference No [complete] of [date])

which form an integral part of this framework contract (hereinafter referred to as 'the FWC').

- The terms set out in the special conditions shall take precedence over those in the other parts of the framework contract.
- The terms set out in the general conditions shall take precedence over those in the model order form
- The terms set out in the model order form shall take precedence over those in the other annexes.
- The terms set out in the specifications (Annex I) shall take precedence over those in the tender (Annex II).
- The terms set out in the FWC shall take precedence over those in the order forms.

I – SPECIAL CONDITIONS

ARTICLE I.1 – OBJECT

I.1.1 The FWC concerns the supply to Brussels of subscriptions to the general and international press (dailies, weeklies and monthlies), by hard copy delivery by hand and by post (where appropriate with electronic access). *Lot 1*

or

I.1.1 The FWC concerns the supply of individual subscriptions to the general and international press (dailies, weeklies and monthlies), by electronic access only. *Lot 2*

or

I.1.1 The FWC concerns the supply of individual subscriptions to an electronic access portal for general and international newspaper publications. *Lot 3*

or

I.1.1 The FWC concerns the supply of 'Team licence' type licences including electronic access to the Financial Times by user name and password. *Lot 4*

I.1.2 Signature of the FWC imposes no obligation on the contracting authority to purchase. Only performance of the FWC through order forms is binding on the contracting authority.

ARTICLE I.2 – ENTRY INTO FORCE AND DURATION

I.2.1 The FWC shall enter into force on 1 December 2015 if the two contracting parties have already signed.

I.2.2 Under no circumstances may performance commence before the date on which the FWC enters into force. Delivery of the goods may under no circumstances begin before the date on which the order form enters into force.

I.2.3 The FWC shall be concluded for a period of 13 months with effect from the date on which it enters into force. Unless otherwise specified, all periods specified in the FWC are calculated in calendar days.

I.2.4 The order forms shall be returned signed by both parties before the FWC expires.

The FWC shall continue to apply to such order forms and specific contracts after its expiry. They shall be executed no later than 12 months after its expiry.

I.2.5 FWC renewal

The FWC shall be renewed automatically up three times under the same conditions and each time for a period of 12 months, unless written notification to the contrary is sent by one of the contracting parties and received by the other at least three months before expiry of the period indicated in Article I.2.3. Renewal does not imply any modification or deferment of existing obligations.

ARTICLE I.3 – PRICES

I.3.1 The maximum amount of the FWC shall be EUR [amount in figures and in word]. However, this must in no way be construed as a commitment on the contracting authority to purchase for the maximum amount.

The maximum prices of the supplies shall be as listed in Annex II.

I.3.2 Price revision

Lots 1 and 2

Prices must be fixed and not subject to revision during the first year of the FWC.

As of the second year, the contractor may submit a request in writing to the contracting authority for prices to be adjusted before 28 February of the year for which the orders are placed, in order to take into account any increase in the subscription prices charged by publishers.

This adjustment shall not exceed the increase in the publishers' subscription prices. The new prices shall apply from 1 January of the year for which the orders are placed if the contracting authority agrees to the price adjustment and the contract is renewed. Once the lead contracting authority has agreed, the contractor may issue invoices for the subscriptions for the current year.

Lots 3 and 4

Prices must be fixed and not subject to revision during the first year of the FWC.

As of the second year, the contractor may submit a request in writing to the contracting authority for prices to be adjusted at the latest by 15 November of each year, in order to take into account any increase in the subscription prices charged by publishers.

This adjustment shall not exceed the increase in the publishers' subscription prices. The new prices shall apply from 1 January of the year for which the orders are placed if the contracting authority agrees to the price adjustment and the contract is renewed. Once the lead contracting authority has agreed, the contractor may issue invoices for the subscriptions for the current year.

ARTICLE I.4 – PAYMENT ARRANGEMENTS AND PERFORMANCE OF THE FRAMEWORK CONTRACT

I.4.1 Single framework contract

Within ten working days of an order form being sent by the contracting authority to the contractor, it shall be returned to the contracting authority, duly signed and dated by the contractor.

The period allowed for delivery shall start to run on the date the contractor signs the order form, unless a different date is indicated on the form.

I.4.2 Delivery – N.A.

I.4.3 Pre-financing – N.A.

I.4.4 Payment

The contracting authority shall pay the amount due as final payment within 30 days of receiving the invoice, provided that the invoice and documents have been approved and without prejudice to Article II.14.7. Approval of the invoice and documents shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information they contain.

ARTICLE I.5 – BANK ACCOUNT

Payments shall be made to the contractor's bank account denominated in [euro][*insert local currency where the receiving country does not allow transactions in euros*], identified as follows:

Name of bank:

Full address of branch:

Exact designation of account holder:

Full account number, including [bank] codes:

[IBAN code³ :]

ARTICLE I.6 – CONTACT DETAILS AND DATA CONTROLLER

For the purposes of Article II.6, the data controller shall be [*name of body*].

Communications shall be sent to the following addresses:

Contracting authority:

European Commission

Directorate-General for Education and Culture

Directorate Culture and Creativity

Library and Electronic Resources Centre

B -1049 BRUSSELS

E-mail: EAC-LIBRARY-TENDER@ec.europa.eu

Contractor:

[*Full name*]

[*Position*]

[*Company name*]

[*Full official address*]

E-mail: [*complete*]

ARTICLE I.7 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES

- I.7.1** The FWC shall be governed by EU law, supplemented, where necessary, by Belgian law.
- I.7.2** Any dispute between the parties resulting from the interpretation, application or validity of the FWC which cannot be settled amicably shall be brought before the courts of Brussels.
- I.7.3** In case of a licensing agreement signed between one publisher and the contracting authority, the licensing agreement shall be governed by the national law mentioned in the licensing agreement.

ARTICLE I.8 – TERMINATION BY EITHER PARTY

Either party may, unilaterally and without being required to pay compensation, terminate either the FWC or the FWC and order forms by formally notifying the other party and by giving three months' notice. Should the contracting authority terminate the FWC or order forms, the contractor shall only be entitled to payment corresponding to part-performance of the contract before the termination date. The first paragraph of Article II.13.3 shall apply.

ARTICLE I.9 – INTER-INSTITUTIONAL FRAMEWORK CONTRACT

- I.9.1** This FWC is inter-institutional. The lead contracting authority shall act on its own behalf and on behalf of the entities listed in the heading of the FWC ('the contracting authorities') for which it has received power of attorney before FWC signature. The lead contracting authority shall sign the FWC and possible amendments on behalf of itself and all other contracting authorities.
- I.9.2** The European Commission shall be the lead contracting authority responsible for the FWC, representing all participating contracting authorities. Each contracting authority is responsible for particular order forms they award.
- I.9.3** In the event of the contractor having a complaint in relation to the conclusion, execution or termination of an order form, the contractor shall remain bound to its obligations under the FWC and other order forms. Without prejudice to Article 1.7, the contractor expressly undertakes not to suspend the execution of other orders or specific contracts or to use them to effect compensation.

ARTICLE I.10 – OTHER SPECIAL CONDITIONS

1.10.1 Delivery: 'Consignment note'

The provisions relating to the consignment note set out in Article II.1.1 c) of the General Conditions shall not apply.

1.10.2 Certificate of conformity

The provisions relating to the certificate of conformity set out in Article II.1.2 of the General Conditions shall not apply.

1.10.3 Pre-financing guarantees

The provisions relating to the pre-financing guarantees set out in Article II.1.4.5 of the General Conditions shall not apply.

1.10.4 Payment of the balance

The provisions relating to the payment of the balance set out in Article II.1.4.6 of the General Conditions shall not apply.

1.10.5 Assembly

The provisions relating to the certificate of conformity set out in Article II.1.5 of the General Conditions shall not apply.

1.10.6 General provisions concerning goods "Guarantee"

The guarantee provisions of Article II.1.7 b) of the General Conditions shall not apply.

1.10.5 Subscription management software

The Commission reserves the right to use the subscription management software provided free of charge by the contractor on its website for placing or cancelling orders or changing subscription addresses and recipients directly.

Any order placed using this software shall be deemed equivalent to an order form and shall therefore be regarded as a standard contract.

SIGNED

For the contractor,

For the contracting authority,

[*company name/forename/surname/function*]

[*forename/surname/function*]

signature[s]: _____

signature[s]: _____

Done at [Brussels], [date]

Done at [Brussels], [date]

in duplicate in English.

II – GENERAL CONDITIONS APPLICABLE TO FRAMEWORK SUPPLY CONTRACTS

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

Whenever the contracting authority wishes goods to be supplied, it shall send an order form to the contractor, in duplicate, specifying the terms of supply of the goods, such as quantity, designation, quality, price, place of delivery and time allowed for delivery, in accordance with the conditions laid down in the FWC.

Within the period indicated in Article I.4, the contractor shall return one original of the order form, duly signed and dated, thereby acknowledging receipt of the order and acceptance of the terms.

II.1.1 Delivery

a) Time allowed for delivery

The time allowed for delivery shall be calculated in accordance with Article I.4.

b) Date, time and place of delivery

The contracting authority shall be notified in writing of the exact date of delivery within the period indicated in Article I.4. All deliveries shall be made at the agreed place of delivery during the hours indicated in Article I.4.

The contractor shall bear all costs and risks involved in delivering the goods to the place of delivery.

c) Consignment note

Each delivery shall be accompanied by a consignment note in duplicate, duly signed and dated by the contractor or his carrier, giving the order number and particulars of the goods delivered. One copy of the consignment note shall be countersigned by the contracting authority and returned to the contractor or to its carrier.

II.1.2 Certificate of conformity

Signing of the consignment note by the contracting authority, as provided for in Article II.1.1(c), is simply an acknowledgement of the fact that the goods have been delivered and in no way implies conformity of the goods with the order.

Conformity of the goods delivered shall be evidenced by the signing of a certificate to this effect by the contracting authority no later than one month after the date of delivery, unless stated otherwise in the special conditions or in the tender specification (Annex I).

Conformity shall be declared only where the conditions laid down in the FWC and in the order form are satisfied and the goods conform to the tender specification (Annex I).

Where, for reasons attributable to the contractor, the contracting authority is unable to accept the goods, the contractor shall be notified in writing at the latest by the deadline for conformity.

II.1.3 Conformity of the goods delivered with the FWC

- a) The goods delivered by the contractor to the contracting authority must conform in quantity, quality, price and packaging with the FWC and the relevant order form.
- b) The goods delivered must:
 - i) correspond to the description given in the tender specification (Annex I) and possess the characteristics of the goods supplied by the Contractor to the contracting authority as a sample or model;
 - ii) be fit for any specific purpose required of them by the contracting authority and made known to the contractor at the time of conclusion of the FWC and accepted by the contractor;
 - iii) be fit for the purposes for which goods of the same type are normally used;
 - iv) demonstrate the quality and performance which are normal in goods of the same type and which the contracting authority can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made by the contractor, the producer or its representative, particularly in advertising or on labelling;
 - v) be packaged according to the usual method for goods of the same type or, failing this, in a way designed to preserve and protect them.

II.1.4 Remedy

- a) The contractor shall be liable to the contracting authority for any lack of conformity which exists at the time the goods are verified.
- b) In the event of lack of conformity, without prejudice to Article II.11 regarding liquidated damages applicable to the total price of the goods concerned, the contracting authority shall be entitled:
 - i) either to have the goods brought into conformity, free of charge, by repair or replacement;
 - ii) or to have an appropriate reduction made in the price.
- c) Any repair or replacement shall be completed within a reasonable time and without any significant inconvenience to the contracting authority, taking account of the nature of the goods and the purpose for which they are required by the contracting authority.
- d) The term 'free of charge' cited in subparagraph (b) above refers to the costs incurred in bringing the goods into conformity, specifically the cost of postage, labour and materials.

II.1.5 Assembly

If provided for in the tender specification (Annex I), the contractor shall assemble the goods delivered within a period of one month unless otherwise specified in the special conditions.

Any lack of conformity resulting from incorrect installation of the goods delivered shall be deemed to be equivalent to lack of conformity of the goods if installation forms part of the contract and the goods were installed by the contractor or under his responsibility. This shall also apply if the product was to be installed by the contracting authority and was incorrectly assembled owing to a shortcoming in the assembly instructions.

II.1.6 Services provided to goods

If required by the tender specification (Annex I), services relating to the goods shall be provided accordingly.

II.1.7 General provisions concerning goods

a) Packaging

The goods shall be packaged in strong boxes or crates or in any other way that ensures that the contents remain intact and prevents damage or deterioration. Packaging, pallets, etc., including contents, shall not weigh more than 500 kg.

Unless otherwise specified in the special conditions or in the tender specification (Annex I), pallets shall be considered as one-way packaging and shall not be returned. Each box shall be clearly labelled with the following information:

- i) name of the contracting authority and address for delivery;
- ii) name of contractor;
- iii) description of contents;
- iv) date of delivery;
- v) number and date of order form;
- vi) EC code number of article.

b) Guarantee

The goods shall be guaranteed against all defects in manufacture or materials for two years from the date of delivery, unless provision is made for a longer period in the tender specification (Annex I).

The contractor shall guarantee that any permits and licences required for manufacturing and selling the goods have been obtained.

The contractor shall replace at his/her own expense, within a reasonable time limit to be determined by agreement between the parties, any items which become damaged or defective in the course of normal use during the guarantee period. This shall be done within a reasonable time limit to be determined by agreement between the parties.

The contractor is responsible for any conformity defect which exists at the time of delivery, even if this defect does not appear until a later date.

The contractor is also responsible for any conformity defect which occurs after delivery and is ascribable to non-compliance with his/her obligations, including failure to provide a guarantee that, for a certain period, goods used for the purposes for which they are normally used or for a specific purpose will retain their qualities or characteristics as specified.

If part of an item is replaced, the replacement part shall be guaranteed under the same terms and conditions for a further period of the same duration as that specified above.

If a defect is found to originate in a systematic flaw in design, the contractor must replace or modify all identical parts incorporated in the other goods that are part of the order, even though they may not have been the cause of any incident. In this case, the guarantee period shall be extended as stated above.

II.1.8 General provisions on performance of the FWC

- a) The contractor shall perform the FWC to the highest professional standards.
- b) The contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the FWC under the laws and regulations in force at the place where the orders are to be executed.
- c) Any reference made to the contractor's staff in the FWC shall relate exclusively to individuals involved in the performance of the FWC.
- d) The contractor must ensure that any staff performing the FWC have the professional qualifications and experience required for the execution of the orders assigned to them.
- e) The contractor shall neither represent the contracting authority nor behave in any way that would give such an impression. The contractor shall inform third parties that he does not belong to the European public service.
- f) The contractor shall have sole responsibility for the staff who execute the tasks assigned to it.

The contractor shall make provision for the following employment or service relationships with its staff:

- i) staff carrying out the tasks assigned to the contractor may not be given orders directly by the contracting authority;
 - ii) the contracting authority may not under any circumstances be considered to be the employer of the staff referred to in (i) above and the said staff shall undertake not to invoke in respect of the contracting authority any right arising from the contractual relationship between the contracting authority and the contractor.
- g) In the event of disruption resulting from the action of a member of the contractor's staff working on the premises of the contracting authority or in the event of the experience and/or expertise of a member of the contractor's staff failing to correspond to the profile required by the FWC, the contractor shall replace them without delay. The contracting authority shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff must have the necessary qualifications and be capable of performing the FWC under the same contractual conditions. The contractor shall be responsible for any delay in the execution of the orders resulting from the replacement of staff.
- h) Should any unforeseen event, action or omission directly or indirectly hamper execution of the FWC, either partially or totally, the contractor shall immediately and on its own initiative record it and report it to the contracting authority. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the contractor to ensure full compliance with its obligations under the FWC. In such event the contractor shall give priority to solving the problem rather than to determining liability.
- i) Should the contractor fail to perform its obligations under the FWC, the contracting authority may - without prejudice to its right to terminate the FWC - reduce or recover payments in proportion to the scale of the failure. In addition, the contracting authority may claim compensation or impose liquidated damages, as provided for in Article II.12.

ARTICLE II.2 – MEANS OF COMMUNICATION

II.2.1 Any communication relating to the FWC or to its performance shall be made in writing and shall bear the FWC number. Any communication is deemed to have been made when it is received by the addressee, unless otherwise provided for in this FWC.

II.2.2 Electronic messages shall be deemed to have been received on the day of dispatch, provided the message is sent to the addressees listed in Article I.6. Without prejudice to the above, if the sending party receives a non-delivery message or an out-of-office reply, it shall make every effort to ensure that the other party actually receives the message.

Electronic messages must be followed by an original signed paper version of the message concerned if any of the parties so requests, provided that this request is submitted without any unjustified delay. The sender shall send the original signed paper version without unjustified delay.

II.2.3 Mail sent using the postal services is deemed to have been received by the contracting authority on the date on which it is registered by the department responsible referred to in Article I.6.

Any formal notification shall be made by registered mail with acknowledgement of receipt or equivalent, or by equivalent electronic means.

ARTICLE II.3 – LIABILITY

II.3.1 The contractor shall be solely responsible for complying with any legal obligations incumbent on it.

II.3.2 The contracting authority shall not be held liable for any damage caused or sustained by the contractor, including any damage caused by the contractor to third parties during or as a consequence of performance of the FWC, except in the event of wilful misconduct or gross negligence on the part of the contracting authority.

II.3.3 The contractor shall be held liable for any loss or damage sustained by the contracting authority in the performance of the FWC, including in the event of subcontracting, and for any claim by a third party, but only to an amount not exceeding three times the total amount of the relevant order. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or by its staff or subcontractors, the contractor shall remain liable without any limitation as to the amount of the damage or loss.

II.3.4 The contractor shall indemnify and hold the Union harmless for all damages and costs incurred due to any claim. It shall provide compensation in the event of any action, claim or proceeding brought against the contracting authority by a third party as a result of damage caused by the contractor in performance of the FWC. In the event of any action brought by a third party against the contracting authority in connection with performance of the FWC, the contractor shall assist the contracting authority. Such expenditure incurred by the contractor may be borne by the contracting authority.

II.3.5 The contractor shall take out insurance against risks and damage relating to performance of the FWC if required by the relevant applicable legislation. It shall take out supplementary insurance as reasonably required by standard practice in the industry. Copies of all the relevant insurance contracts shall be sent to the contracting authority should it so request.

ARTICLE II.4 – CONFLICT OF INTERESTS

II.4.1 The contractor shall take all the necessary measures to prevent a conflict of interests. Such a situation could arise where the impartial and objective performance of the FWC is compromised as a result of economic interest, political or national affinity, family or emotional ties, or any other shared interest.

II.4.2 Any situation constituting or likely to lead to a conflict of interest during the performance of the FWC shall be notified to the contracting authority in writing without delay. The contractor shall immediately take all the necessary steps to rectify the situation. The contracting authority reserves the right to verify that the steps taken are appropriate and may require that additional steps be taken within a specified deadline.

II.4.3 The contractor declares that it has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, insomuch as it is an incentive or reward relating to performance of the FWC.

II.4.4 The contractor shall pass on all the relevant obligations in writing to its staff and to any natural person with the power to represent it or take decisions on its behalf and shall ensure that the persons concerned are not placed in a situation which could give rise to a conflict of interests. The contractor shall also pass on all the relevant obligations in writing to third parties involved in the performance of the FWC, including subcontractors.

ARTICLE II.5 – CONFIDENTIALITY

II.5.1. The contracting authority and the contractor shall treat as confidential any written or oral information or documents, in any form, linked to the performance of the FWC and identified in writing as confidential.

The contractor shall:

- a) not use confidential information or documents for any purpose other than fulfilling its obligations under the FWC or order form without the prior written agreement of the contracting authority;
- b) ensure that such confidential information and documents are afforded the same level of protection that would be applied to its own confidential information, and that such protection on no account falls below a reasonable level;
- c) not disclose, directly or indirectly, confidential information or documents to third parties without the prior written agreement of the contracting authority.

II.5.2 The confidentiality obligation set out in Article II.5.1 shall be binding on the contracting authority and the contractor during the performance of the FWC and for a period of five years starting from the date of the payment of the balance unless:

- a) the party concerned agrees to release the other party from the confidentiality obligation earlier;
- b) the confidential information becomes public by a means other than the disclosure by the party bound by the confidentiality obligation, in breach of that obligation;
- c) the disclosure of the confidential information is required by law.

II.5.3 The contractor shall obtain from any natural person with the power to represent it or take decisions on its behalf, and from third parties involved in the performance of the FWC or order form, an undertaking that they will comply with the confidentiality obligation set out in Article II.5.1.

ARTICLE II.6 – PROCESSING OF PERSONAL DATA

II.6.1 Any personal data included in the FWC shall be processed pursuant to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Such data shall be processed by the data controller solely for the purposes of the performance, management and monitoring of this FWC without prejudice to possible transmission to the bodies charged with a monitoring or inspection task under Union law.

II.6.2 The contractor shall have the right of access to its personal data and the right to rectify any such data. The contractor should address any queries concerning the processing of its personal data to the data controller.

II.6.3 The contractor shall have right of recourse at any time to the European Data Protection Supervisor.

II.6.4 Where the FWC requires the processing of personal data by the contractor, the contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data, and the means by which the data subject may exercise its rights.

II.6.5 The contractor shall limit access to the data to the staff strictly necessary for the performance, management and monitoring of the FWC.

II.6.6 The contractor undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:

- a) prevent any unauthorised person from having access to computer systems processing personal data, and especially:
 - i) unauthorised reading, copying, alteration or removal of storage media;

- ii) unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;
- iii) unauthorised persons from using data-processing systems by means of data transmission facilities;
- b) ensure that authorised users of a data-processing system can access only the personal data that their right of access allows them to consult;
- c) record which personal data have been communicated, when and to whom;
- d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting authority;
- e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- f) design its organisational structure in such a way that it meets data protection requirements.

ARTICLE II.7 – SUBCONTRACTING

- II.7.1** The contractor shall not subcontract without prior written authorisation from the contracting authority nor cause the FWC to be performed in fact by third parties.
- II.7.2** Even where the contracting authority authorises the contractor to subcontract to third parties, it shall nevertheless remain bound by its contractual obligations and shall be solely responsible for the proper performance of this FWC.
- II.7.3** The contractor shall make sure that the subcontract does not affect rights and guarantees to which the contracting authority is entitled by virtue of the FWC, notably Article II.16.

ARTICLE II.8 – AMENDMENTS

- II.8.1** Any amendment to the FWC or order form shall be made in writing before any contractual obligations are fulfilled. An order form may not be deemed to constitute an amendment to the FWC.
- II.8.2** The amendment may not have the purpose or the effect of making changes to the FWC or order forms which might call into question the decision awarding the FWC or order form or result in unequal treatment of tenderers or contractors.

ARTICLE II.9 – ASSIGNMENT

- II.9.1** The contractor shall not assign the rights, including claims for payments, and obligations arising from the FWC, in whole or in part, without prior written authorisation from the contracting authority.
- II.9.2** In the absence of such authorisation or in the event of failure to observe the terms thereof, assignment of rights or obligations by the contractor shall not be enforceable against and shall have no effect on the contracting authority.

ARTICLE II. 10 – FORCE MAJEURE

- II.10.1** ‘Force majeure’ means any unforeseeable and exceptional situation or event beyond the parties' control which prevents either of them from fulfilling any of their obligations under the FWC, which was not attributable to error or negligence on their part or on the part of subcontractors and which proves to be inevitable in spite of exercising due diligence. Any failing in a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of force majeure, or any labour disputes, strikes or financial difficulties, cannot be invoked as force majeure.
- II.10.2** A party faced with force majeure shall formally notify the other party without delay, stating the nature, likely duration and foreseeable effects.
- II.10.3** The party faced with force majeure shall not be held in breach of its contractual obligations if it has been prevented from fulfilling them by force majeure. Where the contractor is unable to perform its contractual obligations owing to force majeure, it shall have the right to remuneration only for tasks actually executed.
- II.10.4** The parties shall take all the necessary measures to limit any damage due to force majeure.

ARTICLE II. 11 – LIQUIDATED DAMAGES

The contracting authority may impose liquidated damages should the contractor fail to complete its contractual obligations or to comply with the quality level required according to the tender specification.

Should the contractor fail to perform its contractual obligations within the time limits set by the FWC or the relevant order form, then, without prejudice to the contractor's actual or potential liability or to the contracting authority's right to terminate the FWC or the relevant order form, the contracting authority may impose liquidated damages for each and every calendar day of delay according to the following formula:

$$0.3 \times (V/d)$$

V is the price of the relevant purchase;

d is the duration specified in the relevant order form or, failing that, the period between the date specified in Article I.4.1 and the date of delivery or performance specified in the relevant order form, expressed in calendar days.

The contractor may submit arguments against this decision within 30 days of receipt of the formal notification. In the absence of a reaction on its part or of written withdrawal by the contracting authority within 30 days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable.

The parties expressly acknowledge and agree that any sums payable under this article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses incurred due to failure to fulfil obligations.

ARTICLE II. 12 – SUSPENSION OF THE PERFORMANCE OF THE FWC

II.12.1 Suspension by the contractor

The contractor may suspend the performance of the FWC or order form or any part thereof if a case of force majeure makes such performance impossible or excessively difficult. The contractor shall inform the contracting authority about the suspension without delay, giving all the necessary reasons and details and the envisaged date for resuming the performance of the FWC or order form.

Once the circumstances allow performance to be resumed, the contractor shall inform the contracting authority immediately, unless the contracting authority has already terminated the FWC or order form.

II.12.2 Suspension by the contracting authority

The contracting authority may suspend the performance of the FWC or order form or any part thereof:

- a) if the FWC or order form award procedure or the performance of the FWC prove to have been subject to substantial errors, irregularities or fraud;
- b) in order to verify whether alleged substantial errors, irregularities or fraud have actually occurred.

Suspension shall take effect on the day the contractor receives formal notification, or at a later date provided in the notification. The contracting authority shall as soon as possible give notice to the contractor to resume the suspended delivery or provision of related services or inform the contractor that it is proceeding with termination of the FWC or order form. The contractor shall not be entitled to claim compensation on account of suspension of the FWC or order form or of part thereof.

ARTICLE II. 13 – TERMINATION OF THE FWC

II.13.1 Grounds for termination

The contracting authority may terminate the FWC or an order form in the following circumstances:

- a) if a change to the contractor's legal, financial, technical, organisational or ownership situation is likely to affect the performance of the FWC or order form substantially or call into question the FWC award decision;
- b) if execution of the tasks under a pending order form has not actually commenced within 15 days of the date foreseen, and the new date proposed, if any, is considered unacceptable by the contracting authority, taking into account Article II.8.2;
- c) if the contractor does not perform the FWC or an order form in accordance with the tender specification or fails to fulfil another substantial contractual obligation; termination of three or more order forms for this reason shall constitute grounds for termination of the FWC;

- d) in the event of force majeure notified in accordance with Article II.10 or if the performance of the FWC or order form has been suspended by the contractor as a result of force majeure, notified in accordance with Article II.12, where either resuming performance is impossible or the modifications to the FWC or order form might call into question the decision awarding the FWC or order form, or result in unequal treatment of tenderers or contractors;
- e) if the contractor is declared bankrupt, is being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- f) if the contractor or any natural person with the power to represent it or take decisions on its behalf has been found guilty of professional misconduct proven by any means;
- g) if the contractor is not in compliance with its obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established or with those of the country of the applicable law of this FWC or those of the country where the FWC is to be performed;
- h) if the contracting authority has evidence that the contractor or any natural persons with the power to represent it or take decisions on its behalf have committed fraud, corruption, or are involved in a criminal organisation, money laundering or any other illegal activity detrimental to the Union's financial interests;
- i) if the contracting authority has evidence that the contractor or any natural persons with the power to represent it or take decisions on its behalf have committed substantial errors, irregularities or fraud in the award procedure or the performance of the FWC, including in the event of submission of false information;
- j) if the contractor is unable, through its own fault, to obtain any permit or licence required for performance of the FWC or order form;
- k) if the needs of the contracting authority change and it no longer requires new supplies under the FWC.

II.13.2 Procedure for termination

Where the contracting authority intends to terminate the FWC or order form, it shall formally notify the contractor of its intention, specifying the grounds. The contracting authority shall invite the contractor to make any observations and, in the case referred to in Article II.14.1(c), to inform the contracting authority of the measures taken to continue the fulfilment of its contractual obligations, within 30 days of receipt of the notification.

If the contracting authority does not confirm acceptance of these observations by giving written approval within 30 days of receipt, the termination procedure shall proceed. In all cases of termination the contracting authority shall formally notify the contractor of its decision to terminate the FWC or order form. In the cases referred to in points (a), (b), (c), (e), (g), (j), (k) and (l) of Article II.13.1 the formal notification shall specify the date on

which the termination takes effect. In the cases referred to in points (d), (f), (h), and (i) of Article II.13.1 the termination shall take effect on the day following the date on which notification of termination is received by the contractor.

II.13.3 Consequences of termination

In the event of termination, the contractor shall waive any claim for consequential damages, including any loss of anticipated profits as a result of uncompleted work. On receipt of the notification of termination, the contractor shall take all the appropriate measures to minimise costs, prevent damages, and cancel or reduce its commitments. The contractor shall have 60 days from the date on which termination takes effect to draw up the documents required by the special conditions or order forms for the tasks already executed on the date of termination and produce an invoice if necessary. The contracting authority may recover any amounts paid under the FWC.

The contracting authority may claim compensation for any damage suffered in the event of termination.

On termination the contracting authority may engage any other contractor to supply the goods and execute or complete the related services. The contracting authority shall be entitled to claim from the contractor all extra costs incurred in this regard, without prejudice to any other rights or guarantees it may have under the FWC.

ARTICLE II.14 – REPORTING AND PAYMENTS

II.14.1 Date of payment

Payments shall be deemed to be effected on the date on which the contracting authority's account is debited.

II.14.2 Currency

The FWC shall be in euros.

Payments shall be executed in euros or in the local currency provided for in Article I.5.

Conversion between the euro and another currency shall be made according to the daily euro exchange rate published in the Official Journal of the European Union or, failing that, at the monthly accounting exchange rate established by the European Commission and published on its website, applicable on the day on which the payment order is issued by the contracting authority.

II.14.3 Transfer costs

The cost of the transfer shall be divided as follows:

- a) the cost of dispatch charged by the contracting authority's bank shall be borne by the contracting authority,
- b) cost of receipt charged by the bank of the contractor are borne by the contractor,
- c) the full cost of any additional transfer for which one of the parties is responsible shall be borne by that party.

II.14.4 Invoices and value added tax

Invoices shall bear the contractor's name and address, the amount, the currency and the date, as well as the FWC reference and the reference of the order form.

Invoices shall indicate the contractor's place of taxation for value added tax (VAT) purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

The contracting authority is, as a rule, exempt from all taxes and duties, including VAT, pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.

The contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for performance of the FWC are exempt from taxes and duties, including VAT.

II.14.5 Pre-financing and performance guarantees

Pre-financing guarantees shall remain in force until the pre-financing is cleared against payment of the balance and, where the latter takes the form of a debit note, for three months after the debit note has been notified to the contractor. The contracting authority shall release the guarantee within the following month.

Performance guarantees shall cover delivery of goods and performance of the related services, in accordance with the terms set out in the tender specification, until their final acceptance by the contracting authority. The amount of the performance guarantee shall not exceed the total value of the order form. The guarantee shall remain in force until final acceptance. The contracting authority shall release the guarantee within a month of the date of final acceptance.

Where, in accordance with Article I.4, a financial guarantee is required for the payment of pre-financing, or as a performance guarantee, it shall fulfil the following conditions:

- a) the financial guarantee shall be provided by a bank or an approved financial institution or, at the request of the contractor and with the agreement of the contracting authority, by a third party;
- b) the guarantor shall stand as first-call guarantor and shall not require the contracting authority to have recourse against the principal debtor (the contractor).

The cost of providing such a guarantee shall be borne by the contractor.

II.14.6 Payment of the balance

The contractor shall submit an invoice within 60 days of receipt of the certificate of conformity of the goods signed by the contracting authority, accompanied by a final report or any other documents provided for in the FWC or in the order form.

Upon receipt, the contracting authority shall pay the amount due as final payment, within the periods specified in Article I.4, provided the invoice and documents have been approved and without prejudice to Article II.14.7. Approval of the invoice and documents shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information they contain.

Payment of the balance may take the form of recovery.

II.14.7 Suspension of the time allowed for payment

The contracting authority may suspend the payment periods specified in Article I.4 at any time by notifying the contractor that its invoice cannot be processed, either because it does not comply with the provisions of the FWC, or because the appropriate documents have not been produced.

The contracting authority shall inform the contractor in writing as soon as possible of any such suspension, giving the reasons for it.

Suspension shall take effect on the date the notification is sent by the contracting authority. The remaining payment period shall start to run again from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds two months, the contractor may request the contracting authority to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph and the new document produced is also rejected, the contracting authority reserves the right to terminate the order form in accordance with Article II.13.1(c).

II.14.8 Late payment interest

On expiry of the payment periods specified in Article I.4, and without prejudice to Article II.15.7, the contractor is entitled to late payment interest at the rate applied by the European Central Bank for its main refinancing operations in euros (the reference rate) plus eight points. The reference rate shall be the rate in force on the first day of the month in which the payment period ends, as published in the C series of the Official Journal of the European Union.

The suspension of the payment period in accordance with Article II.15.7 may not be considered as a late payment.

Interest on late payment shall cover the period running from the day following the due date for payment up to and including the date of actual payment as defined in Article II.14.1.

However, if the calculated interest does not exceed EUR 200, it shall be paid to the contractor only if it submits a request within two months of receipt of the late payment.

ARTICLE II. 15 – RECOVERY

II.15.1 If an amount is to be recovered under the terms of the FWC, the contractor shall repay the contracting authority the amount in question according to the terms and by the date specified in the debit note.

II.15.2 If the obligation to pay the amount due is not honoured by the date set by the contracting authority in the debit note, the amount due shall bear interest at the rate indicated in Article II.14.8. Interest on late payments shall cover the period

from the day following the due date for payment up to and including the date when the contracting authority receives full payment of the amount owed.

Any partial payment shall first be entered against charges and interest on late payment and then against the principal amount.

- II.15.3** If payment has not been made by the due date, the contracting authority may, after informing the contractor in writing, recover the amounts due by offsetting them against any amounts owed to the contractor by the Union or by the European Atomic Energy Community or by calling in the financial guarantee, where provided for in Article I.4 or in the order form.

ARTICLE II. 16 – CHECKS AND AUDITS

- II.16.1** The contracting authority and the European Anti-Fraud Office may carry out checks or audits on the performance of the FWC. This may be done either directly by their own staff or by any other outside body authorised to do so on their behalf.

Such checks and audits may be initiated during the performance of the FWC and for a period of five years from its date of expiry.

The audit procedure shall be considered to have begun on the date of receipt of the relevant letter sent by the contracting authority. Audits shall be carried out on a confidential basis.

- II.16.2** The contractor shall keep all original documents, storing them on any appropriate medium, including digital media where this is authorised by national law and the conditions laid down therein are observed, for a period of five years from the date of expiry of the FWC.

- II.16.3** The contractor shall grant the contracting authority's staff and outside staff authorised by the contracting authority appropriate access to the sites and premises where the FWC is being performed and to all the information, including information in electronic format, needed to conduct such checks and audits. The contractor shall ensure that the information is readily available at the time of the check or audit and, if requested to do so, shall transmit it in an appropriate form.

- II.16.4** On the basis of the audit findings, a provisional report shall be drawn up. It shall be sent to the contractor, which will have 30 days from the date of receipt to submit observations. The final report shall be sent to the contractor within 60 days of expiry of that deadline.

On the basis of the final audit findings, the contracting authority may recover all or part of the payments made and may take any other measures which it considers necessary.

- II.16.5** Under Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF), OLAF may also carry out

on-the-spot checks and inspections in accordance with the procedures laid down by Union law for the protection of the financial interests of the Union against fraud and other irregularities. Where appropriate, the findings may lead to recovery by the contracting authority.

II.16.6 The Court of Auditors shall have the same rights as the contracting authority, notably right of access, for the purpose of checks and audits.



FRAMEWORK CONTRACT ORDER FORM

EUROPEAN COMMISSION

DG and unit:

Order No: _____

(Name and address of contractor)

Currency of payment: EUR

Tel. _____

Tender (date and reference): _____

E-mail: _____

This order is governed by the provisions of Framework Contract No _____
in force from _____ to _____

LIST OF THE SUPPLIES / SERVICES and code	UNIT	QUANTITY	PRICE in €	
			UNIT PRICE	TOTAL
-				
-				

Pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union, the Commission is exempt from all taxes and dues, including value-added tax, on payments due in respect of this Contract. For intra-Community purchases, the wording 'VAT Exemption / European Union / Article 151 of Council Directive 2006/112/EC' should be included on the invoice.

[In Belgium, use of this contract constitutes a request for VAT exemption No 450, VAT exemption; Article 42, paragraph 3.3 of the VAT code (Circular No 2/1978), provided the invoice includes the following wording: "Commande destinée à l'usage officiel de l'Union européenne. Exonération de la TVA; art. 42 paragraphe 3.3, du code de la TVA (circulaire n° 2/1978)'.]

Packaging

Insurance

Transport

Assembly

VAT

TOTAL:

Place of delivery or performance and/or Incoterm:

Final date of delivery or performance:

Terms of payment:

Guarantee:

Contractor's signature:

Name:

Position:

Dated

Date of issue:

Signature [name and position] [and, for Belgium, Commission stamp]:

[For Belgium, file No at the Protocol Service of the Federal Public Department for Foreign Affairs]

The invoice shall be paid only if the contractor has returned the signed order form.