

## **General terms and conditions of contract ('Terms and Conditions') for supplying services and works on behalf of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH**

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## 1. General provisions

### 1.1 Definitions

For the purposes of these Terms and Conditions, the following terms are defined as follows:

- The **'contractor'** is GIZ's contractual partner under the contract.
- The **'commission manager'** is the GIZ staff member who bears overall technical and commercial responsibility within GIZ for the project and for the achievement of objectives within the framework of the project.
- The **'Terms and Conditions'** are these General Terms and Conditions of Contract for supplying services and works on behalf of GIZ.
- **'Backstopping'** is understood to mean in particular the following services provided by the contractor: performance monitoring, steering of adaptation to changing framework conditions, ensuring the flow of information between the contractor and GIZ, personnel responsibility with respect to the contractor's experts, process-oriented technical and conceptual steering of contract implementation and ensuring the administrative management of the project.
- A **'third country'** is any country that is neither an EU member state nor the place of supply for value-added tax (VAT) purposes (as defined in section 1 of these Terms and Conditions).
- The **'country of assignment'** refers to the countries outside Germany that are named in the terms of reference and in which the contractor provides its services and works under the contract.
- **'GIZ'** is the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH.
- The **'GIZ country office'** is the GIZ country or regional office responsible for the country of assignment.
- A **'donor'** is – with the exception of the ultimate commissioning party/client – any instance that provides GIZ with financial resources to fund the project in full or in part through grants or allocations.
- **'Force majeure'** is an unavoidable event (e.g. natural disaster, outbreak of a disease or epidemic, serious unrest, war or terrorism) that no human foresight or experience could anticipate, that cannot be evaded or overcome by applying economically reasonable efforts and utmost care, and which prevents one of the parties to the contract from rendering the contractually agreed services and works. If an event originates from the sphere of responsibility of one of the parties to the contract, this does not constitute an event of force majeure.
- The **'ultimate commissioning party/client'** is the party whose commission forms the basis for the project and, as a result, also for the contract.
- The **'lead executing agency'** is the responsible body or bodies in the country of assignment (e.g. a specific ministry) or (another) institution(s) jointly selected by the government of the country of assignment and the Government of the Federal Republic of Germany that works together with GIZ as partner on behalf of the country of assignment to achieve the project objectives and which is the recipient of the services provided by GIZ on behalf of the ultimate commissioning party/client.
- The **'project'** is the specific (limited-term) GIZ measure through which GIZ implements either the commission awarded by the relevant ultimate commissioning party/client or a self-initiated measure/and on the basis of which the contract between GIZ and the contractor has been concluded.
- The **'place of supply for VAT purposes'** is the country stipulated in the contract documents as the place of supply for VAT purposes.
- **'Subcontracting'** refers to any contractual relationship between the contractor and a third party that involves the delivery by a third party of significant parts of the services and works contractually owed by the contractor. If the contractor is a **'consortium'**, the respective partners of this consortium (**'consortium partners'**) are not third parties within the scope of this definition. Any contracts between the contractor and experts that are entered into in accordance with section 2.1.1 as well as any contracts between the contractor and companies that provide experts to the contractor on a contractual basis do not constitute subcontracting in the sense described here.
- The **'subcontractor'** (subcontracting party) is the contractor's contractual partner in the framework of a subcontracting arrangement.
- The **'contract'** is the specific arrangement entered into by GIZ and the contractor, into which these Terms and Conditions have been incorporated.

## **1.2 Applicable law and components of the contract**

The contract is governed by the laws of the Federal Republic of Germany. The contractor's general terms and conditions of business or payment do not apply.

The components of the contract are:

- the contract for services and works or the contract award notification together with its respective annexes;
- these Terms and Conditions and the annexes listed in 6.4 below;
- the Standard Official Contracting Rules for Services, Part B (VOL/B);

In the event that there is any discrepancy or contradiction between the components of the contract, the above components of the contract apply in the order shown.

## **1.3 Written and text form**

Any amendments to the contract that require a change to the price schedule or the replacement of key experts must be made in written form. Text form may be used for any other amendments to the contract.

The termination of the contract or any approval by GIZ in accordance with section 6.1 regarding the assignment of the contractor's claims under the contract must be in written form. Text form may be used for any other notifications under the contract.

If documents are sent using telecommunications systems, the written form requirement is met only if the transmission takes place via the eProcurement Tender Platform used by GIZ.

## **1.4 Subcontracting services and works**

In the event that services and works are subcontracted in accordance with section 1.1, and such subcontracting is not provided for under the contract, an amendment to the contract is required in written form.

If a subcontracting arrangement is contractually agreed, but the subcontractor has not yet been named in the contract documents, the contractor must obtain GIZ's consent to selection of the subcontractor in text form.

The contractor must oblige all its subcontractors to comply with the provisions of the contract.

## **1.5 Quality of services and works**

The services and works to be provided must comply with the recognised state of the art and the generally accepted rules of technology. The relevant strategies and concepts of the overall commissioning party/client must be taken into account when providing the services and works.

## **1.6 Integrity**

### **1.6.1 Principles of integrity**

The contractor is obliged to implement suitable and adequate measures to prevent and combat corruption in connection with the performance of the contract.

In connection contract performance, the contractor must not, either itself or via third parties (i) offer, grant, accept or request for itself or for others any gifts or other advantages that exceed a market value of EUR 35 per recipient per year, or (ii) offer, grant, accept or request for itself or for others any facilitation payments.

The contractor must also report to GIZ without delay any confirmed cases or suspicions of corruption and/or offences against property (such as fraud, embezzlement or breach of trust) in connection with the performance of the contract.

### **1.6.2 Dealing with conflicts of interest**

The contractor must endeavour to avoid any conflicts with the interests of GIZ in connection with the contract. A conflict of interest may arise as a result of economic interests, family ties, friendships or other relationships.

The contractor is obliged to report to GIZ without delay any circumstances that constitute a conflict of interest or that could lead to a conflict of interest. The parties must endeavour to reach an agreement on how to deal with the conflict of interest reported by the contractor.

### 1.6.3 Contractual penalties

The contractor is obliged to pay a contractual penalty for each breach of section 1.6.1 (2) and/or section 1.6.2 (2); the amount of this penalty (i) depends on the nature and severity of the breach, (ii) is established by GIZ after due consideration and (iii) shall not exceed EUR 50,000. If a pecuniary advantage granted as a form of bribery is greater than EUR 50,000, the contractor must pay a contractual penalty equal to this pecuniary advantage. Further rights of GIZ to claim damages remain unaffected. However, contractual penalties that have already been paid must be deducted from such claims for damages.

## 1.7 Confidentiality

The contractor is obliged to treat all contract-related data and any other information related to GIZ, such as documents provided by GIZ and exchanged information, which become known to the contractor and its employees during the performance of the contract (hereinafter referred to as '**protected information**') as confidential during and beyond the performance period and, in particular, not to disclose this protected information to third parties without the consent of GIZ in text form. This provision applies even if such protected information has not been explicitly designated as secret or confidential. Protected information also includes all data and information relating to third parties (e.g. the lead executing agency) that GIZ designates as secret or confidential. In addition, the contractor may only make protected information accessible to those of its employees who need this data and information to enable the contractor to fulfil its contract performance obligations (need-to-know principle). The ultimate commissioning party/client is to be regarded as a 'third party' within the meaning of this section 1.7. Enterprises that are affiliated with the contractor in accordance with sections 15 ff. of the Stock Corporation Act (AktG) and any persons who are subject to a professional obligation of confidentiality towards the contractor (such as lawyers and tax consultants) are not to be regarded as 'third parties' under this section 1.7.

The obligation of confidentiality under this section 1.7 does not apply if and to the extent that the protected information is or becomes public knowledge without this being due to a breach of the contractual agreement by the contractor, or if this protected information was already known to the contractor when it entered into the contract with GIZ. The same stipulation applies if disclosure is required by law or is ordered by a court or another authority. The contractor undertakes to inform GIZ before disclosing protected information unless such notification is not permitted by law.

At the end of the performance period and without being asked, the contractor is obliged to return without delay any documents, aids, materials or objects received from GIZ that GIZ has not provided to the contractor for the stipulated purpose on a permanent basis. This provision also applies to all copies. Such items must be returned in accordance with a procedure that is to be defined by GIZ. GIZ is also entitled to demand the secure (i.e. non-reversible) deletion or destruction of all or part of the data or materials instead of their return. At GIZ's request, the contractor must confirm to GIZ that the deletion/destruction has been carried out and specify the deletion/destruction method used. The contractor will not receive any additional remuneration for the return, deletion or destruction.

## 1.8 Requirement for GIZ's approval for publications

Any publications regarding the contract and/or the project require prior approval by GIZ in text form, even after the contract has come to an end. GIZ approval is not required for brief descriptions of the subject matter of the contract and outlines of the work involved, where these are designed for use in the public relations work of the contractor.

For the purposes of this provision, a statement noting the subject matter of the contract and the key results constitutes a brief description. The contractor must always express in an appropriate manner that its activities are being carried out on behalf of GIZ and must also name the ultimate commissioning party/client and any other donors.

## 1.9 Use of GIZ's corporate design

When designing materials relating to the contract that are intended for use with third parties (e.g. business cards, letterheads, emails, publications, presentations), the valid version of GIZ's Corporate Design Center guidelines (<https://www.giz.de/cdc/de/html/59557.html>) must be followed. The specific design must be agreed with GIZ and, in the event of direct cooperation, also with the lead executing agency.

## **1.10 Property rights and rights of use**

### **1.10.1 Principle**

Unless otherwise agreed in the contract documents, the contractor must assign to GIZ all assignable ownership and property rights to its work results. If the work results are protected by copyright or other non-assignable property rights, the contractor must grant GIZ an exclusive and irrevocable right to use all work results that is unlimited with respect to time, location and content. If the contractor itself is the originator of the work results, the contractor must also expressly waive the right to be named as the originator; in all other cases, the contractor is obliged to ensure that the originator expressly waives the right to be named as the originator. The contractor is obliged to inform GIZ if the originator does not waive this right.

### **1.10.2 Work results**

Work results pursuant to section 1.10.1 are all material and immaterial assets created or procured in performance of the contract, in particular studies, drafts, documentation, articles, information, illustrations, drawings, calculations, plans, photos and film materials as well as any other visual presentations. Work results also include any computer programs that the contractor produces, modifies, procures or makes available in performance of the contract.

### **1.10.3 Existing work products**

The assignment of rights of use pursuant to section 1.10.1 above also applies to material and immaterial assets, including computer programs, that the contractor has acquired or created either before the date on which the contract comes into force or outside the scope of the contract, and that are supplied from the contractor's existing work products in performance of the contract. If the contractor has notified GIZ in text form prior to providing services and works that such products exist, the contractor must only grant GIZ a non-exclusive right of use to the relevant products. If the existing assets are substantially changed in fulfilment of the contract so that a new product is created, section 1.10.1 applies in relation to the new product; section 1.10.3 does not apply in this respect.

### **1.10.4 Scope of rights of use**

The rights of use granted to GIZ under sections 1.10.1 and 1.10.3 above include in each case the right to use the work results and existing work products without limitation with respect to time, content or location. In particular, this includes:

- (a) the right to duplicate, in full or in part, record, distribute or make accessible to the public through any printed materials and media and in electronic form using any storage media (e.g. DVDs, CDs, memory chips) or computer programs; such distribution and making accessible to the public may be in physical or intangible form, e.g. through oral presentation, including on radio and television, or online, in particular via the internet or intranets, through reproduction on or location monitors or as downloads,
- (b) the right to process (including redesigned, shortened and supplemented versions) and translate or transfer into other languages or forms of presentation, including the right to produce audio, image, text formats and subtitling, by GIZ or by third parties contracted by GIZ;
- (c) the right to adapt for film and broadcasting purposes, in particular through corresponding processing for the purpose of filming and sound recording and the unrestricted right to their public communication, e.g. through oral presentation, screening or performance, also the right to the recording and public communication of image and audio storage media created in this context, in unprocessed or processed form;
- (d) the right to load, display, run, transmit, save, modify, translate, edit and reproduce the computer programs referred to in section 1.10.2 in unlimited quantities. For the purpose of processing, the contractor must provide GIZ with the relevant source code and program documentation, which GIZ may also pass on to third parties in the form of copies, as well as
- (e) the right of utilisation also outside the project.

### **1.10.5 Potential extension of rights of use to include forms of use unknown at the time of entry into the contract**

At GIZ's request, the contractor must further assign to GIZ an exclusive right that is unlimited with respect to time, location and content to use the work results and the existing products in ways unknown at the time of entry into the contract.

In such cases, GIZ and the contractor must agree appropriate remuneration separately.

#### **1.10.6 Assignment to third parties by GIZ**

GIZ is further entitled to assign to third parties the rights of use already granted or to grant non-exclusive rights of use to third parties; however, in the case of non-exclusive rights of use under section 1.10.3 above, this is limited to the assignment and granting of rights to the ultimate commissioning party/client, the lead executing agency and any other parties involved in the project.

#### **1.10.7 Freedom from third-party rights**

The contractor warrants that the work results and the existing stocks of products used are free from any copyright or other third-party rights that would prejudice the use to the extent described above. The contractor must defend GIZ from all claims arising from an infringement of industrial property rights, copyrights or any other property rights due to the use of the work results and existing work products as agreed in the contract and must meet all costs and damages imposed on GIZ by a court of law, insofar as GIZ has informed the contractor without delay of any such claims and the contractor retains the ability to take defensive action or negotiate a settlement. The aforementioned obligation on the part of the contractor does not apply if the contractor is not responsible for the infringement of the rights.

#### **1.10.8 Compensation**

The contractually agreed remuneration also covers the granting of rights of use.

#### **1.10.9 Contractor's right of use for its own purposes**

GIZ may grant a right of use for the work results to the contractor in text form. GIZ will permit such use if and to the extent the contractor can demonstrate a legitimate interest and this does not conflict with GIZ's interests. The contractor must name GIZ with every use of the work results unless GIZ objects to its name being mentioned.

#### **1.11 Data protection**

**1.11.1** The contractor must comply with the requirements of the applicable data protection regulations and require such compliance from its employees.

**1.11.2** The contractor must indemnify GIZ against all claims arising from the violation of the provisions in section 1.11.1 above and of the applicable data protection regulations, and must reimburse GIZ for all costs incurred in connection with its corresponding legal defence or the imposition of government sanctions. This provision does not apply if the contractor is not responsible for the breach.

**1.11.3** If GIZ and the contractor are joint controllers for the processing of personal data within the meaning of Article 26 of the EU General Data Protection Regulation (GDPR), they must enter into a corresponding agreement on the basis of Annex 1 to these Terms and Conditions.

**1.11.4** If the contractor processes personal data for GIZ within the meaning of Article 4 (8) of the GDPR, GIZ and the contractor must enter into a corresponding agreement on the basis of Annex 2 to these Terms and Conditions.

#### **1.12 Transfer of obligations from sanction regimes to the contractor**

The contractor must not make the funds or any other economic resources that it has received from GIZ available, either directly or indirectly, to third parties that are included on a United Nations and/or EU sanctions list.

When implementing the contract, the contractor must also comply with all embargoes and other trade restrictions imposed by the United Nations, the EU or the Federal Republic of Germany.

The contractor must notify GIZ without delay and of its own volition of any violation of the provisions of paragraphs 1 and 2 of this section 1.12.

The contractor must notify GIZ without delay and of its own volition if the contractor, its owners or persons with control (within the meaning of Article 1 (5) or (6) EU Regulation No. 2580/2001) or its employees are placed on a sanctions list published by the United Nations or the EU. The same applies if the contractor learns of an event that could lead to inclusion on such a list.

## **1.13 Fulfilment of the requirements of the Code of Conduct**

### **1.13.1 Obligation to provide information and compliance with the Code of Conduct**

At GIZ's request, the contractor is obliged to procure and provide the information and documents stipulated in the request insofar as these are required by GIZ to meet all of the regulatory requirements resulting from the contractual relationship. This obligation does not apply to sensitive and confidential information relating to the company or personal data. 'Regulatory requirements' in the meaning of this section 1.13.1 may result in particular, but not exclusively, from the following legislation:

- (i) The German Supply Chain Act (*LkSG*);
- (ii) Regulation (EC) no. 1907/2006 (REACH Regulation).

Under *LkSG*, GIZ is obliged, among other things, to identify human rights and environmental risks to which its contractors are exposed. GIZ appreciates contractors establishing their own robust risk management systems in order to identify and address human rights and environmental risks and violations in their own business areas and supply chains.

With regard to its own business activities, the contractor must guarantee that it acts in accordance with the Code of Conduct for Contractors of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH (hereinafter referred to as the '**Code of Conduct**'), which is attached as Annex 3 to these Terms and Conditions. The contractor must notify GIZ without delay if it identifies any violation of the code or any risk of such a violation.

### **1.13.2 Preventive measures**

#### **1.13.2.1 Principle**

If the contractor and/or GIZ identifies a risk of a breach of the Code of Conduct or suspect such a breach by the contractor and/or its suppliers, the contractor and GIZ must agree on appropriate preventive measures and the contractor must implement these accordingly.

#### **1.13.2.2 Training**

Agreement on appropriate preventive measures may include, among other things, the contractor undertaking to participate in training courses held by GIZ on compliance with the human rights and environmental obligations stipulated in the Code of Conduct and to appropriately address such obligations in the wider supply chain as well as confirming participation in the training to GIZ on request. Alternatively, the contractor and GIZ may agree that the contractor confirms to GIZ in text form that it will (i) comply with the provisions of the Code of Conduct and (ii) verifiably conduct its own training or other equally suitable preventive measures.

#### **1.13.2.3 Controls**

If GIZ identifies risks of compliance with regard to the Code of Conduct or with any supplementary agreements on preventive measures and has informed the contractor, GIZ is entitled to check compliance by the contractor. The control measures taken by GIZ must be appropriate and, in particular, give due consideration to the contractor's justified concerns. Possible control measures include, in particular, obtaining comprehensive disclosure or conducting on-site inspections by GIZ or an authorised third party. All control measures are restricted to compliance with the human-rights and environment-related obligations laid down in the Code of Conduct.

### **1.13.3 Remedial measures**

#### **1.13.3.1 Joint remedial action plan**

In the event that the contractor violates its obligations under the Code of Conduct, GIZ and the contractor must first jointly draw up a remedial action plan. This joint plan must also include a schedule for implementing the remedial measures stipulated in the plan as well as an agreement on the appropriate sharing of the costs of such measures. In accordance with section 1.13.2.3, GIZ is also entitled to conduct appropriate control measures to ensure contractor's compliance with the joint remedial action plan.

#### **1.13.3.2 Legal consequences if the joint remedial action plan fails**

If the contractor fails to implement the measures provided for in the joint remedial action plan, GIZ is entitled to suspend fulfilment of the contract after a reasonable period for implementing such remedial measures, set by GIZ, has elapsed, and until the measures provided for in the joint remedial plan have been implemented. GIZ is



also entitled to suspend fulfilment of the contract without first setting a deadline if and for as long as the implementation of the measures laid down in the joint remedial action plan does not bring about a prompt remedy. Section 4.1 does not apply.

GIZ is entitled to terminate the contract immediately if

- (i) there is a serious breach of the Code of Conduct by the contractor,
- (ii) the implementation of the measures set out in the joint remedial action plan has not remedied the situation by the deadline set out in the joint remedial action plan and a remedy no longer appears reasonably possible, and
- (iii) GIZ has no less severe means at its disposal to remedy the situation.

If GIZ terminates the contract in accordance with this section 1.13.3.2, responsibility for termination is deemed to lie with the contractor.

#### **1.13.4 Whistleblower system**

The contractor must ensure unhindered access for all of its employees to the complaints procedure set up at GIZ. This also applies to reports that human-rights or environmental obligations have been violated through the actions of an indirect supplier. In particular, the contractor is not to undertake any actions that hinder, prevent or complicate access to the complaints procedure.

#### **1.14 Ban on behaviour and performance monitoring using IT-systems**

The contractor is prohibited from using any IT-systems to monitor the behaviour or performance of GIZ staff members.

#### **1.15 Services provided by the GIZ office in the country of assignment and the HIV/AIDS workplace programme**

The contractor must ask the local GIZ country office what support it will provide for the respective project. The contractor must make use of these services if they are provided without charge.

If GIZ has an HIV/AIDS workplace programme for its national staff in the country of assignment (see Annex 4 to these Terms and Conditions), the contractor must ensure that its own national employees participate in the programme during their working hours.

#### **1.16 Partner inputs**

The contractor must make use of the partner inputs agreed in the agreements under international law (general agreements on technical cooperation, exchanges of notes), as well as in any implementation agreements or master agreements. GIZ will provide the contractor with information on the partner inputs on request.

If partner inputs were specified in the terms of reference, the contractor is obliged to notify GIZ of this without delay in text form and to inform GIZ of the effects on performance of the contract if these partner inputs are not, not fully or not properly provided, or if further inputs in addition to these partner inputs are granted; if the GIZ country office confirms that the inputs have not been provided as planned, GIZ and the contractor enter into a supplementary agreement on the impact of this situation on the contractually agreed remuneration items. If partner inputs are not, not fully or not properly provided, the contractor must make specific proposals to GIZ on what measures should be taken, with due consideration of the advantages and disadvantages.

## **2. Provision of services and works by the contractor**

### **2.1 Assignment of experts**

#### **2.1.1 Key experts and non-key experts**

The contractor assigns key experts and non-key experts to provide services and works. 'Key experts' are experts who are identified as such in the terms of reference.



The provisions laid down in sections 2.1.2 to 2.1.7 below apply accordingly if the contractor is an individual consultant; in this case, the contractor is also considered to be a key expert.

#### **2.1.2 Qualifications of the assigned experts**

The contractor is obliged to assign only such experts as are trustworthy and have the knowledge and professional experience specified in the terms of reference and in the contractor's tender.

#### **2.1.3 Duty of the contractor to provide information and assignment planning by the contractor**

The contractor must ensure that the assigned experts are adequately informed of the security situation in the country of assignment as well as of the contractual provisions on information security. If participation by the contractor and/or its experts in special preparatory courses is agreed, the preparation period does not form part of the period of assignment.

In addition, the contractor must decide independently on the specific assignment periods of the experts within the framework of the expert days used by GIZ, taking into account the project requirements. If necessary, it coordinates with GIZ and/or the lead executing agency.

#### **2.1.4 Assignment and replacement of experts at the contractor's request**

For the assignment and replacement of experts, the contractor must submit a personnel proposal (expert, job description, start of the assignment and number of expert days) to GIZ for approval in text form; in the case of key experts, however, this approval does not replace the amendment to the contract in written form required for the replacement of key experts in accordance with section 1.3.

The new expert must have at least the same qualifications as stated by the contractor for the replaced expert in its tender or, if the tender is not personalised, the new expert must have at least the qualifications laid down in the terms of reference. If this is not the case, GIZ may refuse to consent to the replacement.

If the expert offered as a replacement is equally well or better qualified, GIZ is not entitled to refuse the replacement provided the contractor can prove that there is compelling reason for the proposed replacement.

If GIZ, for legitimate reasons, has refused to consent to a replacement before the contractual start of the performance period in accordance with this section 2.1.4, and it is anticipated that the expert in question will not provide the services and works owed after the contractual start of the service period, GIZ may withdraw from the contract.

If GIZ, for legitimate reasons, refuses to consent to a replacement in accordance with this section 2.1.4, and the expert in question does not start work after the contractual start of the performance period, GIZ may terminate the contract instead; in this case, responsibility for termination is deemed to lie with the contractor.

#### **2.1.5 Replacement of an expert at GIZ's request for a compelling reason**

GIZ may demand the replacement of an expert in text form if there is a compelling reason for doing so. In particular, a compelling reason is deemed to exist in the meaning of this section 2.1.5:

- (a) if the expert does not have the professional, language or personal qualifications stated in the contractor's tender or does not meet the requirements for the provision of the services and works in terms of health,
- (b) if the expert's conduct is detrimental to the interests of the Federal Republic of Germany or of the ultimate commissioning party/client, or is objected to for understandable reasons by the government of the country of assignment or the lead executing agency;
- (c) if the expert contravenes the duties to be imposed on him/her by the contractor under these Terms and Conditions, despite having been required by the government and/or lead executing agency to conduct himself/herself in accordance with his/her duties, or if GIZ has complained about the expert's conduct to the contractor.

The contractor bears all additional costs incurred due to a need for a replacement for a compelling reason as well as any additional expenses arising for replacement personnel. If an expert is replaced following an objection by the government of the country of assignment or the lead executing agency, the contractor bears these costs only if it or its expert is responsible for the objection. If neither the contractor nor the expert concerned is responsible for the objection, section 2.1.6 applies accordingly.

#### **2.1.6 Replacement of an expert at GIZ's request for other reasons**

GIZ may also demand the replacement of one of the contractor's experts in text form for reasons not associated with the expert's conduct or qualifications (e.g. for political reasons or in the event of a crisis). In such cases,

GIZ will reimburse to the contractor any unavoidable expenses associated with the not, not replacement. If these involve salary or ancillary salary expenses for the replaced expert, these are considered avoidable if they arise more than two months after GIZ's request for replacement, unless the contractor can prove that the costs incurred beyond this period were unavoidable and that the contractor was unable to assign the expert elsewhere.

#### **2.1.7 Assignment of a new expert after GIZ's request for replacement; refusal of performance and termination in the absence of replacement**

In the event of a request for replacement in accordance with sections 2.1.5 and 2.1.6 above, the contractor must cease the assignment of the previous expert at a time to be determined by GIZ. Furthermore, the contractor must arrange for the previous expert to leave the country of assignment ahead of schedule in accordance with GIZ's instructions provided there is a compelling reason for the departure.

In addition, in the event of a request for replacement in accordance with sections 2.1.5 and 2.1.6 above, the contractor must assign a new expert without delay, at the latest however no later than three months after receipt of the request for replacement unless this is explicitly not desired by GIZ; section 2.1.4 (1) applies accordingly. After expiry of this time limit, GIZ is entitled to refuse to accept the contractor's performance in this respect; in this case, responsibility for termination is deemed lie with the contractor.

### **2.2 Special obligations relating to the performance of the contract in the country of assignment**

#### **2.2.1 Obligations with regard to the conduct of seconded experts in the country of assignment**

The contractor must undertake to ensure that the experts it seconds to the country of assignment:

- (i) to the best of their ability, contribute to the achievement of the goals laid down in Article 55 of the United Nations Charter and to the achievement of the project objectives,
- (ii) refrain from any interference in the internal affairs of the country of assignment,
- (iii) comply with the laws of the country of assignment,
- (iv) respect the customs and traditions of the country of assignment,
- (v) cooperate in a spirit of trust with the authorities of the country of assignment, in particular the lead executing agency, and
- (vi) do not engage in any economic activity in the country of assignment other than the activities covered by the contract GIZ may refuse consent in justified cases only.

The same obligations apply to the contractor itself if it is a natural person.

#### **2.2.2 Cooperation with other institutions**

The contractor and the assigned experts are obliged to cooperate with the German mission abroad, specialists working in the country of assignment, representatives of the Federal Republic of Germany working in the country of assignment and, where relevant for performance, with representatives and experts of multilateral or other organisations.

#### **2.2.3 Notification of travel dates**

The arrival and departure dates of the assigned experts must be reported to GIZ in text form without delay, as a rule at least one week before the start of the trip.

#### **2.2.4 Protective measures, health requirements**

The contractor is responsible for ensuring that it and its assigned experts meet the health requirements for the country of assignment. In particular, the contractor is obliged to arrange the necessary vaccinations required for entry of the seconded experts into the country of assignment. The contractor must provide evidence of compliance with this provision if requested by GIZ. If GIZ offers a security briefing, the contractor and seconded experts are obliged to attend.

#### **2.2.5 Obligation to notify in country of assignment**

After arrival in the country of assignment, the contractor must ensure that it or the assigned experts immediately inform the commission manager in text form of the duration and location of their stay and their contact details, and also send the information in copy to the shared mailbox stipulated in Annex 5 of these Terms and Conditions.

The contractor must ensure that it or the experts it assigns register itself/themselves and any accompanying family and household members with the responsible embassy, e.g. using the electronic registration system for Germans abroad (ELEFAND emergency contact list).

In the case of an assignment for an uninterrupted period of more than three months or at GIZ's request, the contractor must also notify the responsible German mission abroad as well as the lead executing agency of the contractor's tasks and activity in the country of assignment within the framework of the contract, stating the project number or project title as well as the names, occupations and arrival dates of the experts assigned by the contractor. Any extensions or termination of the assignment must be reported in the same manner.

#### **2.2.6 Security precautions and crisis management**

Before the outward journey, the contractor must provide the experts and any accompanying family members over the age of eighteen who reside permanently with them in the household and who will travel to the country of assignment with a copy of the instruction sheet on security precautions and emergencies and crises abroad (Annex 6 to these Terms and Conditions), along with the contact information sheet in the event of an emergency or crisis (Annex 7). The contractor must ensure that it and the persons listed above comply with the regulations set out in the instruction sheet.

Using the specified data sheet (Annex 8 to these Terms and Conditions), the contractor is obliged to provide information to GIZ on request at any time on the assigned experts, the experts' accompanying family members and the persons residing permanently with them in the household and who are currently living in the country of assignment within the framework of the contract with GIZ. In the event of an emergency or crisis, the data must be reported to GIZ's crisis officer ([krisenbeauftragter@giz.de](mailto:krisenbeauftragter@giz.de)) immediately, at the latest within six hours of a request (no specified template) from GIZ.

To ensure a rapid local response in an emergency or crisis, it is recommended that the contractor and the assigned experts enter the most important information in a Personal Data Sheet (Annex 9 to these Terms and Conditions) and deposit this with GIZ in the country of assignment for the duration of the assignment. The Personal Data Sheet can either be handed over in a sealed envelope to the security risk management team on site or sent by <https://filetransfer.giz.de/Start?1> to the team's shared mailbox in the country of assignment.

The contractor is obliged to obtain information on the options for registering with GIZ's Emergency Mass Notification System (EMNS) during its period of assignment abroad. The contractor may obtain the necessary access data from the GIZ country office in the country of assignment or by submitting a request for these data to [emns@giz.de](mailto:emns@giz.de). To the extent possible, GIZ must integrate the contractor and its experts into the security system used in the country of assignment.

#### **2.2.7 Conduct in a crisis**

GIZ may order immediate departure from the country of assignment if it believes this to be necessary for crisis-related or political reasons. In such cases, the contractor and the assigned experts must follow GIZ's instructions without delay, leave the country if necessary and participate in any evacuation measures. In the event of a withdrawal from the crisis area, any official return is subject to prior approval by GIZ in text form.

If the contractor and/or the assigned experts do not comply with the obligations under this provision, GIZ can suspend payments to the contractor and may demand that the contractor reimburse any additional expenses incurred by GIZ and/or the German Federal Government as a result of such failure to comply. In this event, GIZ is also entitled to terminate the contract; responsibility for termination is deemed to lie with the contractor.

#### **2.2.8 Sale of vehicles purchased duty free**

Vehicles of the contractor and its experts that have been imported or purchased duty free under agreements under international law or special regulations in the country of assignment may only be sold with the consent of the GIZ country office.

### **2.3 Information and reporting obligations**

#### **2.3.1 Reporting obligations**

The contractor must submit punctually to GIZ the different reports specified in the contract at the stated intervals and in the required format. Unless otherwise agreed in the contract, the contractor must prepare the reports in German and forward them to GIZ in electronic form (both in a format that is MS Word-compatible and as a PDF document).

If the contract does not specify which reports are to be submitted, the contractor is obliged to prepare a final report and, if the contract runs for at least 18 months, interim reports and to submit these to GIZ. If interim reports

are to be prepared, they must be submitted every 12 months; the final report is due at the end of the contract term.

If studies or appraisals are produced, the provisions set out in section 2.3 do not apply, with the exception of sections 2.3.4 and 2.3.5 below.

### **2.3.2 Required content**

All reports and the associated documents must clearly indicate the ultimate commissioning party/client, any other donors and GIZ as the contracting party. The reports must be concise and limited to information directly relevant to the contract. If local contributions are granted pursuant to section 2.7 below, details of their settlement must also be given. The reports are to state the degree to which objectives are achieved. They must be dated, and hard copies need to be signed. Any sources and references must be stated.

### **2.3.3 Special reports**

If there are important reasons for doing so, the contractor must inform GIZ without delay and produce special reports without prior request. Important reasons are above all:

- (i) situations that could delay performance of the contract or make performance impossible,
- (ii) situations that could jeopardise the achievement of the project objectives,
- (iii) significant breaches by the contractor of GIZ's Code of Conduct, attached as Annex 3 to these Terms and Conditions,
- (iv) any other important time-related, financial, technical or development-policy changes during performance of the contract or
- (v) significant risks to the safety or health of assigned staff.

There is no additional remuneration for special reports.

### **2.3.4 Obligation of the contractor to report on the status of the contract**

GIZ may at any time review the status and results of the performance of the contract, including the associated accounting records and any project-related special accounts. The contractor must keep the necessary documents available and provide GIZ with copies of these documents as well as any necessary information on request. If requested by GIZ, the contractor must provide information to other institutions or persons and organisations contracted by GIZ and must facilitate audits. The contractor is obliged to cooperate appropriately in any such audits.

### **2.3.5 Reporting information security incidents**

The contractor must inform GIZ([informationsecuritymanagement@giz.de](mailto:informationsecuritymanagement@giz.de)) without delay about the occurrence and extent of any information security incidents that (also) concern GIZ information or information of the lead executing agency.

An information security incident is an event that could negatively impact information security, for example through the unauthorised inspection, disclosure, modification or deletion of information, or the disruption of access to information.

## **2.4 Procurement**

### **2.4.1 Participation by contractors in the procurement of materials and equipment by GIZ**

If it has been contractually agreed that GIZ is to carry out specific procurements of materials and equipment, the contractor must prepare the necessary specifications for materials and inputs along with the corresponding terms of reference – in accordance with the statutory procurement requirements – and forward these to GIZ. The contractor must handle the receipt of goods locally or support the lead executing agency in doing so. This includes in particular:

- customs clearance and the examination of the consignment for completeness and damage in transport, and where applicable forwarding notification of damage to GIZ, and
- transmitting confirmation of receipt to GIZ.

## **2.4.2 Procurement of materials and equipment, service and works by the contractor**

### **2.4.2.1 Principles of procurement**

In connection with the contract, the contractor may place orders (including subcontracts) only with suitable contractual partners, about whose reliability there are no doubts and on the basis of competition and cost-effectiveness. In procurement processes, the contractor must ensure transparency, equality of treatment, the eligibility of tenderers and sustainability. From an estimated contract value of EUR 1,000 upwards excluding VAT, the contractor must invite at least three suitable companies to submit tenders unless the subcontractor is identified by name in the contract documents or the contractor can prove at GIZ's request that the contract award is cost-effective even without issuing an invitation to tender to at least three suitable companies. The procurement process must be documented accordingly.

### **2.4.2.2 Warranty agreements**

When procuring materials and equipment, services and works in connection with the contract, the contractor is obliged to enter into warranty agreements with the respective contractual partners that do not place the contractor in a less advantageous position than other clients in comparable transactions. The contractor must assign its warranty claims arising from these contracts to GIZ or a body designated by GIZ (e.g. the lead executing agency) and support GIZ in asserting any such claims; the contractor's declaration of assignment and acceptance of the assignment must be documented in the handover record.

### **2.4.2.3 Use of materials and equipment**

With the exception of the materials and equipment that – in accordance with the contractual provisions – must be handed over to the lead executing agency immediately upon arrival in the country of assignment, all materials and equipment that are procured under the contract must be available for the contractor's use until the end of the performance period. The contractor must treat materials and equipment with all due and customary care and label items as specified by GIZ. The contractor bears the risk of loss of or damage to any materials and equipment.

The private use of materials and equipment by the contractor and its experts is prohibited.

### **2.4.2.4 Inventories**

The contractor must take an inventory (Annex 10 to these Terms and Conditions) of all items of equipment and replacement parts with a purchase price in excess of EUR 1,000 excluding VAT unless they are handed over to the lead executing agency immediately upon their arrival in the country of assignment.

## **2.5 Handover of materials and equipment**

As contractually agreed, the contractor is obliged to hand over the materials and equipment to the recipient named in the contract either after their arrival in the country of assignment or at the end of the performance period, and to transfer ownership of the materials and equipment to the recipient. The contractor is obliged to notify the recipient named in the contract about the proper handling and disposal of the materials and equipment.

The contractor must document the handover on the form provided in Annex 11 to these Terms and Conditions and submit the completed form to GIZ at the latest with the final invoice. If it becomes apparent that acceptance of the handover will be refused or if the refusal becomes final, the contractor is obliged to notify the GIZ country office without delay. If the handover refusal becomes final, the contractor is obliged to hand over the materials and equipment to another institution to be specified by GIZ and to inform this institution in accordance with paragraph 1, sentence 2 above.

## **2.6 Compliance with legal regulations relating to the import and export of materials and equipment**

When importing and exporting materials and equipment, the contractor must comply with all applicable statutory provisions, in particular foreign trade and customs regulations.

## **2.7 Local contributions**

If the contract provides for local contributions, the contractor may enter into corresponding agreements with local recipients on the basis of GIZ's template for contracts (Annex 12 to these Terms and Conditions) and in keeping with the guidelines (Annex 13 to these Terms and Conditions). The contractor enters into the agreement on the specific local contribution, makes the funds available, advises the local recipient of the contribution, and steers

and monitors the proper use of funds, including documentation by the local recipient. In each instance, the individual local contribution may not exceed EUR 100,000. The contractor will not be reimbursed for the local contribution by GIZ if the local recipient fails to use the contribution for the intended purpose.

## **2.8 Separate accounting**

The contractor must keep the project's income and expenditure accounts separate from its other accounting records.

## **2.9 Confidentiality, integrity and availability of information**

Technical and organisational measures must be put in place to adequately protect information in terms of confidentiality, integrity and availability.

In particular, when using visual display units within the framework of contract performance, the contractor must ensure that the place of use is adequately secure and that the units cannot be used by unauthorised third parties. It is also important to ensure (e.g. by using privacy filters) that unauthorised third parties are unable to see any information.

# **3. Pricing, remuneration and invoicing**

## **3.1 Principles of remuneration**

The remuneration paid to the contractor for the contractually agreed services and works actually provided by the contractor comprises the fees pursuant to section 3.6.1, VAT pursuant to section 3.3, and the reimbursement items listed separately in sections 3.6.2 to 3.6.6 inclusive. It also covers any contractually agreed backstopping services. No further costs will be reimbursed.

The contractually agreed amounts for the items of remuneration laid down in the budget lines of the price schedule are maximum amounts.

## **3.2 Applicability of legislation on public sector pricing in the context of Federal Government contracts**

The Federal Republic of Germany stipulates that Regulation PR 30/53 on Prices for Public Contracts dated 21 November 1953 – *Bundesanzeiger* (federal gazette) entry no. 244 dated 18 December 1953 – with the Guiding Principles for Pricing on the Basis of Prime Costs must be applied in all the commissions it awards to GIZ, including those where goods and/or services and works are provided indirectly. If the contract is a subcontract to a Federal Government contract and the contractor is based in Germany, the amounts invoiced by the contractor are subject to price verification by the competent price authority.

## **3.3 VAT on services and works provided by the contractor**

In addition to the contractually agreed price, the contractor may invoice VAT at the statutory rate for the services and works it is providing unless the contractor itself can or could have claimed an exemption for this.

The contractor is also not entitled to claim reimbursement of VAT from GIZ if an exemption or reimbursement to which GIZ would have been entitled fails for a reason for which the contractor is responsible (e.g. in the event of late submission of the invoice).

It is the contractor's responsibility to enquire in good time about the requirements for any exemption or reimbursement procedures that are to be carried out either by the contractor itself or by GIZ. If requested by GIZ, the contractor is also obliged to cooperate with GIZ if it applies for an exemption from or reimbursement of VAT.

GIZ will reimburse VAT to the contractor only if the contractor confirms its tax liability when the invoice is issued (see the corresponding confirmation field in the service entry sheet (LERF) (Annex 14 to these Terms and Conditions)). At GIZ's request, the contractor must also provide GIZ with evidence of the payment of VAT by submitting a certificate that is generally required in the country along with all information needed to verify the certificate.



Any VAT levied by a third country (as defined in section 1.1 of these Terms and Conditions) will only be reimbursed if and to the extent it has been specified in the price schedule.

This section applies correspondingly to other indirect taxes.

### **3.4 Price reductions**

Rebates, discounts, refunds, tax concessions or refunds and all other price reductions obtained by the contractor in providing services and works, the costs of which are reimbursed by GIZ, must be availed of and passed on to GIZ or deducted from the invoice.

### **3.5 — Not applicable —**

### **3.6 Items of remuneration**

#### **3.6.1 Fee**

The fee is set out in the price schedule and calculated on the basis of the expert-days on which the contractor or one or more of the experts it assigned provide services and works for GIZ. One expert-day corresponds to 8 hours. The contractor may invoice a maximum of one expert day per expert and calendar day. The contractor is entitled to invoice two full hours as a pro-rata expert day. No other units may be invoiced. Days used exclusively for travel are not considered to be expert days.

#### **3.6.2 Costs related to the contract in the country of assignment**

If the contract requires a planned uninterrupted stay of more than three months in the country of assignment, the contractor may invoice the costs incurred through performance of the contract at the usual location for the delivery of services and works as a per-diem lump sum. The per-diem lump sum is paid from the first day of the stay under the contract.

Assignments up to an overall duration of three months in the country of assignment are invoiced as business trips under the contract in accordance with sections 3.6.4.2 and 3.6.4.3 of these Terms and Conditions.

#### **3.6.3 National administrative staff**

National administrative personnel (drivers, secretaries, assistants) are paid the contractually agreed monthly lump sums on proof of employment. Travel expenses for national administrative staff are not reimbursed separately.

#### **3.6.4 Travel expenses**

##### **3.6.4.1 Transfer and visa acquisition costs**

The costs of air travel for contractually agreed international, regional and domestic flights as well as the transfer costs incurred in this connection (e.g. for journeys by rail or taxi) and the cost of acquiring any visas necessary in connection with the contract will be reimbursed in line with the contractual agreement – either as the sum of costs for which evidence is presented or as a lump sum, the amount of which is laid out in the contract.

If there is a contractual agreement to reimburse costs based on the amount for which evidence is presented, GIZ will only provide reimbursement if the contractor has complied with the following requirements:

- (i) Air travel by contractors and seconded experts must always be in economy class.
- (ii) In derogation from (i), the contractor is entitled to book and invoice premium economy class for long-haul flights by the contractor or seconded experts if the flight time is 6 hours or more (excluding interruptions or stopovers). If premium economy class is not offered on the long-haul flight, business class can be booked and invoiced as an exception.
- (iii) The contractor is not entitled to charge for first-class air travel.

The cost of CO<sub>2</sub> emissions compensation certificates incurred for these flights is reimbursed based on the amount for which evidence is presented.

The contractor and seconded experts can choose to use a different mode of transport in the interests of sustainability provided the use of such a mode of transport is possible and appropriate in the situation. The costs of



travel between the residence and workplace in the country of assignment and the costs of private travel will not be reimbursed.

#### **3.6.4.2 Per-diem allowance**

GIZ pays the contractor per-diem lump sum allowances in line with the contractually agreed amount for the expert days worked in the country of assignment, the days of arrival and departure, as well as for other days necessitated by the contract that are spent in the country of assignment (e.g. weekends, public holidays). Information on such days is recorded separately in the time record in accordance with section 3.7.3.

The per diem is not paid if GIZ or the lead executing agency or a third party commissioned by the lead executing agency covers the costs of subsistence for a conference or an event during the assignment in the country in question.

If, in accordance with section 3.6.2, the contractor is entitled to a lump sum for contract-related costs for experts who spend an uninterrupted period of longer than three months in the country of assignment, per diems for these experts will be paid only for contract-related business trips outside the usual location for the provision of services and works.

#### **3.6.4.3 Overnight accommodation allowance**

If overnight stays are required under the contract, GIZ will pay the contractor the contractually agreed overnight accommodation allowance. Information on such overnight stays is stored separately in the time record in accordance with section 3.7.3.

The overnight accommodation allowance is not paid if accommodation is provided without charge by GIZ, the lead executing agency or other third parties involved in implementing the project.

If, in accordance with section 3.6.2, the contractor is entitled to a lump sum for contract-related costs for experts who spend an uninterrupted period of longer than three months in the country of assignment, over-night accommodation allowances for these experts will be paid only for contract-related business trips out-side the usual location for the provision of services and works.

### **3.6.5 Other costs**

#### **3.6.5.1 Procurement of services and works**

GIZ will reimburse to the contractor the costs of procuring services and works, including subcontracts, in accordance with the costs for which evidence is provided and to the extent agreed in the contract.

#### **3.6.5.2 Procurement of materials and equipment**

GIZ will reimburse the costs of items of equipment and replacement parts including transportation and insurance to the extent agreed in the contract and up to the amount for which evidence is provided, in accordance with the agreed procurement list and on presentation of the following documents:

- (i) invoices received/purchase receipts;
- (ii) shipping documents including the necessary export documents;
- (iii) handover record (Annex 11 to these Terms and Conditions).

For procurements exceeding EUR 50,000, a justification and evaluation of the award procedure must also be shown on GIZ's award note (Annex 15 to these Terms and Conditions).

#### **3.6.5.3 Operating costs in country of assignment**

Operating costs in the country of assignment are remunerated on the basis of a monthly lump sum in accordance with the price schedule.

#### **3.6.5.4 Workshops, training**

The costs of contractually agreed workshops and training events organised by the contractor are reimbursed on the basis of the costs for which evidence is presented.

#### **3.6.5.5 Local contributions**

Local contributions (see section 2.7 above and Annexes 12 and 13 to these Terms and Conditions) are reimbursed upon proof of proper use up to the amount for which evidence is provided.

#### **3.6.5.6 Other costs**

Other costs will only be reimbursed if and to the extent they have been contractually agreed.

#### **3.6.5.7 Flexible remuneration item**

If a flexible remuneration item is contractually agreed and provided GIZ has consented in text form to its use in relation to the corresponding budget line, the contractor is permitted to exceed the contractually agreed quantities or the budgets specified by GIZ in the price schedule by drawing on the budget of the flexible remuneration item. The flexible remuneration item must not be used to increase fees or lump sum rates.

#### **3.6.6 VAT charged by third parties and other indirect taxes**

On production of proof and in accordance with the statutory provisions, GIZ will reimburse the contractor for VAT and other indirect taxes incurred within the scope of the respective budget items and which have been paid by the contractor based on invoices issued to the contractor by its contractual partners. If the contractor is a consortium, the same applies to indirect taxes invoiced to the contractor by a consortium partner.

This only applies if neither the contractor nor its contractual partner can or could have claimed an exemption or reimbursement (e.g. input tax deduction). When invoicing GIZ, the contractor must confirm that this requirement has been fulfilled.

### **3.7 Invoicing and terms of payment**

#### **3.7.1 Presentation of invoices**

The contractor bills GIZ for its services and works using invoices that meet all applicable legal requirements. With regard to settlement, the settlement requirements (Annex 16 to these Terms and Conditions) must be observed and the service entry sheet (Annex 14 to these Terms and Conditions) must be used.

Invoices are to be submitted electronically (for further information, see Annex 16 to these Terms and Conditions). This provision does not apply if invoices are to be issued in a different form, either in accordance with the applicable statutory provisions or with the requirements of the applicable exemption or reimbursement procedures; in such cases, the contractor must observe these alternative procedures.

If, in accordance with the applicable statutory provisions, invoices are to be issued in a currency other than the euro, the applicable exchange rate is the European Commission's monthly booking rate for the euro (InforEuro) on the day the invoice was issued.

#### **3.7.2 Settlement of VAT**

VAT and any other indirect taxes must be shown separately in the invoices in accordance with the applicable statutory provisions.

#### **3.7.3 Time records**

The fee, the contract-related costs in the country of assignment and any contract-related per-diem or overnight accommodation allowances payable are invoiced on the basis of a time record (Annex 17 to these Terms and Conditions) in which the contractor enters the number of expert days.

#### **3.7.4 Due date and payment terms**

The contractor's claims fall due after receipt of an invoice containing all the required details (together with all necessary receipts/vouchers). Payment is made by GIZ no later than 30 days after justified claims fall due.

#### **3.7.5 Withholding of payments**

GIZ may withhold payments for as long as the contractor has not submitted to GIZ any reports that are due in accordance with section 2.3.1.

#### **3.7.6 Final invoice**

The contractor is obliged to submit the final invoice without delay and in any event not later than six weeks after the contractual end of the performance period. However, the contractor may submit the final invoice to GIZ once the services and works have been completed. The final invoice must contain all the contractor's claims for remuneration, be verifiable and include all the necessary information (with all the required receipts/vouchers). The

final payment is made on submission of the final invoice in due form and after the performance of all contractual obligations by the contractor.

Any amounts overpaid by GIZ to the contractor must be repaid to GIZ by the contractor without delay after the final invoice.

If the contractor has not yet fully reimbursed an advance payment received from GIZ and the contractor does not submit the final invoice to GIZ within 15 days despite having received a reminder from GIZ, the contractor is obliged to immediately repay the portion of the advance payment that has not yet been reimbursed.

### **3.8 Different arrangements for contracts for works**

For contracts for works, the final invoice must be submitted without delay and in any event not later than six weeks after acceptance. It must contain all the contractor's claims, be verifiable and include all the necessary information (with all the necessary receipts/vouchers).

The payment of remuneration is due after acceptance of the services and works following receipt of a final invoice containing all the required details (together with all necessary receipts/vouchers). Payment is made by GIZ no later than 30 days after justified claims fall due.

Acceptance is effected in text form.

The provisions contained in section 3.7 also apply to contracts for works.

### **3.9 Settlement of expenses in foreign currencies**

Any costs incurred in a foreign currency will be reimbursed to the contractor by GIZ in euro on the basis of the corresponding exchange rate published by the European Central Bank at the time the costs were incurred.

## **4. Interruption, force majeure and termination**

### **4.1 Interruption at GIZ's request**

GIZ may at any time order a complete or partial interruption of the activity for political or other reasons. The contractor must comply with the order and take all necessary measures to keep its expenses as low as possible. This interruption may be lifted by GIZ at any time.

If the interruption affects a significant part of the contract and persists for more than three months, the contractor may terminate the contract with immediate effect after this period.

All services and works already provided by the contractor up to the time the interruption is ordered will be remunerated by GIZ in accordance with section 3.6.

During the interruption, GIZ will not pay any remuneration for activities that are interrupted on GIZ's instruction. Instead of paying the individual remuneration items, GIZ will reimburse the contractor for reasonable and unavoidable expenses incurred by the contractor during the period of interruption on presentation of evidence. Reimbursement will be provided up to a maximum of the amount of the relevant individual and total remuneration items agreed in the price schedule. The same applies in the event of termination by the contractor in accordance with this section up to a maximum of two months following termination of the contract.

All further claims are excluded.

### **4.2 Force majeure**

If force majeure arises, the contractual obligations – insofar as they are affected by the event in question – will be suspended for as long as it remains impossible to render the services due to force majeure; during the interruption, GIZ will not pay any remuneration for the activities affected by this situation. The contractor must notify GIZ immediately of the force majeure event.

If it is anticipated that, due to force majeure, the provision of services and works will become impossible with regard to essential parts of the contract for the duration of the contractually agreed service period, or if the force majeure event affects a significant part of the contract for more than three months, both contracting parties are

entitled to terminate the contract without further notice. If one of the parties to the contract terminates the contract in accordance with this section 4.2, GIZ will remunerate all of the services already provided by the contractor up to the termination of the contract in accordance with section 3.6.

If force majeure arises, GIZ will also reimburse the contractor for the costs set out in sections 3.6.2 to 3.6.6 above that are incurred up to a maximum of two months after termination of the contract as a result of the orderly performance of the contract, provided and to the extent GIZ consents to this before the costs are incurred or subsequently consents to them. The contractor is obliged to take all necessary measures to keep such costs as low as possible. Reimbursement in accordance with this paragraph is provided up to a maximum of the amount of the relevant individual and total remuneration items agreed in each case in the price schedule.

If, due to force majeure, the activity is continued with GIZ's consent in another country than the country of assignment, payment of the contractually fee will continue in accordance with section 3.6.1. The payment of other remuneration items in accordance with sections 3.6.2 to 3.6.6 will continue for up to three months at the contractually agreed amount unless the cost of such items is reduced or can be eliminated altogether.

GIZ's rights of termination under section 4.3 remain unaffected by the provisions of this section 4.2.

#### **4.3 Termination**

GIZ may terminate the contract at any time with immediate effect without setting any further deadlines or making a prior request for deficiencies to be corrected, either wholly or in respect of individual parts of the works and services or with regard to individual experts.

##### **4.3.1 Grounds which are not the fault of the contractor**

Should GIZ terminate the contract for a reason that is not the fault of the contractor, GIZ will pay for all of the services already provided by the contractor up to the termination of the contract in accordance with section 3.6.

Up to a maximum of two months after termination of the contract, GIZ will reimburse on presentation of evidence the contractor's reasonable and unavoidable expenses and costs instead of paying the individual remuneration items. Reimbursement will be provided up to a maximum of the amount of the relevant individual and total remuneration items agreed in the price schedule.

##### **4.3.2 Grounds which are the contractor's fault**

Should GIZ terminate the contract for a reason that is the fault of the contractor, GIZ will only pay for the services already provided by the contractor up to the termination of the contract, in accordance with section 3.6, provided it has a use for them. Any works and services that cannot be used will be returned to the contractor at the contractor's expense. If the contract performance comprises the provision of services, any services rendered in accordance with the contract up to the date of termination will be deemed to have been usable.

### **5. Protection of third parties and contractual penalty**

#### **5.1 Protection of third parties**

GIZ is entitled to claim for loss or damage suffered by the recipient of the works and services (e.g. lead executing agency) as a result of non-compliance by the contractor with the contractual obligations.

#### **5.2 Delays in the progress of work and services**

If the contractor fails to meet the agreed dates and deadlines for an agreed work and does not deliver the work within the period of grace set by GIZ, then GIZ is entitled, as soon as the period of grace has expired, to demand a contractual penalty of 0.5 % of the remuneration for each week or part thereof after expiration of the set period of grace; however, the contractual penalty must not exceed a total of 5% of the entitlement to remuneration.

## **6. Final provisions**

### **6.1 Prohibition of assignment by the contractor**

The contractor is not entitled to assign claims under the contract unless it has obtained GIZ's prior approval in written form.

### **6.2 Severability clause**

Should individual provisions of the contract be or become invalid or unenforceable, the validity of all other provisions under the contract remain unaffected. The invalid or unenforceable provision is to be replaced by a valid and enforceable rule the effects of which most closely replicate the economic objective pursued by the contractual parties with the invalid or unenforceable provision. This applies accordingly if it emerges that the contract has gaps or omissions.

### **6.3 Place of jurisdiction**

The exclusive place of jurisdiction is Frankfurt am Main if the contractor is a merchant, legal entity or special fund under public law, or does not have a general place of jurisdiction in the Federal Republic of Germany. The same applies if, after entering into the contract, the contractor relocates its domicile or seat or habitual residence from the Federal Republic of Germany to a location abroad, or if its domicile or seat or habitual residence is not known at the time of instituting proceedings. GIZ may also institute proceedings against the contractor before the competent court for the domicile or seat of the contractor or its habitual residence.

### **6.4 Annexes to the Terms and Conditions**

The following annexes constitute an integral part of these Terms and Conditions:

1. Agreement on the fulfilment of obligations under Article 26 of the EU General Data Protection Regulation (GDPR)
2. Information sheet on processing personal data within the scope of GIZ contracts
3. Code of Conduct for GIZ Contractors
4. HIV/AIDS workplace programme
5. Information on shared mailboxes for managing security risks
6. Information sheet on security precautions and emergency and crisis incidents abroad
7. Contact information in the event of an emergency or crisis
8. Reachability form
9. Personal data sheet
10. Inventory list
11. Handover record
12. Template for contracts for local contributions
13. Guidelines on local contributions including annexes
14. Service entry sheet (LERF)
15. Award note
16. Settlement requirements
17. Time record

The relevant forms and documents of the above annexes to the Terms and Conditions can be found on the GIZ website at [www.giz.de > Partner with us > Become a contractor > Services and construction work](https://www.giz.de/en/partner/contractor/services-construction-work#downloads)  
<https://www.giz.de/en/partner/contractor/services-construction-work#downloads>