

Special contractual terms and conditions under the award procedure 10050805 – Advanced Distribution Management System of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

1. Applicability, Components of the Contract

1.1 Applicability of the Special contractual terms and conditions

Subject to Section 1.2, these Special Purchase Conditions apply to all goods and services supplied by the Contractor to the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH as the contracting party. The Contractor must prepare its offer based on these Special contractual terms and conditions. A contract is established between the parties, subject exclusively to GIZ's Special contractual terms and conditions, once an order is issued by GIZ, after which any amendments to the contract require the approval of GIZ in text form. Any general terms and conditions of business and/or payment specified by the Contractor and attached to the latter's order confirmation or made available in any other way do not apply unless GIZ has expressly agreed to them in advance in text form. GIZ's Special contractual terms and conditions apply even if GIZ accepts the goods and/or services in full knowledge of, and without objecting to, any conflicting or differing conditions of the Contractor.

1.2 Components of the contract

The contract is made up exclusively of the following components:

1) either GIZ's written order with all annexes thereto or GIZ's contract for work and materials with all annexes thereto; 2) the technical offer submitted by the Contractor, excluding any general terms and conditions of business and/or payment specified by the Contractor; 3) these Special contractual terms and conditions; 4) the [Code of Conduct for Contractors](#). In the event of discrepancies between individual components of the contract, the documents listed above apply in the given order.

1.3 Enduser / License and terms of use of the software manufacturer

This contract is concluded for the benefit of the partner of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH the JSC "Khmelnyskoblennerho". The partner is the beneficiary and licensee. Therefore, the license agreement is established between the partner and the Contractor. The partner accept the provision of the licenses as well as the license and usage terms of the manufacturer by signing these terms.

The contract between GIZ and the Contractor is concluded under the condition precedent that the license and usage terms of the manufacturer are signed by the partner in Ukraine and forwarded to the Contractor. The Contractor's obligation to perform will only become due once the license and usage terms have been signed by the licensee, and GIZ provides proof of this to the Contractor.

The license and usage terms of the manufacturer submitted during the procurement process apply exclusively with regard to the provisions on license and usage rights contained therein, and only to the extent that they do not contradict or restrict any other contractual provisions.

GIZ shall not be liable for any violations of the license and usage terms or for any damages resulting therefrom, which may have been caused by the beneficiary or licensee.

In the event that the license and usage terms of the manufacturer contain refund provisions for compensation already paid, the refund shall be made directly to GIZ.

2. Procedures governing Supply, Performance

2.1 Scope of Services

The scope of services is defined in the "10050805 - Priceshet" and in document "10050805 – Terms of Reference". The objective is to provide a perpetual license for On-Premise software to the following partner: JSC "Khmelnyskoblennerho", 11 A, Khranovskogo Str., Khmelnytskyi, 29018, Ukraine

GIZ will not procure any maintenance services as part of this scope. Following the award of the contract, the partner JSC "Khmelnyskoblennerho" may, if required, independently procure a maintenance period for the relevant perpetual license for On-Premise software directly from the Contractor at its own expense. Any such maintenance agreement shall be concluded separately between the partner JSC "Khmelnyskoblennerho" and the Contractor and shall not form part of the contractual relationship between GIZ and the Contractor.

The agreed prices are fixed and exclude any additional claims by the contractor against GIZ.

2.2 Place of service

The contractual On-Premise software licenses in accordance with the "10050805 - Priceshet" and "10050805_Terms of Reference" must be made available to the licensee electronically.

The place of service is: JSC "Khmelnyskoblennerho", 11 A, Khranovskogo Str., Khmelnytskyi, 29018, Ukraine

2.3 Date of delivery

The Perpetual On-Premise software will be made available to the licensee as soon as possible after the award of the contract and agreement between the parties.

3. Responsibilites

3.1 Communication and Assertion of Performance Deficiencies

Communication and coordination regarding performance matters shall take place directly between the Contractor and the beneficiary. The beneficiary has the right to inform the Contractor directly of any performance deficiencies and to request remedy. In case of disagreements, GIZ shall be notified immediately and involved in the communication.

3.2 Acceptance of the Services Rendered

The acceptance of the services rendered, in accordance with the contractually agreed provisions, is the responsibility of the beneficiary. After acceptance has been completed, the beneficiary shall inform GIZ of the completion of the service provision.

3.3 Payment Processing

The processing and oversight of all payments to the Contractor are the responsibility of GIZ. GIZ is responsible for ensuring that payment is made in accordance with the contractual terms and the services rendered. If the Contractor is required to refund compensation already received due to non-performance, the refund shall be made to GIZ.

3.4 Changes of the scope of Services

All changes to the scope of services or other contractual amendments must be agreed upon between GIZ and the Contractor. The license and usage terms agreed between the Contractor and the beneficiary shall remain unaffected by this.

3.5 Legal Disputes

The judicial assertion of claims against the Contractor in connection with this contract is the sole responsibility of GIZ.

The beneficiary is not authorized to independently initiate legal action against the Contractor, unless acting on behalf of GIZ and with its express consent.

However, claims arising from a breach of the license and usage terms must be asserted in court by the Contractor or the beneficiary against the respective other party.

4. Obligations related to the Supply Chain

4.1 Code of Conduct for Contractors

The Contractor shall guarantee with regard to its own business activities that it acts in accordance with the [Code of Conduct for Contractors](#) of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH ('Code of Conduct'), which is annexed to these Special contractual terms and conditions, and warrants that it will appropriately address the provisions of the Code of Conduct along the supply chain if GIZ establishes the existence of a human-rights or environment-related risk and notifies the Contractor thereof.

The Contractor is obliged to hold GIZ harmless from third-party claims resulting from a breach of the Code of Conduct unless the Contractor can prove that it is not responsible for the breach.

4.2 Preventive Measures

The Contractor must take suitable and appropriate measures to prevent and minimize the risk of breaching the provisions of the Code of Conduct. If GIZ identifies (new) risks during performance of the contract, additional preventive measures must be taken. GIZ is entitled to instruct the Contractor to take specific measures.

4.3 Ensuring access to the complaints procedure in the supply chain

The Contractor shall ensure unhindered access for all of its employees to the complaints procedure set up at GIZ. In particular, the Contractor shall not undertake any actions that hinder, prevent or complicate access to the complaints procedure. This also applies to indications that human-rights or environment-related obligations have been violated due to the actions of an indirect supplier.

4.4 Warranted Controls

GIZ is entitled to check whether the Contractor complies with the provisions of the Code of Conduct if compliance risks have been identified and the Contractor has been informed of them. The corresponding control measures must be appropriate and give due consideration to the Contractor's justified concerns. Control measures particularly include: comprehensive disclosure, on-site checks by GIZ or a commissioned third party and mandatory certification in line with recognised standards. All control measures are restricted to compliance with expected human-rights and environment-related standards.

4.5 Participation in training courses

If GIZ identifies compliance risks related to the Code of Conduct, the Contractor shall be obliged at GIZ's request to prove that it has taken part in the training courses carried out by GIZ, which aim to ensure compliance with the human-rights and environment-related obligations set out in the Code of Conduct and to guarantee that they are adequately addressed in the further supply chain. Participation is not necessary if GIZ agrees and if the Contractor confirms in writing to GIZ that it (i) complies with the provisions of the Code of Conduct and (ii) verifiably conducts its own training courses.

4.6 Obligations to provide information and documents

The contractor is obliged to produce and provide information and documents needed by GIZ in order to meet all of the regulatory requirements resulting from the contractual relationships upon GIZ's request. Regulatory requirements in this context may result in particular, but not exclusively, from the following legislation:

- the German Act on Corporate Due Diligence Obligations in Supply Chains (LkSG)
- the EU Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)

4.7 Legal consequences in the event of violations of the Code of Conduct

If the Contractor breaches any of the obligations set out in the Code of Conduct, GIZ is entitled to suspend performance of the contract or optionally to withdraw from or terminate the contract if the breach is not remedied after setting a reasonable deadline. There is no need to set a deadline in the event of a serious, persisting or repeated breach. If the Contractor breaches an obligation under the Code of Conduct, the Contractor is additionally obliged to pay damages unless it can prove that it is not responsible for the breach. The payment of damages also includes appropriate compensation for reputational damage.

If the Contractor breaches an obligation under the Code of Conduct, GIZ is furthermore entitled to exclude the Contractor from future competitive award procedures for a period that is limited to the duration of the breach and to the extent appropriate.

The Contractor is obliged to pay a contractual penalty for each breach of the Code of Conduct; 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) does not exceed EUR 50,000. If a pecuniary advantage granted by the Contractor as a form of bribery is greater than EUR 50,000, the Contractor must pay a contractual penalty equal to this sum. Further rights of GIZ to claim damages shall remain unaffected. However, contractual penalties that have already been paid shall be deducted from such claims for damages.

5. Prevention of the financing of terrorism and compliance with embargoes

The Contractor must not use any remuneration obtained from GIZ in order to provide funds or other economic resources directly or indirectly to third parties that are included on a sanctions list issued by the United Nations and/or the EU. When implementing the contract, the Contractor may enter into and/or maintain business relations only with third parties that are reliable and to whom no statutory ban on entering into contractual or business relations applies. When implementing the contract, the Contractor must also comply with 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 on its own initiative if the Contractor, a member of its official managing body and/or other administrative bodies, its shareholders and/or staff is included on a sanctions list issued by the United Nations or the EU. This provision also applies if the Contractor becomes aware of an event that leads to such a listing. The Contractor must notify GIZ without delay and on its own initiative of any violation of the provisions stipulated in this Section 5. In the event of such violation, GIZ is entitled to withdraw from or terminate the contract without prior notice. This does not affect GIZ's rights under Section 6 of these Special contractual terms and conditions.

6. General Provisions, Rights of Termination and Withdrawal

6.1 Retention of documents, right of inspection and duty of disclosure

The Contractor must keep contract-related records for ten years after the goods and/or services have been formally accepted and must provide all such records for inspection by GIZ on request. GIZ is entitled to inspect at any time the progress made and results achieved during the implementation of the contract. The Contractor must ensure that the documents required for this purpose are available at all times and must provide the required information. At the request of GIZ, the Contractor must provide information to other institutions or to persons and organisations commissioned by GIZ and must facilitate any inspections; the Contractor undertakes to cooperate with any reasonable requests during such inspections.

6.2 Confidentially and publications

All data related to the contract and any other information of which the Contractor becomes aware in connection with this contract must be treated confidentially, both during and beyond the end of the contract. The Contractor is not permitted to use this data and information for its own purposes. This provision applies even if such documentation and information has not been explicitly designated as secret or confidential. Written consent must be obtained from GIZ in text form before publishing any documents related to the subject matter of the contract. Consent is not required if the Contractor simply wishes to give a brief description of the contract and the work involved for public relations purposes. 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 way that its activities are being carried out on behalf of GIZ and must also name the ultimate commissioning party and any other financing providers. For its part, GIZ is entitled to publish documentation together with name details; this applies even if the contractual relationship ends prematurely.

6.3 Use of subcontractors

The Contractor remains liable to GIZ for all its obligations under the contract even when using subcontractors. The Contractor must oblige all its subcontractors to comply with those provisions of the contract that are relevant to them.

6.4 Rights of termination and withdrawal

GIZ is entitled to all statutory rights of termination and withdrawal without limitation. Furthermore, GIZ is entitled to withdraw from the contract if the Contractor becomes insolvent, if an application to initiate settlement, insolvency or liquidation proceedings is filed, a liquidation settlement is reached, a decision on a restructuring plan is taken or a comparable measure is being carried out under a different legal system.

6.5 Applicable Law

The contract and all rights and obligations under or in connection with the contract are subject to the law of the Federal Republic of Germany, excluding the applicability of the United Nations Convention on Contracts for the International Sale of Goods, dated 11 April 1980, and other regulations within the meaning of Article 3, No. 2 of the Introductory Act of the German Civil Code.

6.6 Place of jurisdiction

The sole places of jurisdiction are Bonn and Frankfurt am Main. GIZ may also bring legal action against the Contractor before the competent court at the location of the Contractor's registered office.

6.7 Text form

Text form is required for the contract and for any contract amendments, supplements and material communications (including orders placed by GIZ) unless the parties have agreed alternative provisions and unless a stricter format is stipulated in law. The requirement for text form is met where a legible declaration naming the person making the declaration is supplied on a durable medium (e.g. GIZ's contract award platform, email, fax).

6.8 Partial invalidity

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

6.9 Warranty

The Contractor warrants that the deliveries and services are free from legal defects and do not infringe any copyrights, industrial property rights, or other third-party rights.

7. Payment Terms and Prices

7.1 Payment Terms

Payment for pos. 1.1 (according to 10050805 – Priceshet) will be made after the provision of the licenses upon submission of a proper and itemized commercial invoice (Section 7.3).

Payment for Pos. 2.1 (according to 10050805 – Priceshet) will be made after the training sessions were made available upon submission of a proper and itemized commercial invoice (Section 7.3).

For partial deliveries that are not agreed upon or authorized, the full purchase price will only become due once the payment conditions for all deliveries and services, including the final partial delivery or service, have been met.

7.2 Prices

The agreed prices are fixed prices and exclude any subsequent claims by the Contractor for additional payment and any price increases of any kind. The Contractor undertakes to make use of any possible exemption from value-added tax.

If and insofar as goods and services are subject to value-added tax, the Contractor must show the tax separately in the invoice. 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 are provided indirectly. As such, orders placed by GIZ with subcontractors are also subject to possible price inspections by the responsible pricing authority.

7.3 Invoicing

Invoices must generally be submitted in **XInvoices** format or in a CEN-compliant format (EN 16931-1) using the current version or as **PDF invoice**.

Please send your invoice by email to invoice_DE@giz.de.

XInvoices can now only be sent by email.

Please note: When sending XInvoice or PDF invoices, please note that only **one attachment** may be included in the email.

Regardless of the invoicing method, the invoice must always include the **complete GIZ contract number or order number**. XInvoices must be issued stating the GIZ routing ID (Leitweg-ID) "993-80072-52".

When submitting an invoice, please state the **GIZ order/contract number in the subject line of the email** and ensure that all the relevant information is clearly visible on the invoice.

In addition, the supplier must comply with the following requirements:

- a. The invoice must be attached as an e-mail attachment
- b. Not encrypted
- c. Not password-protected

- d. No invoice relevant information in the e-mail body
- e. No additional delivery of copies in paper format.

Further information is also available on the [Materials and equipment | GIZ](#) page.

8. Export license

Required information when submitting a tender

Your tender may be taken into consideration when awarding the contract only if you provide information on the following to GIZ in **Export Controls – Part 1: Classifying Materials and Equipment** at the time of submission:

- whether the requested products can be exported without a licence and you provide evidence to this effect in the form of a clearance certificate issued by the German Federal Office for Economic Affairs and Export Control (BAFA) at GIZ's request. The clearance certificate may be issued by BAFA as information on the list of items (*Auskunft zur Güterliste*, AzG) or a miscellaneous request (*Sonstige Anfrage*). The clearance certificate must not be more than 12 months old.

If an export licence is required, please indicate whether

- the product(s) in question require(s) an export licence in accordance with the current applicable version of the export control list (annex to the German Foreign Trade and Payments Ordinance);
- the product(s) in question require(s) an export licence in accordance with the current applicable version of the Dual-Use List (Annex I to the EU Dual-Use Regulation).

If the recipient country is also a country under embargo, your tender may be taken into consideration only if you inform GIZ that

- the product(s) in question require(s) an export licence in accordance with the current applicable version of the embargo directive;
- in the case of a negative declaration, you will provide evidence to this effect at GIZ's request in the form of a clearance certificate issued by the German Federal Office for Economic Affairs and Export Control (BAFA). The clearance certificate may be issued by BAFA as information on the list of items (*Auskunft zur Güterliste*, AzG) or a miscellaneous request (*Sonstige Anfrage*). The clearance certificate must not be more than six months old.

This information has to be confirmed by signature.

Information required when the contract is awarded

If products requiring an export licence are involved, the **Export Controls – Part 2 questionnaire** must also be completed in full when the contract is awarded and returned signed to the GIZ within a week of receipt at the latest.

GIZ, as the exporter, will use the information you provide to apply to BAFA for the export licence.

GIZ reserves the right to withdraw from the purchase agreement if the contractor omits information or provides incorrect or incomplete details regarding the obligation to obtain a licence for the goods or if the German Federal Office for Economic Affairs and Export Control (BAFA) refuses to grant an export licence. In case of withdrawal, GIZ shall be released from any obligation (of a contractual or any other nature) to you.