

# SMALL PROCUREMENT GENERAL TERMS<sup>1</sup> FOR THE SUPPLY OF GOODS AND/OR SERVICES

Version 1.0, dated 29 March 2021

## 1. MAIN PROVISIONS

- 1.1. Subject matter of the Agreement Supply of either Goods and Services or both as per Special Terms.
- 1.2. Deliverables and due dates As per Special Terms.
- 1.3. Meetings' organisation and schedule As per Special Terms.
- 1.4. Duration As per Special Terms.
- 1.5. Fee As per Special Terms.
- 1.6. Payment schedule As per Special Terms.
- 1.7. Payment term As per Special Terms.
- 1.8. Limitation of liability As per Special Terms.
- 1.9. Contact person of the RBR As per Special Terms.
- 1.10. Contact person of the Supplier As per Special Terms.
- 1.11. Other terms As per Special Terms.

## 2. RESPONSIBILITIES OF THE RBR

- 2.1. The RBR shall, in a timely manner, provide to the Supplier any information regarding requirements and parameters of the Services and/or Goods, as may reasonably be requested by the Supplier for the purposes of supply of Services and/or Goods.
- 2.2. In the event the RBR observes or otherwise becomes aware of any error, fault, omission, or defect in the Services and/or Goods, the RBR shall give prompt notice thereof to the Supplier. The Supplier shall have the obligation to correct such error, fault, omission, or defect in the Services and/or Goods.

## 3. RESPONSIBILITIES OF THE SUPPLIER

- 3.1. For the duration of the Agreement the Supplier shall:
  - 3.1.1. supply the Services and/or Goods according to the requirements and the time schedule set in these General Terms and Special Terms;
  - 3.1.2. in performing its obligations under this Agreement, exercise reasonable professional skill, diligence and care as may be expected of a properly qualified and competent person carrying out services or goods of a similar size, nature, type and complexity;
  - 3.1.3. ensure that its personnel are properly qualified and competent;
  - 3.1.4. at all times during the term of the Agreement comply with all the applicable statutory laws and regulations of the Republic of Latvia;
  - 3.1.5. comply, where applicable, with any reasonable requirements of the RBR not otherwise provided for in this Agreement;
  - 3.1.6. provide information on the course of the supply of Services and/or Goods to the RBR within 1 (one) business day from the reception of such request;
  - 3.1.7. accept and comply with, inter alia, the "Supplier and Sub-Contractor Code of Conduct" and the "Supplier's Declaration" of the Common Procurement Standards and Guidelines for the Rail Baltica Project (CPSG). The CPSG is available on the Rail Baltica project website – [www.railbaltica.org](http://www.railbaltica.org)
  - 3.1.8. notify the RBR of any defects and/or delays in the Services and/or Goods as soon as such defects are identified by the Supplier.
- 3.2. During the term of the Agreement and for 5 (five) years from expiration or termination of this Agreement, the Supplier shall keep and maintain clear, adequate and accurate records and documentation evidencing, that the Services and/or Goods have been supplied appropriately.
- 3.3. The Supplier retains the complete responsibility for the proper performance of all of its obligations under this Agreement, and any act, failure to act, breach or negligence on the part of any of its sub-contractors and staff shall, for the purposes of this Agreement, be deemed to be the act, failure to act, breach or negligence of the Supplier.
- 3.4. Except with the RBR's knowledge and express written permission, the Supplier shall not engage in any activity, or accept any employment, other agreement, interest, or contribution that would reasonably appear to compromise the Supplier's

professional judgment and performance with respect to the Agreement. In performing the Services and/or Goods, the Supplier shall take all necessary measures to prevent any situation where the impartial and objective implementation of supply of the Services and/or Goods is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest.

- 3.5. Upon the request of the RBR and for the provision of a security compliance check, the Supplier shall supply the following information about the natural persons (either sub-contractors and staff) directly involved in the supply of the Services and/or Goods: name, surname personal identification code, place of birth, position, company name and a brief description of the role and responsibilities of the person in the supply of Services and/or Goods.
- 3.6. RBR shall be entitled, at its sole discretion, to prohibit any natural person specified by the Supplier from performing tasks related to the supply of Services and/or Goods to RBR by notifying the Supplier thereof in writing. In such case, the Supplier shall immediately replace such natural person with another natural person by notifying RBR in writing according to Clause 3.5.
- 3.7. If the Supplier does not comply with Clause 3.5 and 3.6 it constitutes a material breach of the Agreement and grounds for RBR to unilaterally terminate the Agreement with immediate effect by submitting a relevant written notice to the Supplier.
- 3.8. Additional warranties for the supply of Goods:
  - 3.8.1. throughout the term of the Agreement the Goods delivered by the Supplier will meet the technical requirements, be new and unused and delivered in original packaging and all documentation will be provided together with Goods;
  - 3.8.2. the conformity of the Goods (quality and other indicators) will comply with the technical documentation of its manufacturer, the standards specified in the European Union, the provisions of the Agreement, the quality and / or conformity certificate and the statutory laws.

## 4. PAYMENT

- 4.1. The Fee includes all taxes, fees and payments, and all costs related to the supply of the Services and/or Goods that can be reasonably estimated, except for VAT that will be charged at the rate applicable in accordance with the applicable law at the time of invoicing.
- 4.2. The Supplier's invoices shall contain the following Supplier's details and details about the Agreement: legal name, address and registration No of the Supplier; Suppliers VAT payer's No or information that the Supplier is not subject to VAT payments; VAT No of the RBR; legal name and SWIFT code of the Supplier's bank; Suppliers bank account No IBAN; Agreement No.
- 4.3. The Supplier shall send the invoice to the RBR electronically to the following e-mail address: [invoices@railbaltica.org](mailto:invoices@railbaltica.org) and the RBR contact person indicated in the Special Terms The invoices shall be submitted only electronically and shall be valid without a signature.
- 4.4. Payments are made within the time period specified in the Special Terms, after the acceptance of the Services and/or Goods in full or part by signing the Deed of Acceptance or bill of lading and after the receipt of a correct invoice issued by the Supplier to the RBR. No payments shall be made for supply of the Services and/or Goods or part of the Services and/or Goods, which do not comply with the provisions of this Agreement or have faults until the non-compliance or faults have been eliminated by the Supplier and the RBR has accepted the Services and/or Goods or part of Services and/or Goods delivered by signing the Deed of Acceptance or bill of lading.
- 4.5. If, by the time of making any payment, the RBR has a claim of contractual penalty or damages against the Supplier, the RBR shall have the unilateral right to deduct the relevant amount from the Fee or part of the Fee payable by submitting the relevant reasoned statement of set-off in a written form.

<sup>1</sup> **Explanatory note.** This document contains the General Terms of a standard SPF Agreement on the supply of Goods and/or Services. In each case RB Rail AS shall set additional Special Terms that will be applied in addition to these General Terms (Special Terms which include revisions and amendments to the General Terms as well as annexes to the Special Terms as required in each separate instance). Both the Special Terms and General Terms are applied to each contractual relationship established by RB Rail AS and its chosen supplier. In the event of any discrepancy or inconsistency between the Special Terms and the General Terms, the Special Terms shall always take precedence.

- 4.6. The Supplier acknowledges that in case where the Republic of Latvia and the state of residence of the Supplier have concluded an international agreement for prevention of double taxation and tax evasion, the Supplier may be subject to perform respective measures for application of tax relief as determined in such international agreements. Otherwise the RBR will withhold withholding tax at the rate provided in statutory law from the fee and payments made to the Supplier. The RBR is entitled to make any deductions from the payments due to the Supplier if the Supplier doesn't comply with this provision.
- 5. DELIVERY AND ACCEPTANCE**
- 5.1 The acceptance of the Services and/or Goods or part of Services and/or Goods will be confirmed by a mutual signing of Deed of Acceptance or a bill of lading.
- 5.2 The RBR will sign the Deed of Acceptance or bill of lading only if the RBR does not have objections against the quality of the delivered Services and/or Goods.
- 5.3 The RBR is entitled to raise objections to the quality of the Services and/or Goods within 5 (five) business days from the date of the delivery. In such case the Supplier must remedy any deficiencies as soon as practically possible but not later than within 5 (five) business days from the moment of receipt of respective objections from RBR. Additionally, 6 (six) months after the acceptance of the Services and/or Goods the RBR has the right to raise objections to the quality of the Services and/or Goods, provided that such objections are based on a hidden defects that were not initially discoverable. In such a case the Supplier must remedy respective defects as soon as practically possible but not later than within 15 (fifteen) business days.
- 5.4 The Supplier shall hand over the Goods to the RBR together with the documentation containing the characteristics, properties and terms of use / instructions of the Goods (if available and required).
- 6. LIABILITY**
- 6.1. The Supplier shall be liable to compensate damages incurred by the RBR arising out of or in connection with this Agreement and pay the contractual penalty if a breach of any of the obligations of the Supplier under this Agreement is established against the Supplier. The RBR shall be liable to pay the contractual penalty if a breach of payment obligations of the RBR under this Agreement is established against the RBR.
- 6.2. If the RBR fails to make any payment due to the Supplier under this Agreement on the due date then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to:
- 6.2.1. terminate this Agreement with immediate effect by giving written notice to the RBR provided that the RBR fails to make the due payment within 10 working days after receiving written notice from the Supplier giving full particulars of the payment due and requiring such payment to be made within 10 working days; and
- 6.2.2. charge the RBR a penalty of 0.5 (zero point five) per cent of the unpaid amount for each day of delay, but not more than 10 (ten) per cent of the unpaid amount (both before and after any judgement), until payment in full is made.
- 6.3. If the Supplier does not comply with a deadline for completion of Services and/or delivery of Goods or part of Services and/or Goods as determined in this Agreement or does not conform with the time limits set for correcting faults and errors made then, without prejudice to any other right or remedy available to the RBR, the RBR shall be entitled to either:
- 6.3.1. terminate this Agreement with immediate effect by giving written notice to the Supplier and to charge the Supplier a penalty of 0.5 (zero point five) per cent of the Fee amount for each day of delay, but not more than 10 (ten) per cent of the Fee amount (both before and after any judgement), until the termination of the Agreement; or
- 6.3.2. charge the Supplier a penalty of 0.5 (zero point five) per cent of the Fee amount for each day of delay, but not more than 10 (ten) per cent of the Fee amount (both before and after any judgement), until the completion of Services and/or delivery of Goods.
- 6.4. Payment of a contractual penalty shall not release the Parties from the performance of obligations arising out of this Agreement.
- 7. TERMINATION**
- 7.1. The RBR may terminate this Agreement with immediate effect by submitting a relevant written notice to the Supplier:
- 7.1.1. if the Supplier fails to meet any requirements set out for the data processing within the European Union, in the Agreement, or in any applicable law;
- 7.1.2. if by the third party's decision the Connecting Europe Facility (CEF) co-financing of the Agreement becomes unavailable to the RBR fully or partly;
- 7.1.3. if international or national sanctions, or substantial sanctions by a Member State of the European Union or the North Atlantic Treaty Organization affecting the financial and capital market interests have been imposed on the Supplier.
- 7.2. Additionally, the RBR has the general right to terminate this Agreement by submitting a written notice to the Supplier at least 30 days in advance.
- 7.3. In cases stipulated in Clause 7.1, 7.2 and 15.2, the RBR shall pay the Supplier the fees in respect of the Services and/or Goods provided under this Agreement up to the date of the notification of the termination of this Agreement and is not obliged to pay contractual or any other penalty or damages to the Supplier.
- 7.4. In any other situation the RBR may exercise its right to partially accept Services and/or Goods or part of Services and/or Goods, thus remunerating the Supplier for the partially accepted Services or part of Services.
- 7.5. The Parties may terminate the Agreement on the basis of a mutual, written agreement.
- 7.6. In case the Agreement is concluded for a term that is less than 30 days or the remaining term of the Agreement is less than 30 days, then the notices mentioned in Clauses 7.2. is half of the remaining term of the Agreement.
- 8. CONFIDENTIALITY**
- 8.1. "Confidential Information" means all information of a confidential nature relating to the Parties and their affiliates which is supplied by the Party (whether before or after the date of this Agreement) to the other Party, either in writing, orally or in any other form and includes all analyses, compilations, notes, studies, memoranda and other documents which contain or otherwise reflect or are derived from such information.
- 8.2. Both Parties shall at all times keep confidential (and take reasonable steps to procure that its employees and agents shall keep confidential) and shall not at any time for any reason disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of any Confidential Information obtained during implementation of this Agreement, relating to the Services, other Party's business methods, plans, systems, finances, projects, trade secrets. The obligation to keep confidentiality shall remain effective also after the expiration or termination of this Agreement.
- 8.3. In case of breach of Clause 8.2 the violating Party shall be liable to compensate damages incurred by the other Party and to pay a contractual penalty in the amount of 10 000.00 EUR (ten thousand euro) to the other Party.
- 8.4. Upon termination of this Agreement for whatever reason both Parties shall deliver to the other Party all working papers or other material and copies provided to the Parties pursuant to this Agreement or prepared by the Parties either in pursuance of this Agreement or previously.
- 9. INTELLECTUAL PROPERTY**
- 9.1. The RBR has rights to fully use the deliverables provided by the Supplier in accordance with the provisions of this Agreement for their designed purposes without any additional authorizations from the Supplier, this Clause shall also apply to other Rail Baltica Global Project stakeholders and beneficiaries. The Parties hereby acknowledge that insofar as allowed by the statutory law the deliverables will be regarded as full legal property (including any intellectual property rights) of the RBR.
- 10. VISIBILITY REQUIREMENTS**
- 10.1. The Supplier is obliged to comply with the following visibility requirements:
- 10.1.1. Any reports, brochures, other documents or information connected with Services and/or Goods which the Supplier produces and submits to the RBR, any other third person or makes publicly available, insofar as such reports, brochures, other documents or information have to be or have been produced specifically for the purposes of provision of Services and/or Goods must include the following:
- (a) a funding statement stating that the Supplier is the recipient of the funding from the CEF: "Rail Baltica is co-financed by the European Union's Connecting Europe Facility";
- (b) (for printed materials) a disclaimer releasing the European Union from any liability in terms of the content of the dissemination materials: "The sole responsibility of this publication lies with the author. The European Union is not responsible for any use that may be made of the information contained therein." This disclaimer in all European Union official languages can be seen at the website:

- <https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>;
- (c) the European Union flag.
- 10.2. Requirements set in Clause 10.1.1.(a). and 10.1.1.(c). can be fulfilled by using the following logo:



**Co-financed by the Connecting Europe  
Facility of the European Union**

- 10.3. If the Supplier shall use this logo, the Supplier shall ensure that elements of the logo will not be separated (the logo will be used as one whole unit) and enough free space around the logo shall be ensured;
- 10.4. The Supplier is obliged to comply with the latest visibility requirements set by the European Union. For that purpose, the Supplier shall follow the changes in the visibility requirements on its own. On the date of conclusion of this Agreement the visibility requirements are published on the following website: <https://ec.europa.eu/inea/connecting-europe-facility/cef-energy/beneficiaries-info-point/publicity-guidelines-logos>.

**11. CHECKS AND AUDITS**

- 11.1. By giving a written notice 5 (five) business days in advance, but in case of an unannounced check without an advance notice, the RBR may carry out on-the-spot visits to the sites and premises where the activities implemented within the Agreement are or were carried out. On-the-spot visits may be carried out either directly by the authorised staff of the RBR or by any other outside body authorised to do so on behalf of the RBR. Information provided in the framework of on-the-spot visits shall be treated as Confidential Information. The RBR shall ensure that any outside body authorised shall be bound by the confidentiality obligation. The Supplier shall provide to the performer of the on-the-spot visit or any other outside body authorised access to all the information and documents, including information and documents in electronic format, which is requested by the authorised staff of the performer of the on-the-spot visit or any other outside body authorised for the performance of an on-the-spot visit and which relates to the implementation of the Agreement, as well as shall allow the authorised staff of the performer of the on-the-spot visit or any other outside body authorised copying of the information and documents, with due respect to the confidentiality obligation.
- 11.2. By virtue of Council Regulation (Euratom, EC) No 2185/961 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EU) No 883/20132 of the European Parliament and the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF), OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by Union law for the protection of the financial interests of the Union against fraud and other irregularities. Where appropriate, OLAF findings may lead to criminal prosecution under national law.
- 11.3. By giving a written notice 5 (five) business days in advance, but in case of an unannounced check or audit without an advance notice, the RBR may carry out technical, legal and financial checks and audits in relation to the implementation of the Agreement. Checks and audits may be carried out either directly by the authorized staff of the RBR or by any other outside body authorised to do so on RBR's behalf. Information and documents obtained in the framework of checks or audits shall be treated as Confidential Information.
- 11.4. Supplier shall provide to the performer of the check or audit or any other outside body authorised access to all the information and documents, including information in electronic format, which is requested by the performer of the check or audit or any other outside body authorised for the performance of the check or audit and which relates to the implementation of the Agreement, as well as shall allow the performer of the check or audit or any other outside body authorised by it copying of the information and documents with due respect to the confidentiality obligation.

**12. FORCE MAJEURE**

- 12.1. An extraordinary situation arising beyond the control of the Parties and which could not be reasonably predicted by the affected Party, which makes the fulfilment of the obligations pursuant to the Agreement impossible, such as war, strike, earthquake, flood,

lockout, embargo, governmental acts or orders or restrictions, or any other reason where failure to perform is beyond the reasonable control and is not caused by the negligence or intentional conduct or misconduct of the nonperforming Party, is deemed to be force majeure.

- 12.2. In case of force majeure the affected Party must notify the other Party without any undue delay and provide proof of the existence of extraordinary force majeure situation.
- 12.3. The affected Party's obligations will be suspended as long as the extraordinary force majeure situation lasts. The other Party's counter-performances will be suspended during the same period of time.

**13. SEVERABILITY**

- 13.1. If any provision of this Agreement is found to be illegal, invalid or unenforceable under applicable law effective during the term of this Agreement, the remaining provisions of this Agreement will remain binding. The Parties will negotiate in a good faith to replace the invalid provision with a provision with the economic and legal effect as close as possible to that of the illegal, invalid or unenforceable provisions.
- 13.2. None of the contracting Parties may transfer its rights and obligations to a third party without a prior written approval of the other Party.

**14. PERSONAL DATA PROTECTION**

- 14.1. The Parties shall have the right to process personal data obtained from the other Party only for the purpose of fulfilling the obligations under this Agreement, while ensuring compliance with the requirements of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) ("GDPR").
- 14.2. The Party transferring the personal data to the other Party for processing shall be responsible for obtaining the consent of the data subjects concerned.
- 14.3. The Parties undertake not to transfer to third parties the data of natural persons obtained from the other Party, except in cases when the Agreement provides otherwise, or the regulatory enactments provide for the transfer of such data.
- 14.4. If, in accordance with regulatory enactments, a Party may be obliged to transfer to third parties the personal data obtained from the other Party, it shall inform the other Party thereof prior to the transfer of such data, unless prohibited by regulatory enactments.
- 14.5. Notwithstanding the provisions of Clause 14.3 of the Agreement, the Supplier agrees that the RBR transfers the personal data received from the Supplier to third parties who provide services to the RBR and with whom the RBR cooperates to ensure its operation and performance of the Agreement.
- 14.6. The Parties undertake to destroy, at the request of the other Party, the data of natural persons obtained from the other Party if the need to process them to ensure the performance of the Agreement ceases.

**15. AMENDMENTS**

- 15.1. The Parties may amend the Special Terms on the basis of a mutual, written agreement.
- 15.2. RBR may unilaterally amend the General Terms from time to time, by giving written notification to the Supplier 30 (thirty) days in advance. RBR may publish amendments to the General Terms on the Rail Baltica project website – [www.railbaltica.org](http://www.railbaltica.org). If the Supplier does not agree with an amendment to the General Terms, the Supplier may terminate this Agreement by giving a written notice 5 (five) business days in advance to the RBR until the respective amendment enters into force.

**16. OTHER PROVISIONS**

- 16.1. For the Agreement, a reference to "writing" or a written form shall include an e-mail transmission and any means of reproducing words in a tangible and permanently visible form between the Contact persons of the RBR and the Supplier.
- 16.2. Unless expressly provided in this Agreement or required by law RBR shall not be obliged to fill-out any questionnaires or other similar documents of the Supplier for the purposes of collection of information nor shall RBR be subject to any requirements to register in any Supplier's client databases or systems with similar purposes.
- 16.3. All notices and other communications made or required to be given pursuant to this Agreement shall be in writing and shall be deemed given if delivered personally or delivered by overnight courier service, or mailed by registered or certified mail or via electronic mail by correspondence between the Contract Persons of the Parties as indicated in this Agreement.

- 16.4. This Agreement is governed by the laws of the Republic of Latvia.
- 16.5. Any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof, will be settled by courts of the Republic of Latvia.