

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

**Version: September 2022 (Terms and Conditions 2020)**

## **Contents**

1. General provisions for supplying work and services	2
2. Provision of work and services by the contractor	7
3. Pricing, remuneration and invoicing	13
4. Contract supplements	18
5. Supplementary performance, interruption and termination	18
6. Liability and contractual penalties	19
7. Final provisions	19

## **1. General provisions for supplying work and services**

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

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

The components of the contract are

1. the contract with its annexes;
2. these Terms and Conditions and their annexes;
3. 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 shall apply in the order shown. In the event of any discrepancy or contradictions between annexes, the provision in the annex with the lower number shall apply.

### **1.2 Written and text form**

The contract, any amendments and supplements and all material communications must be in written form, unless the parties have made different arrangements or a stricter form is prescribed by law. In the event of transmission by telecommunication to be deemed to be in written form, this transmission must take place via GIZ's eProcurement Tender Platform. Insofar as text form is provided for in these Terms and Conditions, it shall consist of a readable declaration on a durable medium in which the person making the declaration is named.

### **1.3 Quality of work and services**

The work and services to be provided must comply with the recognised state of the art and the generally accepted rules of technology as well as being consistent with the relevant strategy of the ultimate commissioning party/client. They must be of excellent quality.

### **1.4 Framework conditions and sustainability**

#### **1.4.1 Compliance with legal provisions**

When performing the work and services, the contractor must comply with all applicable legal provisions, ordinances and official regulations (including tax law provisions), and take into account the local conditions and the customary trading practices in the relevant country.

#### **1.4.2 Environmental and social standards and human rights**

When providing work and services, the contractor shall take into account applicable national and international environmental laws, seek to minimise emissions of greenhouse gases and avoid any action that might make the local population and/or ecosystems more vulnerable to the impacts of climate change.

Respect for human rights, the protection of children, the prevention of any and all forms of violence, abuse and exploitation, the exclusion of any discrimination on the basis of ethnic origin or background, religious beliefs, age, gender identity, sexual orientation, or any type of disability, as well as the promotion of gender equality for all genders and compliance with international standards and multilateral agreements (in particular those relating to human rights) must be ensured throughout the entire duration of the provision of work and services by the contractor.

The contractor shall take adequate measures to prevent sexual harassment in the work environment and counter any attempt to incite hate or violence as well as any action that is discriminatory to a specific individual or group of individuals and is not justified by an actual business or operational requirement.

#### **1.4.3 Labour standards and minimum wage**

In performing the contract, the contractor shall be obliged to comply with the fundamental principles and rights at work as stated in the Declaration of the International Labour Organization (ILO) of 18 June 1998 (freedom of association, right to collective bargaining, elimination of all forms of forced or compulsory labour, effective

abolition of child labour and elimination of discrimination in respect of employment and occupation). In particular, the contractor shall be obliged in the performance of the contract to comply with the regulations enacting the ILO core labour standards (conventions nos. 29, 87, 98, 100, 105, 111, 138 and 182) in the legislation of the country of assignment. If the country of assignment has not ratified one or more core labour standards or not enacted them in national legislation, the contractor shall be obliged to comply with such regulations in the country of assignment which pursue the same goal as the core labour standards.

In the case that the contract is performed in Germany, the contractor is obliged to comply with the provisions of the minimum wage legislation (Mindestlohngesetz – MiLoG) and ensure that the contractor's employees are paid any standard wages that may have been negotiated via collective bargaining agreements.

#### **1.4.4 Avoidance of unintended negative consequences during the performance of the contract**

The contractor is obliged to provide its work and services in a manner designed to avoid or minimise unintended negative consequences with regard to the environment, climate protection, measures for adapting to climate change, human rights, fragile situations and situations marked by conflict and violence, and gender equality through the implementation of documented mitigation measures. With regard to gender equality, the contractor is additionally obliged to exhaust all possibilities for ensuring such equality.

#### **1.4.5 Consequences of violations**

If the contractor violates one of the obligations mentioned in Section 1.4 and GIZ terminates the contract as a result, then such termination shall be deemed to be the responsibility of the contractor.

### **1.5 Integrity**

#### **1.5.1 Conflict of interest**

The contractor may not become involved in any conflict of interest that relates to the performance of the contract. Conflicts of interest can arise in particular as a result of economic interests, political or national affinities, family or emotional ties or any other ties or common interests. The contractor shall undertake in particular

- (a) not to accept any additional remuneration from third parties in connection with the contract
- (b) not to accept during the term of the contract other orders where a conflict of interest is to be anticipated due to the nature of the order or due to the contractor's personal or financial connections with a third party unless prior consent has been given by GIZ in text form
- (c) not to enter into any contracts with natural or legal persons with whom it has personal or financial ties unless GIZ has previously agreed to this in written form.

The contractor shall undertake to disclose without delay to GIZ any circumstance that might represent a conflict of interest or which could lead to such. The contractor shall then discuss and agree with GIZ any further steps to be taken. If the parties are unable to reach an agreement in such a case and GIZ terminates the contract, then the contractor is responsible for the termination.

#### **1.5.2 Code of Conduct**

The contractor must not offer or give any gift or grant any other advantages, either itself or via third parties, in connection with the award and/or performance of the contract, nor may the contractor accept or demand the same for itself or others. This shall also include any facilitation fees.

The contractor must not agree on any restraints on competition with one or more other companies.

All forms of corruption are prohibited. The contractor shall be obliged to implement suitable and adequate measures to prevent and combat corruption. The contractor shall be further obliged to immediately report to GIZ's whistleblower system all confirmed cases of corruption and any serious suspected cases that might relate to corruption and/or financial crimes such as fraud, embezzlement and breaches of trust in connection with the performance of the contract. The whistleblower system can be contacted via the whistleblower portal, [www.giz.de](http://www.giz.de) • About GIZ • Compliance • Whistleblowing, GIZ's integrity advisor ([integrity-mailbox@giz.de](mailto:integrity-mailbox@giz.de)) or the external ombudsman at [www.giz.de](http://www.giz.de) • About GIZ • Compliance • Whistleblowing.

#### **1.5.3 Consequences of violations of integrity provisions**

If the contractor infringes one of the prohibitions stated in Section 1.5 and GIZ terminates the contract as a result, then such termination shall be deemed to be the responsibility of the contractor. In the event of violations

of an obligation under 1.5, GIZ shall be entitled to exclude the contractor from future competitive tenders for a limited period and to a reasonable extent.

## **1.6 Confidentiality**

Any and all data relating to the contract as well as any other information, such as submitted documents and exchanged information, of which the contractor and its employees become aware in the course of performing the contract, must be treated as confidential during and beyond the term of the contract. This provision applies even if such documentation and information has not been explicitly designated as secret or confidential. The contractor must not make documents and/or work results of any kind, including in particular, but not limited to, reports, accessible to third parties without prior approval in text form by GIZ. Third parties under this provision also include the ultimate commissioning party/client. The contractor shall also not be permitted to make use of any such data and information for the contractor's own purposes.

## **1.7 Requirement for GIZ's approval for publications**

Any publications regarding the contract require prior approval in text form by GIZ, even after the contract has come to an end. A brief description of the contract and scope of activity for the contractor's PR purposes shall not require GIZ's approval.

A statement on the content of the contract and the key results constitutes a brief description for the purposes of these Terms and Conditions. The contractor must always express in an appropriate way that its activities are on behalf of GIZ, and must also name the ultimate commissioning party/client and any further financing parties.

## **1.8 Use of GIZ's corporate design**

When designing materials relating to the contract which are intended for use with third parties (e.g. business cards, letterhead, emails, publications, presentations), GIZ's specifications and the specifications set out in GIZ's Corporate Design Manual (Annex 1 to these Terms and Conditions) must be followed. The design must also be agreed with GIZ and in the event of direct cooperation also with the responsible partner institution in the country of assignment.

## **1.9 Property rights and rights of use**

### **1.9.1 Principle**

Unless otherwise agreed in the contract, the contractor shall 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 shall grant GIZ an exclusive and irrevocable right that is unlimited with respect to time, location and content to use all work results, including commercial use outside the measure. The originator expressly and additionally waives the right to be named as such.

### **1.9.2 Work results**

Work results pursuant to 1.9.1 are all material and immaterial assets that are created or procured in performance of the contract, especially studies, drafts, documentation, articles, information, illustrations, drawings, calculations, plans, photos, materials, film negatives, image files and other visual presentations. Work results shall also include any computer programs which the contractor produces, modifies, procures or makes available in performance of the contract.

### **1.9.3 Existing work products**

The assignment of rights of use pursuant to 1.9.1 above shall also apply to material and immaterial assets, including computer programs, that the contractor has acquired or created 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 work and services that such products exist, and if the contractor does not substantially modify these in performance of the contract, GIZ shall only be entitled to a non-exclusive right of use for the relevant products.

#### **1.9.4 Scope of rights of use**

GIZ's rights of use shall include the right to use the work results and existing work products without limitations with respect to time, content and location. In particular, this includes:

- (a) the right to full or partial duplication, recording, distribution and making 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, displayed on monitors or as downloads;
- (b) the right to processing (including redesigned, shortened and supplemented versions) and translation 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 adaptation for film and for 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 1.9.2 in unlimited quantities. For the purposes of processing, the contractor shall provide GIZ with the respective source code and program documentation, copies of which GIZ shall also be entitled to pass on to third parties.

#### **1.9.5 Extension of rights of use to include forms of use unknown at the time of entry into the contract**

The contractor shall 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 still unknown at the time of entry into the contract.

The contractor and GIZ shall agree an appropriate remuneration for this separately.

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

GIZ shall further be entitled to assign to third parties the rights of use granted or to grant non-exclusive rights of use to third parties; in the case of non-exclusive rights of use under 1.9.3 above, however, this shall be limited to the assignment and granting of rights to the ultimate commissioning party/client, the executing agency of the measure, the partner institution and all other parties involved.

#### **1.9.7 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 shall 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 shall 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 shall not apply if the contractor is not responsible for the infringement of the rights.

#### **1.9.8 Compensation**

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

#### **1.9.9 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 and free of charge, where such use is for the contractor's own purposes. GIZ will permit such use if and to the extent that 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.

#### **1.10 Data protection**

Within the framework of the contract, GIZ processes person-related data exclusively in accordance with the provisions of the EU General Data Protection Regulation (GDPR) and other applicable data protection regulations. Such data are processed and stored by GIZ only to the extent necessitated by this contract. The contractor

shall have the right to view, delete or rectify the data and can approach GIZ (datenschutzbeauftragter@giz.de) or the responsible government authorities in order to assert this right.

The contractor shall comply with the requirements of applicable data protection regulations and take measures to ensure such compliance by its employees.

The contractor warrants that data transmitted to GIZ have been processed in accordance with applicable data protection provisions and are free from any third-party rights that could prejudice the use of this data within the purpose of this contract. The contractor indemnifies GIZ against all claims arising from the violation of data protection regulations and shall reimburse GIZ for all costs incurred in connection with its corresponding legal defence or the imposition of government sanctions.

Should applicable data protection law contain special principles that must be adhered to when providing work and services (for example implementation of technical requirements in a privacy-friendly way by means of Privacy by Design and Privacy by Default), the contractor shall place particular emphasis on ensuring compliance with such principles.

Should the contractor process person-related data for GIZ within the meaning of Art. 28 GDPR, this processing shall be performed on the basis of an associated separate agreement.

#### **1.11 Prevention of the financing of terrorism and compliance with embargoes**

The contractor shall not use the remuneration received from GIZ to make any financial resources or other economic resources available, either directly or indirectly, to third parties that are included on a United Nations or EU sanctions list.

When executing the contract, the contractor may enter into and/or maintain business or contractual relationships only with third parties that are reliable and to whom no statutory ban on doing business or entering into contracts applies.

In executing the contract, the contractor shall also comply with embargoes or other trade restrictions imposed by the United Nations, the EU or the Federal Republic of Germany.

The contractor shall notify GIZ without delay and of its own volition if the contractor, a member of its official managing body and/or other administrative bodies, its shareholders and/or its employees should be placed on a sanctions list published by the United Nations or the EU. The same stipulation applies if the contractor should learn of an event that results in the inclusion of aforementioned individuals on such a list.

The contractor shall notify GIZ without delay and of its own volition of any violation of the provisions of the present section 1.11. GIZ's rights pursuant to Sections 5 and 6 of these Terms and Conditions remain unaffected.

#### **1.12 Services 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 relevant measure. The contractor must make use of these services if they are provided without charge. Otherwise the conditions for their use shall be agreed in text form between the contractor and the local GIZ country office.

If GIZ has an HIV/AIDS workplace programme for national staff (Annex 6 to these Terms and Conditions), the contractor's own national staff shall participate in the programme.

#### **1.13 Partner inputs**

The contractor must make use of the partner inputs agreed in the agreements under international law (technical cooperation framework agreements, exchanges of notes), implementation agreements and master agreements.

If the partner inputs pledged in the agreements under international law (technical cooperation framework agreements, exchanges of notes), implementation agreements and master agreements are not or only partly supplied, or not supplied on time, or if further input is provided, the contractor shall be obliged to notify GIZ without delay in text form and to describe the effects on the implementation of the measure. If partner inputs are not properly provided, the contractor shall make suggestions to GIZ for measures to be taken with due consideration of the advantages and disadvantages.

If the country office confirms that the planned partner inputs have not been supplied in due form, GIZ and the contractor will enter into supplementary agreements.

This also applies if further partner inputs lead to a reduction in the contractor's expenditures.

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

### **2.1 Assignment of experts**

#### **2.1.1 Key experts and other experts**

The contractor shall assign key experts and other experts to provide work and services.

Key experts are experts who are identified by name in the contract.

For the assignment and replacement of other experts, the contractor shall submit an implementation proposal in text form to the person at GIZ who is responsible for the commission (stating the nominated expert, Terms of Reference, duration of assignment and number of expert-days) for approval.

#### **2.1.2 Qualifications and requirements for the assigned experts**

The contractor shall be obliged to assign only such experts as are capable of performing the tasks allocated to them, who have the necessary professional and local knowledge, and are adequately informed of and prepared for the security situation in the country of assignment. If participation by the contractor and/or its experts in special country orientation courses and/or development policy preparatory courses is agreed, the preparation period shall not form part of the period of assignment.

#### **2.1.3 Assignment times**

The assignment times of the contractor and assigned experts shall be determined by the requirements of the measure and the conditions in the country of assignment.

#### **2.1.4 Compliance with contractual obligations**

The contractor shall ensure that the experts it assigns comply with the relevant provisions of the contract.

If a key expert should not be present to perform the assigned work and services and GIZ terminates the contract as a result, then such termination shall be deemed to be the responsibility of the contractor.

#### **2.1.5 Replacement of a key expert by the contractor**

If the contractor requests replacement of a key expert prior to the start of the contractually agreed period, GIZ may withdraw from the contract.

Replacement of a key expert during the contract term requires the prior written approval of GIZ. Approval of a replacement may only be refused for a compelling reason.

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

GIZ may demand the replacement of an expert if there is a compelling reason for doing so. In particular, a compelling reason is deemed to exist:

- (a) if it becomes clear that the expert does not meet the requirements in terms of health, language skills, professional or personal qualifications or the requirements under 2.1.2 above;
- (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 the subject of complaint for understandable reasons by the government of the country of assignment or the partner institution;
- (c) if the expert contravenes the duties to be imposed on him/her by the contractor despite having been required by the government and/or partner institution in the country of assignment 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 shall bear 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 a complaint by the government of the country of assignment or the partner institution, the contractor bears these costs only if it or its expert is responsible for the cause of complaint. If the contractor or its expert is not responsible for the cause of complaint, 2.1.7 below shall apply analogously.



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

GIZ may also demand the replacement of one of the contractor's experts 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 shall reimburse unavoidable expenses in connection with the replacement. If these involve salary or ancillary salary expenses for the expert replaced, these are considered avoidable if they arise more than three months after GIZ's request for replacement, unless the contractor can prove that the incurring of such costs beyond this period of time was unavoidable and that it was not possible to assign the expert elsewhere.

**2.1.8 Assignment of a new expert after the request for replacement**

For the purpose of replacement, the contractor must assign a new expert without delay, at the latest however three months after receipt of the request for replacement, unless this is explicitly not desired by GIZ. The qualifications of the new expert must be at least equivalent to those stated in the Terms of Reference for the given position. After expiry of the time limit, GIZ shall be entitled to refuse to accept the contractor's performance in this respect.

**2.2 Special obligations for performance of the contract in the country of assignment**

**2.2.1 Principles of conduct**

The contractor shall be obliged to comply with the applicable stipulations of the respective agreements under international law (technical cooperation framework agreements, exchanges of notes), implementation agreements and master agreements relating to the measure, provided these stipulations are part of the contract.

The contractor is further obliged to seek good cooperation with the authorities in the country of assignment. For the duration of the contract, the contractor shall refrain from any interference whatsoever in the internal affairs of the country of assignment, in particular with regard to its politics, religion, manners and customs. The contractor must bear in mind that a task is being performed in the context of international cooperation or international education work with a partner country of the Federal Republic of Germany. The contractor shall be intent on maintaining friendly relations between the country of assignment and the Federal Republic of Germany.

Neither the contractor nor the assigned experts shall be permitted to pursue any interests unrelated to the measure in the country of assignment while executing the contract. This provision also applies to the assumption of extracontractual activities in the country of assignment, unless GIZ has been informed of these in advance. The contractor and the assigned experts are further obliged to adapt their personal conduct to the local conditions. This rule also applies to relatives accompanying the assigned experts.

**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 and the representatives of the Federal Republic of Germany working in the country of assignment, and also, where relevant for performance, with representatives and experts of multi-lateral or other organisations.

**2.2. Notification of travel dates**

Every journey by assigned experts to and from the country within the framework of the provision of work and services must be reported to GIZ in text form in advance.

**2.2.4 Protective measures, health requirements and necessary insurance policies**

The contractor shall be responsible for ensuring that it and its assigned experts meet the health requirements for the country of assignment. The contractor shall in particular be obliged to arrange the necessary vaccinations. The contractor must ensure adequate insurance cover (in particular health, repatriation and accident insurance). The contractor must provide evidence of compliance with this provision on request by GIZ. If GIZ offers a security briefing, the contractor and assigned experts are obliged to attend.

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

After arrival in the country of assignment, the contractor and assigned experts must contact GIZ in the country of assignment and notify it of the duration and location of their stay and contact details. If there is no GIZ office in the country of assignment, the contractor coordinates notification before departure with GIZ's person responsible for the commission.



The contractor and/or its assigned experts must register themselves and any accompanying family and household members with the German mission abroad or the responsible embassy. In the case of an assignment for an uninterrupted period of more than four months, the partner institution must also be notified and the measure number and/or title and the names, professions and dates of arrival for the experts in question must be provided as well.

After arrival in the country of assignment the expert heading the measure must also present himself/herself to the responsible German mission abroad without delay in coordination with the GIZ country office. The expert shall inform the German mission abroad of the contractor's tasks and activity in the country of assignment under the contract awarded. Any extensions of the assignment must be reported in the same manner.

At the end of the assignment it is necessary to deregister from the relevant offices.

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

Before the outward journey, the contractor shall provide the experts, as well as each of their family members and other persons living with them in the household and who are travelling to the country of assignment, with a copy of the instruction sheet on security precautions and emergencies and crises abroad (Annexes 2 and 3 to these Terms and Conditions). The contractor shall ensure that it and the persons listed above comply with the regulations set out in the instruction sheet.

The contractor shall be obliged to provide information to GIZ on request at any time with respect to the assigned experts and their family members who are currently residing in the country of assignment under the contract with GIZ, using GIZ's data sheets for this purpose (Annexes 4 and 5 to these Terms and Conditions). These data must be reported within six hours of informal request by GIZ directly by fax to GIZ's crisis officer (krisenbeauftragter@giz.de, fax: +49619679-7321).

To ensure rapid local response in emergency and crisis, it is recommended that the contractor and the assigned experts enter the most important information in a Personal Data Sheet (Annex 5 to these Terms and Conditions) and deposit this with GIZ in the country of assignment for the term of the assignment.

The contractor shall be obliged to register with GIZ's Emergency Mass Notification System (EMNS) during its period of assignment abroad. The contractor will receive the necessary access data for this from the GIZ country office in the country of assignment, or else can submit a request for these data via emns@giz.de. To the extent possible, GIZ shall integrate the contractor and its experts into the security system utilised in the country of assignment.

In the context of security precautions and crisis management measures, personal data associated with the contractor and the assigned experts shall be collected, processed and stored, and also shared in a crisis situation with the German mission abroad or other German Federal Government agencies assigned to deal with such a crisis. All data will be deleted after the assignment is completed.

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

GIZ may order immediate departure from the country of assignment if political reasons or crises make this necessary. In a crisis the contractor and the assigned experts must obey GIZ's instructions without delay to leave the country if necessary and possibly participate in 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 may 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 shall also be entitled to terminate the contract for a reason for which the contractor is responsible.

### **2.2.8 Force majeure**

Force majeure is an unavoidable event (e.g. natural disaster, outbreak of diseases and epidemics, serious unrest, war or terrorism) which is unforeseeable by human judgement and experience, cannot be avoided or rendered harmless by reasonable economic means and under application of the utmost care, and which prevents one of the parties to the contract from rendering the contractually agreed services. If an event originates from the sphere of responsibility of one of the parties to the contract, this shall not constitute an event of force majeure.

If force majeure arises, the contractual obligations, insofar as they are affected by the event in question, shall be suspended for as long as it remains impossible to render the services because of this situation, provided that a party to the contract notifies the other party to the contract about the force majeure event without undue delay. In this case, the contractor is obliged to take all measures to keep its expenses caused by the force majeure event as low as possible and to document them.

If the provision of services becomes permanently impossible due to the force majeure event or if the force majeure event lasts for more than three months, both parties to the contract are entitled to terminate the contract without further notice. GIZ's rights of termination as stipulated in Section 5.3 remain unaffected.

In the event of interruption or termination based on force majeure, the services rendered and all proven, necessary and unavoidable expenses of the contractor shall be invoiced according to the contract prices. GIZ may refuse to reimburse expenses in accordance with this provision if the contractor does not provide GIZ with sufficient evidence or documentation of its expenses and the measures taken to reduce them, or the contractor does not do so promptly without having good reason for late submission of the evidence or documentation. Expenses shall only be reimbursed for a period of up to three months, which commences on the first day of the interruption.

If, due to force majeure and with GIZ's consent, the activity is continued at a location other than the place of assignment, the contractually agreed fee shall continue to be paid. The other remuneration items will continue to be paid in the contractually agreed amount for a period of up to three months unless they are or can be saved, or the resources are used elsewhere.

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

Private vehicles of the contractor and its experts imported or purchased duty free under agreements under international law or special regulations in the country of assignment may only be sold in the country of assignment after consultation with the GIZ country office.

## **2.3 Information and reporting obligations**

### **2.3.1 Reporting obligation**

The contractor shall punctually submit to GIZ the reports specified in the contract according to type and frequency, in the agreed form and language and in the stipulated format. Unless otherwise agreed in the contract, the contractor shall prepare the reports in German and forward them in electronic form (both in a format that is MS Word-compatible and as a PDF document) to GIZ.

If the contractor's primary task is to produce one or more studies or appraisals, the reporting requirements set out at 2.3 above do not apply (with the exception of 2.3.5).

### **2.3.2 Required content**

All reports and the associated documents must clearly indicate the ultimate commissioning party/client, any other financing parties and GIZ. The reports must be concise and limited to information directly relevant to the contract. Where there are local subsidies as per 2.7 below, details of their settlement must also be given. The reports should 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 Interim reports and final report**

The final report is due at the latest when the contract period ends. Where a contract has a term of at least 12 months, interim reports are due every twelve months. The partner institution must be involved in writing the reports.

Upon request by GIZ, the key sections of reports must be forwarded to the partner institution in the country's official language or an agreed common language.

### **2.3.4 Special reports**

The contractor shall produce special reports for GIZ without delay or prior request if there is an important reason. For this purpose, an important reason is one that could delay the performance of the contract or make it impossible, or necessitate modification of the contract, the agreed obligations or the conditions.

Important reasons shall also include substantial changes in the risk assessment of the measure, a justified suspicion of corruption in connection with the performance of the contract, the occurrence of events that have an unintended negative effect on human rights (including the rights of women, children and young people), on the environment and climate, on fragile situations and those marked by conflict and violence, and gender equality. Further important reasons are any other important changes with regard to time factors and financial, technical or development-policy aspects during the performance of the contract, as well as risks to the safety or health of assigned staff.

GIZ may also request special reports on specific procedures/incidents and issues at any time. No additional remuneration shall be payable for such special reports.

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

GIZ shall be entitled to review the progress and results of the performance of the contract at any time, including the project accounts and any special accounts connected to the project. The contractor must keep the necessary records available and provide the necessary information for this purpose. At the request of GIZ the contractor shall also provide information to other institutions or persons and organisations commissioned by GIZ as well as making audits possible, and agreeing to cooperate appropriately in any such audits.

## **2.4 Procurement**

### **2.4.1 Procurement by GIZ**

If it has been contractually agreed that GIZ will carry out procurements of materials and equipment, the contractor shall prepare the necessary manufacturer-neutral specifications for materials and inputs and forward these to GIZ. The contractor shall handle receipt of goods locally or assist the partner institution in doing so. This includes in particular

- arranging for or assisting the recipient (partner institution) with customs clearance, examination of the consignment for completeness and damage in transport, and where applicable notice of damage to GIZ;
- transmitting confirmation of receipt to GIZ.

### **2.4.2 Procurement by contractor**

#### **2.4.2.1 Principles of procurement**

The contractor may only place orders with completely reliable, qualified and competent bidders under cost-efficient conditions and on the basis of competition. When conducting procurement, the contractor must ensure transparency, equality of treatment, the suitability of bidders and sustainability. As far as possible, at least three offers should be obtained.

Procurements above the most recently defined EU threshold for contracts for goods and services are subject to the latest versions of both the Act Against Restraints on Competition (GWB) and the Regulation on the Award of Public Contracts (VgV), if the contractor procures the goods or services in the European Economic Area. For procurements outside the European Economic Area, these rules shall be applied by analogy.

The contractor's obligations to provide work and services shall remain unaffected in the event that the contractor commissions third parties to provide subcontracted work and services. Any subcontracting of work and services by the contractor to third parties shall require GIZ's prior approval in written form, unless the contract stipulates that such work or services be procured by the contractor. The contractor shall undertake to ensure that the subcontractors it uses comply with the provisions of these Terms and Conditions.

#### **2.4.2.2 Warranty agreements**

The contractor shall be under an obligation to enter into warranty agreements with the suppliers which do not place it in a less advantageous position than other clients in comparable transactions. At the request of GIZ, the contractor must assign its claims arising from the contracts with the suppliers to GIZ and support GIZ in asserting any such claims.

#### **2.4.2.3 Treatment of equipment**

The contractor must treat equipment with all due and customary care and diligence and label items as specified by GIZ. Private use of these items by the contractor and its experts is not allowed.

Temporary private use of official vehicles may be agreed in writing with the GIZ country office in justified exceptional cases in return for reimbursement of the costs. Such authorisation for the private use of official vehicles can also be revoked at any time.

The contractor bears the risk of loss or damage to the vehicle or any third party damage, insofar as these are not covered by the vehicle insurance.

#### 2.4.2.4 Inventories

The contractor must comply with the Regulations of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH on the taking of inventories of materials and equipment by the contractor (Annex 7 to these Terms and Conditions). The contractor must take an inventory of all items of equipment and replacement parts with an individual purchase price of more than EUR 1,000, unless they are handed over to the partner institution immediately upon their arrival in the country of assignment. Inventories must be taken of aggregates and individual items which belong together (e.g. chairs for a training room, laboratory burners and reagents), even if the individual items cost less than EUR 1,000. Inventories must be taken of equipment with an individual purchase price below EUR 1,000 if multiple items are purchased (e.g. computers, office furniture).

#### 2.4.2.5 Procurement documentation

The contractor shall ensure adequate documentation of all procurements. In the case of materials and equipment, this must be done in accordance with the following list:

- the request for materials and equipment;
- the reasoning for the chosen procedure;
- the enquiries;
- the bids;
- documented evaluation of bids and justification for contract award;
- the order;
- confirmation of performance or receipt of goods stating the performance date;
- the invoice/where relevant transport documentation; any correspondence relating to this transaction.

GIZ is entitled to ask for the complete documentation of procurements at any time. The documents must be provided to GIZ within seven working days of receipt of the request.

#### 2.5 Handover of items of equipment

The contractor is obliged to hand over the equipment – as agreed in the contract – to the contractually designated institution either after its arrival in the country of assignment or upon completion of the measure, to transfer ownership to the institution, to have the handover certified on the form provided by GIZ for this purpose (Annex 8 to these Terms and Conditions) and to submit this to GIZ at the latest with the final invoice. If acceptance of handover is refused, the contractor is obliged to notify the GIZ project office or country office without delay. If refusal of handover becomes final, the contractor must provide credible evidence of this to GIZ at the latest with the final invoice.

In cases where work is performed solely in the Federal Republic of Germany, on completion of the work the equipment must be handed over to GIZ or to the institution specified by GIZ in the contract.

#### 2.6 Compliance with relevant procedures for export from the European Union

If the contractor is responsible for the transport of the goods to the location of use, it shall ensure compliance with the relevant procedures and provisions in respect of foreign trade and payments when exporting the equipment.

#### 2.7 Local subsidies

If the contract provides for local subsidies, the contractor may enter into corresponding agreements with national organisations on the basis of GIZ's specimen agreement (Annex 10 to these Terms and Conditions). The contractor enters into the agreement, makes the funds available, advises the local recipient of the subsidy, and steers and monitors the proper use of funds, including documentation by the recipient. In each instance, the individual local subsidy may not exceed EUR 50,000. The contractor will not be reimbursed for the local subsidy by GIZ if the national recipient of the subsidy fails to use the subsidy for the intended purpose.

The contractor shall keep separate accounts for the local subsidies in accordance with correct and orderly accounting principles.

**2.8 Correct and orderly accounting principles**

The contractor shall carry out project accounting in accordance with principles of correct and orderly accounting.

**2.9 Keeping of contract-related records**

The contractor must keep contract-related records and work results, including financial records, for ten years after acceptance of the final report or, as the case may be, of the work, and must provide them for inspection at GIZ's request.

**3. Pricing, remuneration and invoicing**

**3.1 Pricing**

When commissioning GIZ, the Federal Republic of Germany requires that Regulation PR 30/53 on the Prices for Public Contracts of 21 November 1953 – Bundesanzeiger (Federal Gazette) No. 244 of 18 December 1953 – with the Guiding Principles for Pricing on the Basis of Prime Costs is applied, including for the indirect provision of work and services. As a result, even those commissions executed by subcontractors for GIZ may accordingly be subject to price auditing by the competent price authority.

The price specified in the contract is a maximum amount; any costs in excess of this shall not be reimbursed.

In addition to the contractually agreed price the contractor may, where applicable, invoice value-added tax (VAT) at the statutory rate.

**3.2 Price reductions**

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

**3.3 Principle of remuneration, items of remuneration**

Remuneration is provided for contractually agreed items of remuneration; the amounts agreed are the maximum amounts in each case.

**3.3.1 Fee**

The fee is based on expert-days as a unit of calculation. An expert-day is a full day on which the contractor or one or more of the experts it assigns provides work and services for GIZ. Days used exclusively for travel are not considered to be expert-days. If contractually agreed, expert-hours may also be used to calculate fees in individual cases. No other units may be invoiced.

The contractor's fee or fee of the experts assigned by it covers all personnel costs including ancillary personnel costs, costs of backstopping, communication, reporting and all overheads, profit, interest, risk, etc.

Backstopping shall be 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 responsibilities with respect to the contractor's experts, process-oriented technical and conceptual steering of contract performance and ensuring the administrative management of the project.

**3.3.2 Costs related to the contract in the country of assignment**

In the event that a contract requires an uninterrupted stay of more than three months in the country of assignment, the contractor may, after receiving confirmation from GIZ in text form, invoice as a lump-sum fee the costs incurred through the performance of the contract at the usual place where services are delivered abroad. The lump-sum fee shall be paid from the day on which the stay related to the contract in the country of assignment begins. This lump-sum payment covers all the costs incurred in relation to the assignment of the expert in question for the performance of the contract abroad.

The lump-sum fee for costs incurred is to be invoiced as a separate remuneration item (i.e. separately from the general fee) at a daily rate.

Assignments up to an uninterrupted period of three months in the country of assignment are invoiced as business trips related to the contract in accordance with 3.3.4.2 and 3.3.4.3 of these Terms and Conditions.

### **3.3.3 National staff**

National administrative personnel (drivers, secretaries, other assistants) are paid monthly lump sums in the contractually agreed amount on proof of employment.

### **3.3.4 Travel expenses**

#### **3.3.4.1 Air travel expenses and other transport costs**

Air travel and other transport costs are reimbursed to the extent agreed in the contract, generally as a lump sum and in exceptional cases against presentation of evidence.

Air travel expenses are incurred for the outward and homeward journey of the contractor or contractor's experts to and from the country of assignment and for other contractually agreed official international, regional and domestic flights. Experts can choose to use a different mode of transport in the interest of sustainability, provided the use of such a mode of transport is possible and indicated by the situation.

The lump sum is to be calculated on the basis of a reasonable fare that meets generally accepted principles of economy. Providers that allow changes in bookings should be chosen. Advantage must be taken of any air fare reductions.

#### **3.3.4.2 Per-diem allowance**

The per-diem allowance covers the additional cost of subsistence to the contractor or the contractor's experts during an assignment away from their regular domicile and/or seat of business for a period as of a one-day business trip.

Per-diem allowances are paid for both expert-days and other days necessitated by the contract that are spent in the country of assignment (e.g. weekends, holidays, days spent in the country of assignment due to illness). Information on such days is stored in a separate section of the time record.

The per diem is not paid if GIZ or the partner institution or a third party commissioned by it covers the costs of subsistence during a conference or event for which a business trip was undertaken.

Experts who are entitled to a lump-sum payment for costs related to the contract in the country of assignment because they spend an uninterrupted period of more than three months in the country shall only receive per diems for business trips related to the contract outside the usual place where services are provided, in accordance with Section 3.3.2.

#### **3.3.4.3 Overnight accommodation allowance**

The overnight accommodation allowance covers the cost to the contractor or the contractor's experts of accommodation on an assignment away from their regular domicile or seat of business, if an overnight stay is necessary.

Overnight accommodation allowances are only paid if the contract necessitates an overnight stay. Information on such stays is stored in a separate section of the time record.

The overnight accommodation allowance is not paid if accommodation is provided without charge by GIZ, the executing agency/agencies of the measure, the partner institution or other third parties involved in implementing the contract.

Experts who are entitled to a lump-sum payment for costs related to the contract in the country of assignment because they spend an uninterrupted period of more than three months in the country shall only receive overnight accommodation allowances for business trips related to the contract outside the usual place where services are provided, in accordance with Section 3.3.2.

#### **3.3.4.4 Other travel expenses**

Other travel expenses related to the contract (domestic and foreign travel) are reimbursed up to the contractually stipulated number and quantity, generally as a lump sum and in exceptional cases upon presentation of evidence. The category of other travel expenses related to the contract also includes certain expenses such as the cost of obtaining a visa.



Travel between the residence and workplace constitutes a private journey and the associated costs are not be deemed to be 'other travel expenses'.

### **3.3.5 Other costs**

#### **3.3.5.1 Subcontracts**

For subcontracts the actual costs incurred shall be reimbursed within the contractually agreed scope on production of proof.

#### **3.3.5.2 Equipment**

GIZ shall reimburse the costs of items of equipment and replacement parts including transportation and insurance costs in accordance with the agreed procurement list on presentation of the following documents:

- invoices received/purchase receipts;
- shipping documents including the necessary or prescribed export documents;
- handover record (Annex 8 to these Terms and Conditions).

For procurements exceeding EUR 1,000, a justification and evaluation of the procurement procedure must also be shown on GIZ's award note (Annex 9 to these Terms and Conditions). The provisions described under 2.5 of these Terms and Conditions are to be taken into account here.

#### **3.3.5.3 Operating costs in the country of assignment**

Operating costs associated with the performance of the contract in the country of assignment comprise office and office operation costs, costs for supplies/non-durable items and operating costs for vehicles. Office and office operation costs and costs for supplies/non-durable items shall include all costs in connection with the proper operation of the offices – i.e. rent, security, electricity, water, heating, office supplies, telephone, internet, photocopiers and paper, as well as IT security infrastructure and data protection measures. Vehicle operating costs shall include all necessary costs in connection with the proper use of project vehicles, such as repairs due to normal operation, fuel, oil, maintenance, insurance, etc.

Remuneration on the basis of a monthly lump sum is provided for operating costs in the country of assignment.

#### **3.3.5.4 Workshops, training**

The costs of contractually agreed workshops organised by the contractor and training events for the partner institution shall be reimbursed on production of proof.

#### **3.3.5.5 Local subsidies**

Local subsidies (see Section 2.7 and Annex 10 to these Terms and Conditions) shall be reimbursed on proof of payment and proper use thereof.

#### **3.3.5.6 Other costs**

Costs not included in Sections 3.3.1 to 3.3.4 of these Terms and Conditions shall be reimbursed as lump sums or against proof, to the extent contractually agreed.

#### **3.3.5.7 Flexible remuneration item**

Where a flexible remuneration item is contractually agreed, the contractor shall be permitted to exceed the contractually agreed quantities up to the amount of the flexible remuneration item, taking into account the contractually agreed individual rates and bases for invoicing. The flexible remuneration item covers costs only for items listed in 3.3, where these are contractually agreed.

Use of the flexible remuneration item must be approved in text form by GIZ before the costs in question are incurred.

### **3.3.6 Indirect taxes in the country of assignment**

On production of proof, GIZ shall reimburse the contractor for indirect taxes (VAT) paid in the country of assignment as a result of invoices received from its contractual partners. This provision shall apply only if, due to national or international regulations, the contractor is not eligible for an exemption or reimbursement in the country of assignment.



### **3.4 Offsetting costs**

On submission of the final invoice, overruns on individual remuneration items may be offset against omitted or reduced items of remuneration if GIZ has approved the offsetting in text form before the costs in question are incurred. GIZ's approval is not required for offsetting up to 1% of the total contract value, or a maximum of EUR 5,000 for each remuneration item.

An increase in the individual rates or agreed prices is not possible. Lump-sum payments cannot be offset.

### **3.5 Terms of payment, invoicing for service contracts**

#### **3.5.1 Presentation of invoices**

The contractor shall bill GIZ for its work and services using invoices that meet all applicable legal requirements. The legal requirements for invoices depend on which VAT law the contractor is subject to. VAT shall only be reimbursed if the value-added tax in question is a statutory tax on work and services contained in the invoice.

Up until 26 November 2020, the contractor shall be able to submit invoices using GIZ's invoice form in the original (Annex 14 to these Terms and Conditions) or by using GIZ's invoice submission platform to submit an electronic invoice that complies with the CEN standard for electronic invoicing.

From 27 November 2020, invoices are to be submitted electronically exclusively via GIZ's invoice submission platform. Exceptions have to be agreed upon with GIZ.

#### **3.5.2 Time records**

The invoicing of the fee, costs related to the contract in the country of assignment and any per-diem or overnight accommodation allowances related to the contract that may need to be paid must be based on a time record (Annex 12 to these Terms and Conditions) in which the contractor enters the number of expert-days.

#### **3.5.3 Due dates and payment terms**

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

#### **3.5.4 Advance payments and settlement plans**

Advance payments and settlement plans are governed by provisions contained in the special conditions of contract or the contract/contract award letter and their annexes.

#### **3.5.5 Securities for advance payments**

If an advance payment is to be made, GIZ shall be entitled to demand that the contractor present proof of its creditworthiness or the existence of a line of credit in the corresponding amount, or else to provide securities. GIZ may also require provision of securities retroactively for advance payments effected and as yet unsettled if it considers that a deterioration of the contractor's financial circumstances or similar circumstances jeopardise the performance of contractual obligations or repayment of the advance payment.

If the contractor provides security, it shall be obliged to do this by way of a guarantee or surety in accordance with the specimen forms (Annex 11 to these Terms and Conditions) issued by a bank recognised by GIZ.

#### **3.5.6 Partial invoices**

Unless contractually otherwise agreed, the contractor shall submit a partial invoice to GIZ using GIZ's invoice form no later than 30 days after the agreed invoicing periods for the work and services actually provided in the period.

#### **3.5.7 Suspension of payments**

GIZ may suspend or adjust payments if:

- the contractor does not meet or only partly meets its reporting and information obligations
- there are significant delays in the progress of the work and services or changes in the scope of the work and services or the assignment of staff and

- there is no mutual agreement on a settlement plan corresponding to the actual progress or scope of the work and services.

### **3.5.8 Final invoice, final payment**

The contractor shall be obliged to submit the final invoice without delay, and in any event not later than six weeks after the contractual end of the period of assignment. The final invoice may be submitted before the end of the contractually agreed term once the work or services have been completed. The invoice must contain all the contractor's claims for remuneration, be verifiable and contain all the necessary information (with all the necessary receipts/vouchers). Final payment is made on submission of the final invoice in due form and performance by the contractor of all contractual obligations.

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

If an advance payment was made and the contractor does not submit the final invoice within 15 days despite a reminder by GIZ, the contractor shall be obliged to repay the advance payment.

### **3.6 Terms of payment for contracts for work and services**

Contracts for work and services shall be subject to the conditions of 3.5 above with the following provisions:

#### **3.6.1 Claim for payment**

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 contain all the necessary information (with all the necessary receipts/vouchers).

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

#### **3.6.2 Security deposit**

If payments on account have been agreed in the contract, 10% of the amounts invoiced in accordance with the contract (including VAT) shall be retained and initially not disbursed. This amount can be released against the provision of a security. The amount retained shall be disbursed following acceptance of the work and services as a whole.

#### **3.6.3 Acceptance**

Acceptance shall be effected in text form.

GIZ shall be entitled to warranty claims for any defects which were evident on acceptance even if it did not reserve the right to such claims at that time.

### **3.7 Invoicing in foreign currencies**

GIZ shall reimburse any amounts disbursed in the local currency on the basis of verified euro exchange rates for the currency in question.

### **3.8 Reconciliation of accounts**

The contractor shall be obliged on request by GIZ to reconcile the balances for each contract (advance payments less invoiced amounts) with GIZ's Financial Accounting Division once a year at a time of GIZ's choice.

### **3.9 Price adjustment clause for contract extension options and follow-on contracts**

This sub-section applies only to contracts with an original performance period of at least two years.

If GIZ exercises an option to extend the performance period or if such an extension is agreed by the parties to the contract, the fees shall be increased according to the formula below. If the parties to the contract agree a follow-on contract that corresponds to the same underlying project as the original contract, they shall be obliged to determine the fees using the formula below:

$$\text{NFR} = \text{OFR} \left( 1 + 0,8 \times N \times \frac{[T1 + T2 + \dots + Ta]}{a \times 100} \right)$$

where

NFR = NEW fee rate in EUR,

OFR = OLD fee rate in EUR,

Ta = annual salary increase under collective bargaining in the TVöD public-sector pay system,

a = number of increases under collective bargaining during the term of the present contract, and

N = calculation period: middle of the term of the present contract to the middle of the term of the new contract in years.

## 4. Contract supplements

### 4.1 Principle

The parties to the contract may agree on amendments to the contract relating to the scope of work and services, the performance period and the agreed remuneration.

### 4.2 Extending the performance period and expanding the scope of work and services

All amendments that entail changes in the specification of inputs, as well as the replacement of key experts and other major modifications to the contract, shall be agreed by the parties in the form of written contract supplements. Changes in the specification of inputs concern, for example, changes in the performance period, the expansion of the scope of work and services, changes to personnel requirements and/or changes in remuneration.

Cost-neutral extensions of the performance period without changes in the specification of inputs and the replacement of experts who are not key experts do not call for a written contract supplement and can be agreed in text form.

## 5. Supplementary performance, interruption and termination

### 5.1 Supplementary performance

If the contractor's performance is defective, GIZ may require supplementary performance; however, requiring supplementary performance is not a prerequisite for asserting other rights.

### 5.2 Interruption at GIZ's request

GIZ may at any time, e.g. for policy reasons, order a complete or partial interruption of the activity. In this case, the contractor must take all necessary measures to keep their expenses as low as possible.

If the interruption lasts for more than three months, the contractor may terminate the contract.

In the event of interruption or termination, the services rendered up to that point and all proven necessary expenses incurred by the contractor up to the end of the interruption shall be invoiced at the contract prices. All further claims are excluded.

### 5.3 Termination

GIZ may terminate the contract at any time, 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 work and services or with regard to individual experts.

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

If GIZ terminates the contract for a reason which is not the fault of the contractor, the contractor shall be entitled to demand the agreed remuneration. However, the contractor must allow deduction of expenses which are or could be saved, as well as of earnings from the use elsewhere of the resources in question, or of potential earnings foregone wilfully. Fees, salaries and ancillary salary costs are deemed to be saveable if they relate to periods more than 60 days after receipt of notice of termination.

The contractor bears the burden of proof in the case of exceptions.

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

Should GIZ terminate the contract for a reason which is the fault of the contractor, the only remuneration that shall be paid is for work and services already performed, provided that GIZ has a use for them, either at contract prices or on a pro rata basis taking into account the contract prices and the work and services provided in comparison to what would have been required for complete performance of the contract. Any work and services that cannot be used shall 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 shall be deemed to have been usable. Under no circumstances shall entitlement exceed the total contract value.

## **6. Liability and contractual penalties**

### **6.1 Liability**

The contractor is liable pursuant to the statutory provisions. GIZ is also entitled to claim damages that arise in connection with the recipient of the services due to the contractor's non-compliance with contractual obligations.

### **6.2 Contractual penalties**

In the event of violations of an obligation under 1.4.2 (Environmental and social standards, human rights), 1.4.3 (Labour standards and minimum wage) and 1.5 (Integrity), the contractor shall be obliged to pay a contractual penalty of EUR 25,000 for each violation. If the pecuniary advantage given is greater than EUR 25,000, then the contractor shall owe a contractual penalty equal to the amount of the pecuniary advantage. This is without prejudice to any further claims for damages by GIZ. However, contractual penalties that have already been paid shall be deducted from such claims for damages.

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

If the contractor fails to meet the agreed dates and deadlines for an agreed piece of work and does not deliver the work within the period of grace set by GIZ, then GIZ shall be 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 shall not exceed a total of 8% of the remuneration.

## **7. Final provisions**

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

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

### **7.2 Partial invalidity**

Should individual provisions of this contract be or become invalid or unenforceable, the validity of all other provisions under the contract shall 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 which was pursued by the contractual parties with the invalid or unenforceable provision. This shall apply accordingly if it emerges that the contract has gaps or omissions.

### 7.3 Place of jurisdiction

The exclusive places of jurisdiction are Bonn and Frankfurt/Main if the contractor is a merchant or a 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 shall apply 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.

### 7.4 Annexes to the Terms and Conditions

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

1. GIZ Corporate Design Manual (for contractors)
2. Information sheet on security precautions
3. Contact information in the event of an emergency or crisis (to be completed by contractors)
4. Reachability form (to be completed by assigned experts)
5. Personal data sheet (optional, may be completed by assigned experts)
6. 6HIV/AIDS workplace programme
7. GIZ rules for inventorising and handing over equipment and materials
8. Handover record
9. Award note
10. Specimen agreement and guidelines on local subsidies
11. Guarantees
  - 11.1 Performance guarantee (template)
  - 11.2 Advance payment guarantee (template)
  - 11.3 Defects liability guarantee (template)
12. Time record
13. Notes on accounting procedures
14. Invoice forms
15. Request for advance payment
16. Report formats (in German only)

The relevant forms, documents and explanations of the above annexes to the Terms and Conditions can be found on the GIZ website [www.giz.de](http://www.giz.de) • Doing business with GIZ • Procurement and Financing • Contracts for services and construction as well as development partnerships: Contract management, invoicing and accounting procedures (To overview page).