

FONDAZIONE BRUNO KESSLER
CONTRACTUAL TERMS FOR ORDERS FOR GOODS, SERVICES AND
WORKS

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Recitals – The contractual terms defined below apply to each purchase order for goods, services and works (hereinafter Contract) with which Fondazione Bruno Kessler (hereinafter FBK) accepts the offer made by the economic operator (hereinafter EO) at the request of FBK electronically or via a certified digital platform (PAD).

Art. 1 - Obligations of the Economic Operator - All obligations set forth in this document, in the bid (both technical and economic) and in the bid request documentation are the responsibility of the EO.

The EO undertakes to: fulfill all the obligations deduced in the Contract in good faith and with due diligence, skill and prudence; use professionally adequate personnel and suitable equipment; make use of duly hired personnel; make its employees all the compensation, tax, insurance, social security and welfare related-payments provided for by the applicable laws and collective bargaining agreements; indemnify and in any case hold FBK harmless from any liability, including indirect liability, from any charge that may arise, as well as from any legal action brought by third parties, in any way connected with the performance of the Contract.

Article 2 - Prohibition of assignment of the Contract, assignment of receivables - The Contract is not assignable: the EO may not substitute a third party for itself in the responsibility arising from the execution of the contract. This is without prejudice to cases of subcontracting, in which the EO still remains the sole contact person and responsible to FBK. The EO may not assign the credit arising from the Contract, without the prior written authorization of FBK. In case of violation of these prohibitions and without prejudice to FBK's right to damages, FBK may declare the Contract terminated due to the fact and fault of the EO.

Art. 3 - Subcontracting - The EO may not subcontract the performance of the Contract without FBK's prior written authorization. The provisions of Article 119 of Legislative Decree No. 36/2023 shall apply.

Art. 4 - Social security obligations compliance - DURC - FBK acquires ex officio the Social security contribution obligation compliance document (DURC) at the time of: a) verification of the general order requirements referred to in art. 94, 95, 96, 97 and 98 Legislative Decree n. 36/2023; b) awarding of the contract; c) stipulation of the contract; d) payment of progress of works or services and supplies; e) certificate of acceptance, regular execution, verification of conformity, attestation of regular execution; f) payment of invoices.

Art. 5 - Acceptance/Attestation of Regular Performance/Verification of Conformity - FBK's signing of the transport document is valid as a mere acknowledgement that the supply has been delivered and does not imply final acceptance of the supplies. FBK has the right to carry out checks on the performance of the Contract; upon completion of the performance of the Contract it shall make a final inspection for final acceptance of the supplies. The testing/certification of regular execution or verification of conformity is carried out by FBK within the legal term within 6 months of receipt of the goods or the completion of the services described in the invoice (art. 116 paragraph 2 Legislative Decree 36/2023). The verification does not exempt the EO from any flaws, discrepancies or defects that subsequently emerge. Any advance payments shall in no case imply tacit acceptance by FBK. At the outcome of the verification of regular performance resulting in refusal of the supply, in whole or in part as well as non-payment or/and reduction of the price, subject to compensation for damages, the EO is invited to verify the facts and make a decision within the allotted time. At FBK's option, the EO must replace or repair at its own expense supplies that do not meet the conditions prescribed in the Contract. If the EO does not agree to replace the rejected supply with another suitable one within the prescribed period, or fails to make the repair within the same time frame, FBK may proceed to have a third party perform the work at the EO's expenses. Defects and shortcomings which, in FBK's judgment, are deemed tolerable shall result in proportionally reduced price.

Art. 6 - Obligation of Traceability of Financial Flows - The EO assumes the obligations of traceability of financial flows under L. 136/2010. All subcontracting/sub-supply contracts shall include, under penalty of absolute nullity, an appropriate clause by which each subcontractor in the supply chain assumes the obligations of traceability of financial flows. Failure to use bank or postal transfer or other appropriate instruments to allow full traceability of transactions will result in the termination of the contract provided for in Article 13 below.

Art. 7 - Invoicing - The EO shall issue invoices within the terms and in the manner prescribed by law. Invoices issued shall be in good standing for tax purposes and in accordance with applicable laws and regulations. In addition to the description of the activity or component of the work, service or supply, all invoices shall contain: the FBK e-Invoicing Code (UFBKVC); the Tender Identification Code (CIG); the number and date of the Job Order or Contract; and the Project Code (CUP) if indicated in the order. They shall also show the amounts with the reference currency expressed in euros, the details of the dedicated bank account, as well as the VAT number (if applicable) and be in the name of "Fondazione Bruno Kessler."

Art. 8 - Payments - Following the issuance of a regular invoice in the manner described in the previous paragraph, payments will be made by bank transfer to a dedicated bank account in accordance with L. 136/2010, within thirty days from the date of acceptance or verification of conformity of the goods or services to the contractual provisions or acceptance of the work (art. 4 paragraph 2 lett. d) of Legislative Decree 231/2002).

Art. 9 - Warranty - The EO shall be liable for the warranty for defects and non-conformity in the work. In particular, all material supplied and/or the works/services shall provide warranty against all defects and faults in manufacture, assembly and execution, for the minimum duration of twelve months or for the longer duration provided for by legal provision or by the Contract. In the event of discrepancies and/or defects, FBK shall have the right to demand exact performance of the obligations as set forth in the Contract pursuant to Articles 1453/1460 of the Italian Civil Code

Art. 10 - Logistics - For those cases in which the Contract provides for the provision of logistics services, the EO shall: a) carry out its activities in accordance with the provisions of D.Lgs. 286/2005 making use, in particular, for trucking activities, of companies established in Italy registered in the National Roll of Road Hauliers, or companies not established in Italy but licensed for international trucking and road cabotage activities in Italian territory; b) to receive and keep declarations, from its carriers, with reference to the work of their respective drivers about the observance of collective and individual labor agreements, social security and welfare regulations, and regulations on road haulage for third parties, as well as also with regard to loss, damage or breakdown of the goods transported c) to see to it that in the performance of road haulage services, Carriers comply with the laws and regulations laid down to protect road traffic safety and social security, assuming full responsibility for the violation of such provisions.

Art. 11 - Liability - Without prejudice to the EO's obligation to take out suitable insurance policies, the EO shall be liable for any damage caused for any reason by the EO, its employees and collaborators as well as subcontractors during the performance of the Contract.

Art. 12 - Penalties - Unless otherwise agreed upon in the Contract, where the EO fails to perform, in whole or in part, the services referred to in the Contract within the deadline set, in the absence of force majeure or specific agreements, FBK will apply a penalty equal to 5 per thousand of the net contractual amount of the work/service/supply, for each day of delay. In the event that the EO performs the services under the Contract in a manner that is even partially inconsistent with the provisions set forth in the Contract, FBK will apply a daily penalty equal to 5 per thousand of the net contractual amount of the improperly performed work/service/supply, until the date on which the work/service/supply actually begins to be performed in a manner that is compliant therewith. If the performance of the service is divided into several parts, in the event of delay with respect to the terms of one or more of these parts, the penalties referred to in the preceding paragraphs shall be applied to the respective amounts. In the event of failure, incomplete or inadequate execution of the contract, the Foundation may apply a penalty re-proportioned to the seriousness of the breach and/or disruption. The above penalties will be applied up to a maximum of 10% of the total consideration, without prejudice to compensation for greater damages. Exceeding this percentage, without prejudice to the application of the penalty, FBK has the right, after written notice, to consider the relationship terminated by right and entrust the execution of the contract to others, to the detriment of the defaulting OE. In such a case, the latter shall be liable to pay the penalties for the delay/non-compliant execution up to the date of termination of the relationship. FBK shall be entitled to recoup any difference in price, subject in all cases to compensation for greater damages. Where provided for in the Contract, any different penalties specified therein shall remain unchanged and fully applicable.

Art. 13 - Termination - Should the EO fail to fulfill the obligations of the law or the Contract FBK, without prejudice to the application of penalties, subject to formal notice and after setting a reasonable time to comply, has the right to declare the termination of the Contract and to forfeit the deposit, if any, as well as to proceed to the execution by others charging the defaulting EO. This is without prejudice to FBK's right to compensation for any greater damages, if any, without prejudice to any other rights. The contract shall be terminated upon the occurrence of the following causes:

- failure of the OE to meet the general requirements set forth in Articles 94, 95, 96, 97 and 98 of Legislative Decree No. 36/2023; arrangement with creditors or bankruptcy of the EO, except in the case referred to in, 186 bis of R.D. 267/42;
- failure to comply with the provisions of Law 136/2010 on financial flows traceability;
- violation by the EO of any of the provisions of the FBK Code of Conduct;
- serious error, as ascertained by any element that can be documented by FBK, or FBK's assessment attesting to serious negligence or bad faith in the performance of the services entrusted or serious error in the exercise of professional activity, ascertained by any means of evidence by FBK;
- The EO is in a situation of conflict of interest or has been guilty of misrepresentation in providing the information requested by FBK for the contracting procedure.
- financial transactions related to the Contract itself or to subcontracts and derivative subcontracts are carried out without making use of bank or postal transfer or other appropriate instruments to allow the full traceability of transactions, as provided for in art. 3 paragraph 9 bis of L. 136/2010.

Article 122 of Legislative Decree 36/2023 shall apply.

Art. 14 - Withdrawal - Unless otherwise provided for in the Contract, FBK reserves the right to withdraw therefrom with notice of 20 consecutive days to be communicated in writing to the EO. In such case, the EO shall be entitled to payment for what has been properly performed in accordance with the compensation and terms of the Contract. Article 122 of Legislative Decree 36/2023 shall apply.

Art. 15 - Intellectual Property - Unless otherwise agreed upon in the Contract, the rights of ownership and/or economic exploitation of the drawings, intellectual creations, brainwork, software development, and other material and documentation created, invented, prepared, or made by the EO or its employees and collaborators, within the scope of and in connection with the performance of the Contract, shall be the exclusive ownership and property of FBK, including the invention of products or processes that might require patent protection. The OE shall not be entitled to any compensation beyond that agreed upon in the Contract. The EO assures that they shall not violate for any reason the rights and reasons of third parties, indemnifying in any case FBK from any loss, damage, or economic consequence resulting from violation of third parties' rights and taking on all consequent burdens at its own expense.

Art. 16 – Environmental regulations – The EO undertakes to comply with environmental and waste disposal regulations. FBK reserves the right to request appropriate documentation from the EO to prove compliance with the aforementioned environmental regulations. The EO that in the course of its activities is found to produce waste of any kind is obliged to dispose of any waste produced in accordance with the regulations in force and under its full responsibility as it is considered a waste holder and/or producer pursuant to Article 183 of Legislative Decree of April 3 2006, n. 152.

Art. 17 – Safety - The EO undertakes to cooperate with FBK personnel in the implementation of prevention and protection measures from risk at work as well as safety measures including any operational interference between the parties and with third parties (DUVRI), to comply with all obligations of the current legislation pertaining to safety, health and hygiene at work and FBK regulations, as well as to enforce them among its own employees and those of subcontractors. In case of supply of chemical and biological agents, the relevant safety data sheet must be provided in Italian pursuant to Regulation 453/2010/EU. The supply of scientific systems and equipment shall be complete of: identifiable CE marking in accordance with European Directives; Declaration of Conformity certifying that a product complies with the standards imposed by technical regulations and/or the law in relation to the type of product; Use and Maintenance Manual in Italian and English.

Article 18 - Confidentiality - The EO undertakes to keep strictly confidential and reserved any technical, commercial, or other information of which it may become aware in the performance of the Contract. The OE also undertakes to enforce this obligation on all employees, representatives, contractors, subcontractors, and third parties it uses in the performance of the Contract. Information in the public domain or the disclosure of which is required by provisions of law or public authority shall be excluded.

Art. 19 - Code of Conduct - The EO undertakes to observe, in addition to the provisions of the law, all the provisions contained in the FBK Code of Conduct available on the FBK website at <http://bit.ly/codice-comportamento-fbk>.

In case of violation of even one of the provisions set forth in the Code of Conduct, FBK shall have the right to terminate the contract with immediate effect, without prejudice to the right to compensation.

Art. 20 – Jurisdiction - The Court of Trento is the exclusive jurisdiction for any dispute that may arise regarding the Contract.

Art. 21 – Contractual charges and expenses – Any contractual expenses, including registration fees, shall be borne by the EO.

Art. 22 – Personal data - The Parties mutually acknowledge that personal data related to contractual relations are processed solely and exclusively for the purposes of fulfilling them and complying with legal obligations. Full information on FBK's processing of the EO's personal data can be found at bit.ly/FBK_Informativaprivacy_Operatorieconomici

FBK represents and warrants that it complies with all obligations under applicable data protection legislation.

The EO that processes personal data on behalf of FBK shall possess adequate requirements of sufficient experience, capacity and reliability to put in place appropriate technical and organizational measures and to formally take on the role of "Data Processor" under Article 28 of the EU Regulation 2016/679 (GDPR). The EO undertakes to process any personal data it may become aware of in the performance of the Contract in strict compliance with the principles and provisions and obligations of the current legislation on the protection of personal data and, in any case, by following the written instructions issued by FBK available at <https://howto.fbk.eu/documenti/regolamenti>

Art. 23 - Conflict of Interest - The EO ensures that the performance of the activities covered by the Contract will take place in the absence of any conflict of interest with FBK.

Art. 24 - Final Provisions - The Contract constitutes the complete manifestation of the agreements reached between the Parties and cancels and replaces any and all different and previous implementation, including verbal, between them. Should any changes occur regarding the data declared by the EO, the EO shall promptly notify FBK, expressly releasing FBK from any liability that may arise as a result of the failure to promptly notify FBK of the changes that have occurred. The Parties mutually acknowledge that the possible invalidity of one or more clauses will not result in the nullity or dissolution of the entire Contract, nor of the remaining part of the clause itself, and they undertake to replace in good faith the invalid or ineffective clauses with others that accomplish the same function as far as possible. Any forbearance by either Party of conduct of the other constituting violations of the provisions of the Contract shall not constitute a waiver of the rights arising from the violated provisions, nor of the right to demand the proper performance of all terms and conditions set forth in the Contract. Any amendment or supplement to the Contract shall not be valid and binding unless it results from a written instrument duly countersigned for acceptance by both Parties. For matters not governed by these general terms and conditions, please refer to the provisions of the Procurement Code and the relevant provincial regulations in force, as well as the provisions of the Civil Code.