

# GENERAL TERMS & CONDITIONS OF PURCHASE APPLICABLE TO GENERAL SUPPLIES AND SERVICES (GTC-P-GSS)

## Appendix no. 1

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### **Article 1 - Scope of application of these General Terms & Conditions of Purchase (GTCP)**

The aim of these GTCP is to define the framework of the contractual relationship between the University and its co-contractors.

For the purposes of these general terms and conditions of purchase, «the buyer» refers to Université Lumière Lyon 2 and «the supplier» refers to the co-contractor of Université Lumière Lyon 2 in charge of the delivery of supplies or the performance of services.

These GTCP, which may be accompanied by Université Lumière Lyon 2's Special Terms and Conditions of Purchase (STCP), apply to all purchases of supplies and services worth less than €40,000 (exc. tax).

The supplier must accept them and sign them before the notification of the order.

To finalise the commitment of each party, no other formality can be required by the supplier who waives this right expressly.

### **Article 2 - Aim**

The aim of the contract, its content, its technical specifications and the special terms of performance are defined in the purchase order form, these GTCP, and, if applicable, the STCP, and/or all other relevant documents relating to the purchase. It is expressly acknowledged between the buyer and the supplier that the present contract is a public supply and service contract under Articles L2, L1111-1, L1111-3 and L1111-4 of the French Code of Public Procurement.

### **Article 3 - General obligations of the supplier**

The supplier is subject to an obligation of result for the performance of the buyer's order. To this end, the supplier undertakes to perform his services in all circumstances, except in cases of *force majeure*.

### **Article 4 - Constituent documents of the contract**

By way of derogation from Article 4.1 of the GAC-GSS\*, the constituent documents of the contract are as follows, in order of priority :

- the purchase order form issued by the University and any appendices;
- if applicable, the STCP (special terms and conditions of purchase) and any appendices ;
- these GTCP (general terms and conditions of purchase);
- the General Administrative Clauses applicable to public contracts for general supplies and services (GAC-GSS), approved by the decree of 30 March 2021 ;
- the supplier's technical and financial offer ;
- the special subcontracting agreements and their amendments subsequent to notification of the contract.

For information, the GAC-GSS can be found at :

<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043310341>

Under no circumstances whatsoever do the stipulations in the technical and financial offer of the supplier take precedence over these general terms and conditions of purchase.

Likewise, the general terms and conditions of sale or service issued by the supplier, his subcontractors or his suppliers are not applicable to this contract.

Finally, the parties acknowledge that the provisions laid down in the Code of Public Procurement are applicable to the delivery and performance of the services.

### **Article 5 - Notification of the contract, purchase order form and Notice to Proceed**

By way of derogation from Article 4.2 of the GAC-GSS, notification of the contract is effected by sending a copy of the purchase order form and any appendices to the supplier using any means, including electronic means. Since other constituent documents of the contract are deemed to be known by the supplier, their transmission is not necessary in order to finalise the commitment of each party.

By way of derogation from Articles 3.7.2 and 3.8.2 of the GAC-GSS, if the supplier considers that the requirements of the purchasing order form or a Notice to Proceed about which he is notified necessitate his observations, he must notify the buyer within eight calendar days from receipt of the purchase order form.

### **Article 6 - Representation of the buyer**

The supplier's principal contact is the person whose details appear on the purchase order form.

Unless otherwise noted in the purchase order form, the person authorised to represent the University regarding the performance of the contract under Article 3.3 of the GAC-GSS is the person who signed the purchase order form.

### **Article 7 - Access to premises**

To access the public purchaser's premises, the supplier's staff will be required to comply with the instructions given to them.

### **Article 8 - Technical documentation**

Up-to-date technical documentation in French is provided for free by the supplier upon delivery of the equipment. Apart from the characteristics and user manuals, this technical documentation explains standard procedures for use and trouble-shooting.

### **Article 9 - Delivery**

By way of derogation from Article 21.2 of the GAC-GSS, a delivery slip should be given upon delivery, mentioning the following items :

- reference of the purchase order form ;
- name and contact details of the supplier;
- name of department and name and contact details of the person who made the order ;
- date and delivery address ;



\*General Administrative Clauses applic. to General Supplies & Services contracts



- quantities requested and delivered ;
- amount of the delivery ;
- detail of the supplies delivered.

Delivery is made in agreement with the person authorised to receive the order : the supplier or the carrier must inform them of the day and time of the delivery.

The supplier shall also ensure the delivery or shipment to the address indicated on the purchase order form during the following hours : Monday to Friday from 9am to 11am and from 2pm to 5pm. Delivery may be to upper floors or to the basement.

#### **Article 10 - Duration of contract, address and performance period**

Unless explicitly stated otherwise in the STCP, this contract is not renewable at term. The contract is active from its notification until the end of the basic warranty provided for in Article 19 of these GTCP.

Equipment is delivered and services are performed at the address on the purchase order form, or, failing this, the address can be found in other contract documents. Delivery and services performance takes place according to the days and times of operation of the establishment at the address on the purchase order form. The goods are transported to the delivery address at the supplier's expense and risk. Each delivery is accompanied by a form specifying the article and quantities delivered, the order number and the name of the client.

The performance period is indicated by the supplier in his technical and financial offer. After notification of the contract by the buyer, the performance period of the contract will be legally binding between the parties. By way of derogation from Article 13.1 of the GAC-GSS, this period begins on the date on which the supplier received notification of the contract which serves as an order to begin the services unless the purchase order form (or, failing that, another contract document) specifies a different performance start date. Failure by the supplier to meet the deadlines may result in the application of penalties provided for in Article 12 of these GTCP.

In the context of the stipulations of Article 13.3.3 of the GAC-GSS, when the supplier requests an extension of the performance period of the services, if the University does not give a decision within the next 15 (fifteen) working days from the date on which the supplier's request was received, then the buyer is deemed to have rejected the supplier's extension request, except for cases provided for in the second and third paragraphs of Article 13.3.3 of the GAC-GSS.

#### **Article 11 - Price and settlement of accounts**

Unless expressly stated otherwise in the special terms and conditions, the contract prices are deemed firm and updatable for the entire duration of the contract. The applicable prices are those stated by the supplier in his financial offer and they are restated by the buyer on the purchase order form.

The contract price can be updated at the supplier's request if more than three months has passed since the date when the supplier submitted his technical and financial offer to the buyer and the date when performance of the works ordered by the buyer began. The price is updated using the following formula:

Updated price = initial price x (indices or index at date of start of works - 3 months) / (indices or index at

date of submission of supplier's technical and financial offer to the buyer).

The reference index, published by the National Institute for Statistics and Economic Studies or in the official government Journal, is : index of producer prices of French industry for all contracts - A10 BE - 'Overall industry'.

The prices are deemed to include all fiscal taxes or other duties which are mandatory on services, costs related to packaging, storage, wrapping, insurance and transportation to the delivery address, associated costs pursuant to Article 18.2 of the GAC-GSS, as well as all the other expenses necessary for the performance of services, risk margins and profit margins. Further to Article 10.1 of the GAC-GSS, the prices are also deemed to include :

- normally predictable constraints (bad weather, usual natural phenomena, locations and constraints specific to the buyer's premises, etc.) ;
- expenses linked to special measures concerning the safety and health protection of employees;
- costs which may be incurred by the use of the public domain or the operation of public services;
- rental of equipment, costs of installation and removal and/or necessary labour ;
- costs resulting from the management and disposal of waste, means of transportation, etc. ;
- specific constraints linked to the preliminary preparation of a quote or to a site visit ;
- all expenses resulting from the coordination, monitoring or performance of services provided via a consortium or a subcontractor ;
- all other causes (expenses necessary to the successful execution of the mission are deemed to be included in the contract including when they are not the subject of a specific stipulation).

Payment is effectuated by administrative transfer. Amounts due to the supplier are paid within 30 days from the date of receipt of the payment request or from the date of acceptance of the services if it is later.

If payment is delayed, the rate of default interest and the amount of the fixed recovery fee will be set pursuant to Articles R.2192-31 to R.2192-36 of the Code of Public Procurement.

Electronic invoicing is compulsory and takes place via the shared electronic portal freely accessible at : <https://chorus-pro.gouv.fr/>. The University's registration number (SIRET) (196 917 751 00014) is necessary, as well as the purchase order form number which will be sent to the supplier by the department or unit which initiated the order.

Besides the compulsory information, electronic invoices transmitted by the supplier and any subcontractor(s) authorised for direct payment must include the details specified in Article D.2192-2 of the Code of Public Procurement.

The accounting officer responsible for payments is *Monsieur l'Agent Comptable de l'Université Lumière Lyon 2*.





## Article 12 - Penalties

By way of derogation from Article 14.1 of the GAC-GSS, failure by the supplier to meet the performance or delivery deadline is subject to a penalty calculated according to the following formula  $P = (V \times R) / 100$  in which :

P = the amount of the penalty ;

V = the value of the services on which the penalty is calculated, this value being equal to the amount (excluding VAT) of the delayed part of the services or of all the services, if the delay in performing part of the services makes all of the services unusable ;

R = the number of calendar days of delay.

In any case, P cannot exceed V.

Furthermore, the following penalties are applicable :

Reason for penalty	Calculation and amount
Discovery of a subcontractor who has not been declared	€200 immediately, then €50 per calendar day of delay after formal notice requesting the regularisation of the subcontractor's situation (the penalty is applicable until the day when the subcontractor is declared, according to the procedure provided for in Article 8 of these GTCP)
Breach of an obligation concerning the protection of personal data	The amount of the penalty may be up to 10% of the contract value (excluding tax) (at the buyer's discretion) but cannot be less than €200.
Any other breach in the delivery of supplies or the performance or services	€100 for each breach observed.
Failure to meet the deadline for an update or a repair requested under the basic warranty	€50 per calendar day of delay from the expiration of the repair and update deadline.

The penalties are cumulative for the same fact.

Generally speaking, and by way of derogation from Article 14 of the GAC-GSS, no exemption from penalties is applicable. Likewise, there is no limit to the total amount of penalties.

Likewise, the penalties are applicable without prior formal notice and without the buyer asking the supplier to present his observations.

The application of penalties does not affect any civil or criminal proceedings which could be brought by Université Lumière Lyon 2 against the supplier. It is also expressly agreed between the parties that the application of penalties by the public purchaser does not in any way have a liberating, compensatory or indemnifying nature for the supplier. Likewise, the application of penalties

in no way hinders the implementation of measures provided for in Article 20 of these GTCP.

## Article 13 - Verification and acceptance

Verification operations are conducted according to the stipulations of Articles 27 to 30 of the GAC-GSS.

However, by way of derogation from Articles 3.2.2 and 28.1 of the GAC-GSS, the simple quantitative and qualitative verifications are carried out within a maximum of five working days from the date of delivery of supplies or of the completion of the services. If no decision is notified at the end of this period, these supplies and services are deemed to be accepted (subject to hidden defects).

Verification operations other than those mentioned above are performed by the buyer in conditions provided for in Article 29 of the GAC-GSS. Following these verifications, the University decides, subject to hidden defects, to accept, postpone, ask for a price reduction, or reject. However, by way of derogation from Article 30.1 of the GAC-GSS, acceptance takes effect on the date of notification to the supplier of acceptance or, in the absence of a decision, within a period of 21 calendar days from the date of delivery of the supplies or completion of the services.

Generally speaking, and by way of derogation from Article 27.3 of the GAC-GSS, the University does not notify the supplier of the days and times fixed for these verifications which can be carried out without the presence of the supplier. Nevertheless, the supplier may contact the establishment to find out the days and times fixed for verifications in order to be present or to have a representative present.

## Article 14 - Subcontracting

Subcontracting is governed by Law no. 75-1334 of 31 December 1975 and Articles L.2193-1 to L.2193-14 and R.2193-1 to R.2193-22 of the Code of Public Procurement. It is illegal to subcontract the supply of goods.

The supplier may subcontract out the performance of certain parts of his service to another qualified service provider, subject to the acceptance of his subcontractor(s) by the public purchaser and approval of the terms of payment.

In accordance with the provisions of Article L2193-3 of the Code of Public Procurement, the public purchaser may demand that certain tasks, which he considers to be essential, be carried out directly by the supplier.

Any supplier who hires a subcontractor remains personally responsible with regards to the buyer. The supplier must receive written approval from the University for his subcontractor and regarding payment conditions before any performance of the subcontracted part of the services begins. The supplier has to make a subcontracting request via a special subcontracting agreement (DC4 form available from the Ministry of Economy and Finances' website) :

<https://www.economie.gouv.fr/daj/formulaires-declaration-du-candidat>

As well as the DC4 form, the supplier also has to send :





- the subcontractor's tax certificate and the certificate showing the subcontractor's social contributions mentioned in Articles D. 8222-5 or D.8222-7 and in D. 8222-8 of the Labour Code,

- the subcontractor's *extrait Kbis* (company proof of registration) document, less than three months old.

#### **Article 15 - Protection of personal data**

The parties agree to collect and process any personal data in accordance with the applicable regulations in force governing the processing of such data and in particular with modified Law no. 78-17 of 6 January 1978 as well as with EU Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and of the free movement of such data (otherwise known as the GDPR, 'General Data Protection Regulation' (*RGPD in French*)). Contractually, the service provider is authorised, on behalf of the buyer, to process the personal data necessary to provide the services covered by the contract. In so doing, the provisions and detailed rules concerning the processing of personal data are mentioned in the technical specifications or in the attached STCP.

The University has appointed a data protection officer who can be contacted at [dpo@univ-lyon2.fr](mailto:dpo@univ-lyon2.fr).

In the event of a breach of a legal and contractual obligation by the supplier concerning the protection of personal data, the buyer may terminate the contract under the conditions laid down in Article 20 of these GTCP.

#### **Article 16 - Language and currency**

All documents, inscriptions in hardware/software, correspondence, invoices, user manuals, technical instructions, etc. must be written in French.

The currency used in the contract is the Euro.

#### **Article 17 - Conformity of the supplier's status**

By accepting these GTCP, the supplier declares on his honour that he is free of any legal bans to submit a tender, as provided for in Articles L.2141-1 to L.2141-12 of the Code of Public Procurement, and that he complies with Articles L.5212-1 to L.5212-11 of the Labour Code regarding the employment of disabled workers.

The supplier agrees to provide the documents and sworn statements provided for in Article D.8222-5 or D.8222-7 of the Labour Code every 6 months from the notification of the contract until the end of its performance.

The supplier must upload the above-mentioned documents and statements onto the University's online platform : <https://www.e-attestations.com>.

#### **Article 18 - Liability and insurance**

In accordance with Article 8 of the GAC-GSS, damages of any kind sustained by the buyer's staff or the goods by the supplier as a result of the performance of the contract are the responsibility of the supplier.

To this end, by way of derogation from Article 9.2 of the GAC-GSS, within a maximum period of five calendar days, the supplier must demonstrate that he is covered by a civil liability insurance contract under Articles 1240

to 1242 of the French Civil Code which covers his liability towards the buyer and third parties who are victims of accidents or damages caused by the performance of services. At any time during the performance of the services, the supplier should be able to produce this certificate upon simple request of the public purchaser within a period of five calendar days from receipt of the request.

#### **Article 19 - Warranty**

##### **Basic warranty :**

In accordance with Article 33 of the GAC-GSS, deliveries and services are subject to a minimal guarantee of one year from the date of the decision to accept the services.

Unless the buyer expressly makes a more favourable decision, the supplier has a period of 15 calendar days to carry out the requested updates or repairs.

##### **Additional warranty :**

In addition to Article 33 of the GAC-GSS, it is expressly agreed between the parties that the warranty for hidden defects, provided for in Article 1641 of the Civil Code, applies to parts and supplies used by the supplier. The warranty period is limited to 5 years after acceptance of services and supplies.

#### **Article 20 - Termination and performance at the supplier's expense and risk**

##### **Performance for fault of supplier**

In accordance with Article 41.1 of the GAC-GSS, the buyer can terminate the contract for fault of the supplier.

This termination does not entitle the supplier to any compensation and does not annul any legal action which the buyer might bring for damages incurred. Termination takes effect from the date specified in the decision, or, failing that, at the date of its notification with written acknowledgment of receipt.

##### **Performance at the supplier's expense and risk**

The provisions laid down in Article 45 of the GAC-GSS apply. In the event of non-performance or poor performance of the services provided for in the contract, if there is no response to notice being served, or if the decision is taken to terminate the contract, the buyer may employ a third party to perform the services at the supplier's expense and risk.

##### **Termination on grounds of general interest**

By way of derogation from Article 42 of the GAC-GSS, the buyer can at any time, prematurely, and without prior formal notice, terminate the contract for reasons of general interest by unilateral decision of termination whereby the supplier must be notified with written acknowledgment of receipt. The supplier is not entitled to any compensation apart from the share of costs and investments which may have been incurred and strictly necessary for the contract's performance.

#### **Article 21 - Review clause**

Besides the case provided for in Article 25 of the GAC-GSS and pursuant to Article L 2194-1 of the Code of Public





Procurement, the contract can be modified, by an addendum, regardless of the amount, provided that the initial subject of the contract remains :

- in the event of changes in legislation or regulations in force ;
- in order to improve environmental, social and societal performance of supplies and services, particularly by increasing the proportion of goods from re-purposing, re-use or recycled waste ;
- to adapt supplies and services to changes in techniques and technologies, and to innovations, as well as to the changing needs of public services of higher education and research, particularly regarding the improvement of accessibility of people with disabilities and the user experience ;
- to take into account changes in the University's property assets and/or movable heritage, or address concerns of obsolescence of equipment.

In order to implement the review clause, the supplier must first provide a quote so that the modification can be recorded by means of an addendum signed by both parties.

#### **Article 22 - Disputes**

In the event of disputes, only French law will apply.

Any disputes will be brought before the Lyon Administrative Court if an amicable settlement cannot be reached :

**Lyon Administrative Court**

**184 rue Duguesclin**

**69433 Lyon cedex 03**

**Tel. +33 (0)4-87-63-50-00**

**Fax +33 (0)4-87-63-52-50**

**Email : [greffe.ta-lyon@juradm.fr](mailto:greffe.ta-lyon@juradm.fr)**

In all cases and unless deadlines are exceeded, the procedure provided for in Article 46.2 of the GAC-GSS is applicable in terms of the resolution of disputes between the parties.

#### **Article 23 - Derogations from the GAC-GSS**

Article 4 derogates from Article 4.1 of the GAC-GSS;

Article 5 derogates from Articles 3.7.2, 3.8.2 and 4.2 of the GAC-GSS ;

Article 9 derogates from Article 21.2 of the GAC-GSS ;

Article 10 derogates from Article 13.1 of the GAC-GSS ;

Article 12 derogates from Articles 14 and 14.1 of the GAC-GSS;

Article 13 derogates from Articles 3.2.2, 27,3 and 28,1 and 30,1 of the GAC-GSS ;

Article 18 derogates from Article 9.2 of the GAC-GSS;

Article 20 derogates from Article 42 of the GAC-GSS.

#### **For the co-contractor :**

Subject of the request :

Price :

The company presents its offer and commits itself unreservedly and according to the requirements imposed by these GTCP and the other constituent documents of the contract. The company's offer is valid for 60 calendar days from the day of its acceptance by the buyer. The company notes that, in the event that it is notified by the buyer with a purchasing order form, these GTCP will be legally binding for both parties.

Signed in

Signature and company seal (the signatory should have the authority to bind the co-contracting company) :

