

GENERAL TERMS & CONDITIONS OF PURCHASE APPLICABLE TO INTELLECTUAL SERVICES (GTCP-IS)

Appendix no. 2

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 Université Lumière Lyon 2 and its co-contractors for all public intellectual services contracts worth less than €40,000 (exc. tax).

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 Payment (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 and definitions

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, if applicable the STCP, and 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 contract for intellectual services.

The definitions of Articles 2 and 32 of the GAC-IS* are applicable.

Article 3 - General obligations

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

Article 4 - Constituent documents of the contract and order of priority

Unless expressly stated otherwise in the purchasing order form or in the special terms and conditions of payment or in these GTCP, the stipulations of the General Administrative Clauses applicable to public intellectual services contracts in the version appended to the decree of 30 March 2021 approving the General Administrative Clauses applicable to public intellectual services contracts (below-named «GAC-IS»), are applicable.

For information, the GAC-IS can be found at :
<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043310613>

By way of derogation from Article 4.1 of the GAC-IS, in the event of contradiction between the stipulations of constituent documents of the contract, they take precedence in the following order of priority :

- the purchase order form and any appendices ;
- the STCP (special terms and conditions of purchase) and any appendices ;
- these GTCP (general terms and conditions of purchase) ;
- the General Administrative Clauses (GAC) applicable to services which are the subject of the order ;
- the special subcontracting agreements and their addenda subsequent to notification of the contract ;
- the supplier's technical and financial offer.

Under no circumstances do the provisions which appear in the documents issued by the supplier, in particular his general or special terms and conditions of sale, take precedence over these general terms and conditions of purchase.

Article 5 - Notification and information from the buyer

By way of derogation from Article 4.2 of the GAC-IS, notification of the contract is effected by sending a copy of the purchasing order form and any appendices to the supplier. In this case, the person authorised to represent the establishment regarding the performance of the contract under Article 3.3 of the GAC-IS is the person who signed the purchase order form. Nevertheless, the supplier's principal contact is the person whose details appear on the purchase order form.

By way of derogation from Article 3.7.2 of the GAC-IS, if the supplier considers that the requirements of the purchasing order form 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-IS 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 - Standards and technical documentation

The services which are the subject of the contract must comply with the approved standards in force in France.

Upon delivery, the supplier agrees to provide all updated documentation necessary to ensure the maintenance, correct operation of the equipment and analysis/interpretation of studies. This documentation is written in French and is provided at no additional cost.

*General Administrative Clauses applic. to Intellectual Services contracts



Article 9 - Delivery

Delivery details and terms are specified in the contract.

Article 10 - Duration of contract, address and timing

The duration of the contract is specified on the purchase order form or in other contract documents.

Unless otherwise explicitly stipulated in the STCP, this contract is not renewable at term. The contract is active from its notification and finishes at the end of the guarantees provided for in Article 19 of these GTC.

If the contract provides for renewals, the buyer has an exclusive right to renew or not to renew the services covered by this contract.

Subsequently, the co-contractor is required to accept the possibility of renewal but is not an obligation for the buyer. If the establishment does not wish to renew the contract, it must inform the co-contractor by registered mail with acknowledgment of receipt before the end of the period in progress.

In the event of a renewable contract, and if the buyer has not made any contrary decision before the end of the current period, the renewal is considered tacit.

The address where the services are performed is on the purchase order form or failing this, in other contract documents. In the context of the stipulations of Article 13.3 of the GAC-IS, when the supplier requests an extension of the performance period of the services, if the establishment does not give a decision within the next 15 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-IS.

In any case, the duration of the contract cannot exceed four years.

Article 11 - Price and settlement of accounts

Unless expressly stated otherwise in the special terms and conditions, the contract prices are deemed fixed and definitive 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 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-IS, 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-IS, 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

12.1 - Delay penalties

By way of derogation from Article 14.1 of the GAC-IS, failure by the supplier to meet deadlines 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.

By way of derogation from Article 14.1.3 of the GAC-IS, no exemption from penalties is applicable.

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 13 of these GTC)
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.

Likewise, penalties are applicable without prior formal notice and without the buyer asking the supplier to present his observations, subject to the stipulations of Articles 13.3 and 21.5 of the GAC-IS.

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 GTC.

Article 13 -Intellectual property

13.1 - Intellectual property rights or rights related to results

Unless expressly stated otherwise on the purchase order form or in the special terms and conditions of purchase, the provisions of Article 35 of the GAC-IS regarding the transfer of rights of intellectual property or rights related to results apply in this case.

13.2 - Verification operations

The buyer has two months to carry out verifications and then notify his decision of acceptance, postponement, acceptance with price reduction, or rejection. Failure to make a decision within this timeframe shall be considered an acceptance of the services.

By way of derogation from Article 28.5 of the GAC-IS,

the establishment is not obliged to automatically notify the supplier of the days and times fixed for the verifications. Nonetheless, 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 - Confidentiality and protection of personal data

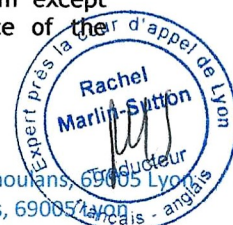
In addition to the provisions of Article 5 of the GAC-IS, the supplier acknowledges that the computer storage media and documents supplied in the context of the performance of this contract remain the property of the buyer.

Data contained in the media and documents is strictly covered by the obligation of professional secrecy, as is all data of which the supplier is aware during the performance of this contract.

In accordance with Article 34 of the amended French Data Protection Act, the supplier agrees to take all necessary precautions to ensure the security of the information, and especially to prevent it from being altered, damaged or disclosed to unauthorised persons.

The supplier agrees to comply with the following obligations and to ensure that his staff does likewise :

- Not to make any copies of documents or information media entrusted to them except those necessary for the performance of the services provided for in the contract ;



- Not to disclose these documents and information for purposes other than those specified in the contract ;
- Not to disclose these documents or information to other persons;
- To take all measures to prevent any misuse or fraudulent use of computer files during the performance of the contract ;
- To take all security measures, especially physical ones, to ensure the preservation and integrity of the documents and information processed during the performance of the contract ;
- At the end of the contract, to destroy all manual or computerised files storing the information which has been entered.

The buyer reserves the right to conduct any inspections which he considers necessary in order to ensure compliance with the aforementioned obligations.

These provisions also apply to any subcontractors of the supplier.

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.

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-IS, 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.

By way of derogation from Article 9.2 of the GAC-IS, 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.

Furthermore, for those in the construction and building trade, the supplier must also provide proof of insurance under his ten-year insurance guarantee covering liabilities arising from the principles outlined in Articles 1792, 1792-1, 1792-2, 1792-4 and 1792-4-1 of the Civil Code.

Article 19 - Technical warranties

In accordance with Article 30 of the GAC-IS, 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.

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

Termination for fault of supplier

In accordance with Article 39 of the GAC-IS, the buyer can terminate the contract for fault of the supplier.

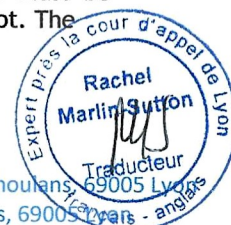
This termination does not entitle the supplier to any compensation and does not annul any legal action which the buyer might bring for damages incurred. Termination takes effect from the date specified in the decision, or, failing that, at the date of its notification with written acknowledgment of receipt.

Performance at the supplier's expense and risk

The provisions laid down in Article 27 of the GAC-IS 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 40 of the GAC-IS, the buyer can, at any moment, prematurely 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-IS 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 should first provide a quote so that the modification can be recorded by means of an addendum signed by both parties.

Article 22 - Disagreements and 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

In all cases, and unless deadlines are exceeded, the procedure provided for in Article 43.2 of the GAC-IS is applicable in terms of the resolution of disputes between the parties.

Article 23 - Background intellectual property

The conclusion of the contract does not entail the transfer of rights to intellectual property or any other rights related to background intellectual property. The

buyer, the supplier and the third parties named in the contract each retain their respective intellectual property rights or any other rights involving background intellectual property. The terms related to the application of background intellectual property are governed by Articles 33 and 34 of the GAC-IS.

Article 24 - Cessation of the performance of services

When the services are split up into several technical parts to be performed separately and each one is clearly identified and associated with an amount, the buyer may decide, when each of these parts comes to an end, either on his own initiative or at the request of the supplier, to stop the performance of the services.

By way of derogation from Article 22 of the GAC-IS, if cessation of service performance when one technical part comes to term is temporary, it does not result in the termination of the contract. However, in the other cases, cessation leads to the termination of the contract. The decision taken specifies whether the cessation is temporary or definitive. The decision to stop the performance of services does not give rise to any compensation.

This provision applies to each definite and/or conditional section, if applicable.

Article 25 - *Intuitu personae* regarding the supplier

In addition to Article 37 of the GAC-IS, when the contract is concluded *intuitu personae*, the buyer may terminate it unilaterally if the supplier is deemed to have lost the qualities which determined why he was chosen.

The buyer notifies the supplier of his decision to implement the termination clause provided for in this Article, as well as the effective date.

Termination does not entitle the supplier to any compensation.

The supplier agrees to return to the buyer any equipment, goods or installations which the buyer lent him, as well as all the documents provided by the buyer which he possesses.

Article 26 - Terms of payment

The provisions of Articles R.2191-3 and subsequent Articles of the Public Procurement Code and of the GAC-IS regarding advances, deposits and payment systems are applicable.

In accordance with Article R2192-10 of the Public Procurement Code, the general payment deadline is 30 days from receipt of the invoice. If this deadline is exceeded, the supplier or subcontractor is fully entitled to charge default interest without further formality.

Invoices accompanied with bank account identification details must comply with the provisions of Articles 289 and 289a of the French General Tax Code and, in addition to other information requested by Article 242 ninth A of appendix II of the General Tax Code, must include the reference numbers of the order, the contract and the corresponding lot, if applicable.



In the event of late payment, the buyer will owe the supplier the fixed sum to cover recovery costs without further formality, in accordance with the provisions of Article D2192-35 of the Public Procurement Code.

Article 27 - Validity of the tenderer's offer

On the date of his technical and financial proposition, the tenderer's offer is valid provided that the buyer's notification of acceptance is notified within a maximum period of 60 days from that date.

When this deadline expires, the tenderer reserves the right either to maintain his offer at the buyer's request, or to submit a new updated proposition.

Article 28 - List of derogations from the GAC-IS

Article 5 derogates from Articles 3.7.2 and 4.2 of the GAC-IS

Article 13.2 derogates from Article 28.5 of the GAC-IS

Article 15 completes Article 5 of the GAC-IS

Article 18 derogates from Article 9.2 of the GAC-IS

Article 20 derogates and completes Article 40 of the GAC-IS

Article 21 completes Article 25 of the GAC-IS

Article 24 derogates from Article 22 of the GAC-IS

Article 25 completes Article 37 of the GAC-IS

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) :

