

GENERAL TERMS & CONDITIONS OF PURCHASE APPLICABLE TO INFORMATION AND COMMUNICATIONS TECHNOLOGY (GTCP-ICT)

Appendix no. 3

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.

These GTCP, which may be accompanied by Université Lumière Lyon 2's Special Terms and Conditions of Purchase (STCP), apply to all purchases of works 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 the provision of services related to information and communications technology. It involves services and the supply of tools which facilitate the dissemination of information (such as IT, telecommunications, software or IT maintenance services), under Articles L2 and L1111-1 of the French Code of Public Procurement.

Article 3 - 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

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

- the purchase order form issued by the University 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 applicable to public contracts for information and communication technology (GAC-ICT), approved by the decree of 8 October 2021 ;
- the supplier's technical and financial offer ;

* General Administrative Clauses applic. to ICT contracts

- the special subcontracting agreements and their amendments subsequent to notification of the contract.

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

<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043310689>

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 sales 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 and information from the buyer

By way of derogation from Article 4.2 of the GAC-ICT, 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 Article 3.7.2 of the GAC-ICT, 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-ICT 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



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 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.

The performance period is outlined on the purchase order form, or, failing this, in other contract documents. By way of derogation from Article 13.1 of the GAC-ICT, 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-ICT, 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-ICT.

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 20 of the GAC-ICT, 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-ICT, 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-ICT, 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 13 of these GTCF).
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.
Non-compliance with security rules and protection of confidential information not involving personal data	0.5 % of the performed amount of the contract at the date when the facts were reported.
Non-compliance with security rules and protection of confidential information involving personal data	2 % of the performed amount of the contract at the date when the facts were reported.

The penalties are cumulative for the same fact.

Generally speaking, and by way of derogation from Article 14.1.3 of the GAC-ICT, no exemption from penalties is applicable. Likewise, there is no limit to the total amount of penalties.

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 GTCF.

Article 13 - Verifications, acceptance, intellectual property and transfer of ownership

13.1 -Intellectual property rights or rights related to results

In accordance with Article 46 of the GAC-ICT and unless expressly stated otherwise in the purchase order form or

in the special terms and conditions of purchase and on a non-exclusive basis, the supplier grants the buyer and any third parties named in the contract the right to use or allow the use of standard software and associated documentation. These rights come under Article L. 122-6 (1°) of the French Intellectual Property Code, and cover any needs that are the subject of this contract within the limits of any restrictive conditions provided and accepted by the buyer in the special contract documents. These rights apply to France and have a legal duration of copyright. In the event of publication on the Internet, rights are granted worldwide.

Unless expressly stated otherwise on the purchase order form or in the special terms and conditions of purchase, the provisions of Article 46 of the GAC-ICT regarding the transfer of rights from the supplier to the buyer apply in this case.

13.2 - Verification operations

Verification operations are conducted according to the stipulations of Articles 30 to 33 of the GAC-ICT.

- Quantitative verifications :

Quantitative verifications will be conducted in accordance with the provisions of Article 31 of the GAC-ICT. In accordance with the provisions of Article 33.1 of the GAC-ICT, if, after quantitative verifications, the quantity supplied and the services provided do not comply with the stipulations mentioned in the contract, the University may issue a formal notice to the supplier that within a period of eight (8) days :

- either the excess quantity must be returned, or
- the delivery or services must be completed.

- Qualitative verifications :

In accordance with Article 32 of the GAC-ICT, verification operations testing suitability will be conducted once the system is operational. The aim is to certify that the services delivered or performed have the relevant technical characteristics to make them suitable to perform their required functions.

The buyer has one month from the date of notification of the acceptance report to verify the suitability of the software equipment and to make a decision. If, at the end of this period having verified suitability, the buyer decides that the equipment is not suitable (a negative decision), he can decide either to postpone or to reject, in accordance with Article 34 of the GAC-ICT. If the verification suitability is positive, verification is then carried out in normal service conditions.

The aim of normal service verification is to confirm that the equipment provided is able to ensure normal service under normal operating conditions. Service regularity is monitored for one month from the date of the buyer's positive verification report decision. Service is considered normal if, during this period, the percentage of unavailability of each piece of equipment is not greater than 2 % of the total time the equipment is in use.

The buyer has 7 days to notify the supplier in writing of his decision regarding normal service verification.

If the result of normal service verification is negative



the buyer must notify the supplier of his decision in writing, explaining that either :

- he requests a postponement, with the possibility of verifying the equipment during normal service conditions for one additional month maximum ; or
- he accepts the equipment but requests a price reduction ; or
- he rejects the order.

If the buyer does not send written notification of his decision within seven days, the result of the normal service verification is considered positive, and the equipment is considered to be accepted.

By way of derogation from Article 30.3 of the GAC-ICT, 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.

13.2 - Transfer of ownership

The acceptance of supplies or equipment results in the transfer of ownership in favour of the buyer.

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 require that certain tasks, which he considers to be essential, be carried out directly by the supplier.

The supplier who hires a subcontractor remains personally responsible with regards to the buyer. The supplier must receive written approval from the University about his subcontractor and about 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 on 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 sends :

- 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-ICT, 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 duration 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 requirements 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 STC.

The University has appointed a data protection officer who can be contacted at dp@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 GTC.



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 GTCs, 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-ICT, 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-ICT, 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 - Technical warranties and maintenance

In accordance with Article 36 of the GAC-ICT, 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.

A maintenance contract comes into effect as soon as the equipment and software are operational, unless otherwise stipulated in the STCP.

The special terms and conditions of purchase also define the duration of the maintenance as well as the time limit for intervention. Unless otherwise stipulated in the STCP, the hours of intervention are from 8am to 6pm, Monday to Friday (excluding public holidays) when the University is open. The STCP may provide for a deadline for restoration.

In addition to Article 36 of the GAC-ICT, 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 of the contract

Termination for fault of supplier

In accordance with Article 50 of the GAC-ICT, the buyer can terminate the contract for fault of the supplier. By way of derogation from Article 50.2 of the GAC-ICT, the buyer can terminate the contract for fault without prior formal notice and without the supplier being asked to present his observations.

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 54 of the GAC-ICT 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 51 of the GAC-ICT, the buyer can at any time 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 27 of the GAC-ICT 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 - 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 55 of the GAC-ICT 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 44 and 45 of the GAC-ICT.

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 41 of the GAC-ICT, if cessation of service performance when one technical part comes to an end 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 48 of the GAC-ICT, 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 to him, as well as all the documents provided by the buyer which he possesses.

Article 26 - 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 27 - List of derogations from the GAC-ICT

- Article 4 derogates from Article 4.1 of the GAC-ICT
- Article 5 derogates from Articles 3.7.2 and 4.2 of the GAC-ICT
- Article 10 derogates from Article 13.1 of the GAC-ICT and completes Article 13.3.3
- Article 12 derogates from Articles 14.1 and 14.1.3 of the GAC-ICT
- Article 13 derogates from Article 30.3 of the GAC-ICT
- Article 15 completes Article 5 of the GAC-ICT
- Article 18 derogates from Article 9.2 of the GAC-ICT
- Article 19 completes Article 36 of the GAC-ICT
- Article 20 derogates from and completes Articles 50, 50.2, 51 and 54 of the GAC-ICT
- Article 21 completes Article 27 of the GAC-ICT
- Article 24 derogates from Article 41 of the GAC-ICT
- Article 25 completes Article 48 of the GAC-ICT

For the co-contractor :

Subject of the order :

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

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Signature and company seal :



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