

General purchase terms and conditions 28Digital IVZW

Article 1 – General provisions / Definitions

Agreement – The written agreement (framework agreement/ Service agreement and/or agreement to deliver Products) on which the Assignment is executed. This Agreement can either be the contract signed by both parties (in originals or by using E-signing), as well as the combination of the order confirmation of Client (by e-mail/post) and the preceding offer of Contractor.

Assignment – The requested Services and/or Products that Contractor will deliver in accordance with the RFP and/or the Agreement.

Client – 28Digital IVZW, its Node(s) legal entities and/or other (affiliated) parties that are explicitly using these Conditions.

Conditions – The general purchase terms and conditions formulated in this document.

Confidential Information - Any information disclosed by one Party ("Disclosing Party") to the other Party ("Receiving Party") under the Agreement (i) that is clearly marked as proprietary and/or confidential when disclosed or, (ii) from which the confidentiality and proprietary nature can be reasonably interfered under the circumstances. Without limiting the generality of the foregoing, the existence of the Agreement and the terms and conditions of the Agreement, including prices, are Confidential Information of both Parties.

Contractor – The legal entity (or entities) from which the Services and/or Products are procured.

FPA (Framework Partnership Agreement) - The agreement between Client and the European Institute of Innovation and Technology. The FPA lays down the conditions under which Client and the European Institute of Innovation and Technology work together, a.o. with respect to organizing the KIC Activities and receiving the funding from the European Institute of Innovation and Technology.

KPI – (Key Performance Indicators) Variables to analyse the performance of Contractor, its Products and/or its Services.

Legal representative – The natural person who, according to the extract of the Chamber of Commerce (in the member state of the Contractor), is entitled to legally bind Parties.

Node – Co-location centres of 28Digital IVZW located in Berlin, Eindhoven, Helsinki, Trento, Budapest, Madrid and Silicon Valley.

Party / Parties – Client or Contractor or both Client and Contractor depending on the context.

Professional error – Shortcomings, such as mistakes, negligence, late delivery, omissions, incorrect Services/Products which wouldn't be provided by a skilled and careful professional Contractor under the given circumstances, considering normal alertness, normal professional knowledge and agreed upon specifications and requirements for Products and Services.

Products – The procured products as specified in the RFP and/or the Agreement.

RFP (Request for Proposal)– The document with which Contractor was asked to submit an offer including all accompanying documents that were provided by Client regarding the procurement procedure.

Service(s) – The procured services as specified in the RFP and/or the Agreement.

SGA – (Specific Grant Agreement) The Agreement that sets out specific terms and conditions and rights and obligations that are applicable to the specific grants awarded to Client by the European Institute of Innovation and Technology.

Third parties – All parties except: Client, Contractor and all their legally affiliated parties.

VAT – Value added taxes, sales tax, transfer taxes or any other analogous tax in any relevant jurisdiction.

Working day – A calendar day, not the Saturday or Sunday, not an internationally respected holiday and/or the equivalent of such a day as respected by Client.

Article 2 – Applicability

1. The version of the Conditions as provided by Client apply, respectively the Conditions that are published on the website.
2. The Conditions apply in full to all legal relationships between Client and Contractor, unless otherwise agreed upon in deviating provisions within the Agreement and/or within provisions between Parties that have been recorded in writing or digitally and that have been signed by Legal representatives of both Parties.
3. All provisions on Contractor's forms are deemed deleted.
4. Contractor shall ensure that the Conditions will also apply on any third parties that Contractor engages for the execution of the Assignment(s).
5. If any of the provisions of the Conditions or the Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, the Conditions or the Agreement will be construed as if it did not contain the invalid or unenforceable provision(s). The void provision shall be superseded by another provision in accordance with the intention of the Parties.
6. Modifications or amendments to the Agreement and/or the Conditions shall be valid only if these are foreseen in the Agreement and/or there is written prior consent of both parties to the modifications and/or amendments.

Article 3 – Realization and termination of the Agreement

1. The Agreement is concluded at the date on which:
 - a. In case of a contract value that exceeds EUR 60.000,-:
 - i. the Legal Representatives of both Parties have signed the contract (hardcopy or digitally);

- b. In case of a contract value that doesn't exceed EUR 60.000,-:
 - i. the Legal Representatives of both Parties have signed the contract (hardcopy or digitally);
 - ii. Client explicitly agreed in writing or digitally with an unchanged quotation or offer or;
 - iii. Parties are actually starting the execution of Services and/or delivery of Products.
2. Client has the right to terminate the Agreement by written (e-mail) notice without any liability up to 30 days before the Service(s) start and/or Product(s) will be delivered, unless otherwise provided for.
3. Unless specifically otherwise provided for, the Agreement is deemed to end on December 31st of the year in which the Agreement is concluded.
4. Client has the right to terminate the Agreement in the event Contractor breaches any material term or condition from the Agreement and where such breach remains uncured for more than thirty (30) days after Contractor is provided with written (e-mail) notice of such breach. However, in the event the breach cannot be cured, Client is entitled to terminate the Agreement up on written notice with immediate effect.
5. Client has the right to terminate the Agreement by written (e-mail) notice to Contractor if a proceeding is commenced against Contractor under any bankruptcy code and such proceeding has not been discharged, dismissed or terminated within sixty (60) days of its commencement.
6. Client is entitled without any notice or notice of default being required by the court, to terminate the Agreement by registered letter if Contractor is in a state in which;
 - a. payments are suspended;
 - b. (provisional) deferral is granted;
 - c. The current company ceases or becomes subject to a change of control;
 - d. It fails to comply with the Agreement because of force majeure;
 - e. Permits required for the execution of the Agreement are withdrawn.
7. If Client enters a termination of the Agreement, Client will immediately pay the invoices that are approved by it for Services and/or Products already rendered.
8. If Client and/or Contractor is no longer able to comply with the Agreement by law of government and/or supranational institutions and/or by the development of the law and/or changes within the FPA and/or SGA, Client has the right to terminate the Agreement in a whole or partly, without any liability. The resulting situation will be reviewed by Parties in good consultation.
9. Upon expiration or termination of the Agreement, Contractor shall cease performance of all Services.
10. Regarding the termination of a Framework Agreement, Parties do have to complete all outstanding orders unless otherwise agreed upon.
11. Clients liability shall be limited to payment of the amount due for Services and Products provided up to and including the date of expiration, termination or cancellation.
12. The termination or expiration of the Agreement will not affect the survival and continuing validity of Conditions that expressly or by implication are intended to continue in force after such termination or expiration of the Agreement.

Article 4 – Obligations Contractor

1. Contractor warrants that the Assignment will be performed in a diligent, workman-like and professional manner, in compliance with industry and legal standards, and in accordance with all specifications, instructions and/or documentation described in the RFP, the Agreement or as otherwise agreed upon.
2. To determine the intended use of Services and/or Products by Client, Contractor will actively inform itself of the objectives to which Client enters into the Agreement and the organization of Client insofar as relevant to the execution of the Assignment.
3. Contractor is obligated to give timely a responsible indication of the outcome of the Assignment. For the remainder Contractor will, when carrying out the Assignment, take reasonable wishes of Client into account where possible.
4. It is the responsibility of Contractor to further adjust the execution of the Assignment to changing conditions. Contractor will discuss impending relevant changes in statutory regulations impacting the execution of this Agreement with Client in a timely matter.
5. Contractor shall immediately notify Client of the (partial)completion of the Assignment if Client would otherwise not be aware of it.
6. Contractor reports on a monthly basis to which extent issues have occurred during the execution that influence the execution of the Assignment and which are outside its control and responsibility.
7. Neither Party shall be liable for delays in performance or non-performance, in whole or in part - except for payments due - resulting from causes beyond its reasonable control, such as acts of God, fire, strikes, embargo, acts of the government, or other similar causes. In such event, the Party delayed shall promptly give notice to the other Party. The Party affected by the delay may: (a) extend the time for performance for the duration of the event, or (b) cancel all or any part of the unperformed part if such delay exceeds ninety (90) days.
8. Contractor commits that the assigned Services and/or delivery of Products continue in an undisturbed matter and are carried out properly and completely. Contractor shall always guarantee that continuation and execution is not interrupted due to illness, holidays or other reasons for the absence of personnel engaged for the Services. Contractor will immediately take the necessary measures to make the required facilities and/ or the deployment of replacement personnel, as the case may be.

9. Contractor shall refrain from changing key personnel during the execution of the Agreement. In the event key personnel will have to be replaced, Contractor shall consult with Client regarding such replacements. It being understood that the final decisions regarding allocation of personnel always remains with Contractor. Contractor shall in any event be liable for any costs and expenses pertaining to the replacement of key personnel.
10. The relationship of Parties is that of independent contractors. Nothing in the Agreement or otherwise shall be deemed to create any other relationship, including employment, partnership, agency or joint venture, between Parties. Nothing in the Agreement shall be deemed or construed by the Parties or any Third party as creating the relationship of principal and agent, franchisor and franchisee, partnership or of a joint venture, it being understood and agreed that no provision contained herein, and no act of the Parties, shall be deemed to create any relationship between the Parties other than the relationship of independent contractor.
11. Client expressly agrees that Contractor also performs Services and/or delivery of Products for other clients, provided that this doesn't interfere with the proper execution of the Assignment between Client and Contractor and/or it doesn't harm (other) interests of Client.
12. Contractor may not transfer its rights and obligations ensuing from the Agreement to Third parties (subcontractors or otherwise) in whole or in part without prior written permission from Client. Client may attach Conditions to such permission.

Article 5 – Obligations Client

1. Client guarantees the correctness, completeness and reliability of the data and information provided by or on behalf of Client.
2. Client is obligated to notify Contractor as soon as reasonable possible of any new information that may be of any importance for the execution of the Agreement.

Article 6 – Financial agreement

1. Prices are indicated in the Agreement.
2. Prices specified by Contractor are in Euros and excluding VAT.
3. Client will not pay any Service and/or Product other than the ones specified in the Agreement. Additional work will not be paid for, unless the Agreement contains an explicit possibility to do so, Client gave the additional order and Parties have written prior consent on the scope and price of the additional work.
4. Prices remain unchanged during the term of this Agreement.

Article 7 – Billing and Payment

1. Client only pays a fee for the agreed and incurred costs and hours unless a fixed price has been agreed upon in the Agreement. Contractor provides specifications of the statements made by it based on this Agreement per hour of employment per employee and/or per Product.
2. Contractor will send an invoice with regard to the Services and/or Products at the end of every month via a digital invoice addressed to easyform@eitdigital.eu.
3. Failure to comply with the requirements set out in the Conditions may result in non-timely payment without Contractor being able to derive any right therefrom and will not lead to any obligations of Client.
4. Client shall make payment of a correct and undisputed invoice within thirty (30) days after receipt of the invoice. A "correct" invoice is an invoice that meets Clients invoicing requirements including, but not limited to, correctly reflecting the fee as agreed upon by the Parties as well as the description of the Services and/or Products ordered and provided.
5. Client is entitled to suspend payment of invoices or to automatically ask for repayment of the amount collected by Contractor in case of alleged material misstatement of the facts and/or in case of Professional errors. If the Service and/or Product has not been delivered to the agreed location within the agreed term, Supplier will be in default without notice. Contractor bears - in this respect - the risk of damage or loss of Products until delivery of the Products on the agreed-on location. The agreed delivery date, or dates, or period (s) apply as fixed and fatal. Client may objects to Contractor's invoice before expiry of the payment period or within 30 days of direct debit. In that case Contractor will remain liable for the execution of the Agreement.
6. Invoices shall be paid electronically by Client to the banking institution/account number provided by Contractor. In the event of a change of banking institutions and/or account numbers, Contractor shall provide the applicable account numbers to Client thirty (30) days prior written notice.
7. Contractor shall take all necessary measures to comply with tax laws and regulations of each country in which it operates for the performance of the Agreement.
8. The specified fees do not include any VAT, they are however inclusive of costs of transportation/travel, any other taxes, import duties, other levies, insurance, packaging costs, removal costs and any installation and/or assembly costs and similar charges.
9. Client shall only be responsible for any applicable VAT with respect to the prices paid for the Services and/or Products and shall reimburse Contractor for any such VAT paid by Contractor on behalf of Client. Contractor will not charge an otherwise applicable VAT if the Services and/or Products are exempt from VAT. If Client so requests, payment receipts from the tax authorities and/or other authorities concerning Contractor and its subcontractors will be provided within one month.

Article 8 – Confidentiality

1. Parties shall only use Confidential Information to exercise its rights and fulfil its obligations under the Agreement, maintain the confidentiality of Confidential Information and will not disclose Confidential Information to any Third party.
2. Parties are required to secrecy against third parties regarding confidential information obtained from the (pre-) contractual relationship and/or obtained during and/or after termination of this Agreement that regards one or both Parties.
3. Contractor is not permitted to reproduce, disclose or exploit any correspondence produced by Client, contracts and/or other proprietary Products with or without Third party involvement, without Clients prior written consent.
4. Where a Party is obliged to disclose the Confidential Information, in whole or in part, in order to comply with a court order, a verdict, an administrative act or a statutory requirement, it shall notify the other Party thereof without delay and in advance of such disclosure and shall support the other Party in defending against the requirement for disclosure or seeking further protection of such confidential information.
5. In accordance with Clients written instructions, Contractor will, at its own expense, destroy (and certify in writing such destruction) or return the original and any copies of Confidential Information to Client.
6. For any breach or violation of these provisions by the Contractor, the Contractor shall pay to the Client a fixed amount of € 10.000,00, notwithstanding the terms on liability and indemnification as set out in Article 10 of the Conditions and without excluding any further indemnification of the Client by the Contractor for any damages exceeding the aforementioned amount.
7. Notwithstanding the foregoing, Contractor acknowledges the obligations of Client under the FPA and the SGA, that Client receives grants from the European Institute of Innovation and Technology and that Client has the obligation to comply with controls, checks and audits and investigations (hereinafter “Audits”) that may be carried out by the European Institute of Innovation and Technology, the European Court of Auditors and/or the European Anti-Fraud Office (OLAF). Contractor shall do everything that is necessary to enable Client to comply with these obligations.
8. More in particular, Contractor acknowledges and agrees that the European Institute of Innovation and Technology, the Commission, the European Court of Auditors (ECA) and the European Anti-Fraud Office (OLAF) can exercise their rights under Articles 28 and 29 of the Framework Partnership Agreement also towards Contractor. Contractor agrees in this regard to comply with any requests (including but not limited to providing any information and/or documents at first request) made by the European Institute of Innovation and Technology, the European Court of Auditors and/or the European Anti-Fraud Office (OLAF) in the context of such audits as to the Agreement and the results of the Agreement by Contractor.

Article 9 – Intellectual property

1. All (intellectual) property rights and related rights, including but not limited to copyright and patent rights, on all results of Contractor's activities under the Agreement, as well as on the materials used and/or developed thereunder shall vest with Client. Client shall maintain the full and unrestricted ownership of the information and materials it delivers to Contractor in the execution of this Agreement.
2. Notwithstanding the previous article will Contractor own all pre-existing Contractor Materials (i.e. Contractors' pre-existing materials and software, any skills, know-how, processes methodologies, or other intellectual property of general application) which IP-rights were already protected and enforceable. Client will have a non-exclusive, non-transferable licence to use these Materials included in the deliverables for Client's own internal purposes both during and after termination of the Agreement. Whenever Contractor can prove that the -during the Assignment - created Materials (like IP/Software) are an add-on on existing Materials, than the rights on the Materials will be subject to a separate agreement.
3. Contractor shall waive all rights relating to such material and shall not reproduce, publish or supply any such material to any Third party without Clients prior written approval.
4. Contractor is not permitted to use the word / figurative mark of other intellectual property rights of Client in any way or for advertising, promotional and/or acquisition purposes, unless prior written consent of Client has been obtained.
5. For any breach or violation of these provisions by the Contractor, the Contractor shall pay to the Client a fixed amount of € 10.000,00, notwithstanding the terms on liability and indemnification as set out in Article 10 of the Conditions and without excluding any further indemnification of the Client by the Contractor for any damages exceeding the aforementioned amount.

Article 10 – Liability and insurance

1. The Services and/or Products provided by Contractor shall always comply with the (local and international) regulations (like, but not limited to: labour law, tax law, environmental law, criminal law) in force at the time of delivery and also any reasonably expected changes thereto. Contractor will discuss impending relevant changes in statutory regulations with Client on time. Contractor indemnifies, holds harmless and defends Client against all claims in this regard.
2. To the maximum extent permitted by law, under no circumstances and under no legal theory, whether in tort (including negligence) contract or otherwise, shall Client be liable to Contractor for any special, indirect, punitive, incidental or consequential damages resulting from or arising out of or relating to the Agreement, even if Client has been informed of the possibility of those damages. Might any liability be accepted by any court, than the liability of Client is limited to the value of the purchase orders placed during three months previous to the month in which the liability occurred.

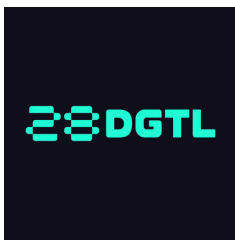
3. Contractor will indemnify, defend and hold harmless Client, its employees, agents, its affiliated entities and the KIC Partners from any losses, damages, claims and expenses (including court costs and reasonable attorney's fees) that arise out of or result from: (1) injuries or death to persons or damage to property, including theft, in any way arising out of or relating to the Services and/or Products, or any person or deliverable furnished by Contractor except to the extent directly caused by the negligence or wilful misconduct of Client; (2) assertions under workers' compensation or similar social insurance claims made by persons furnished by Contractor; or (3) Contractor's breach of any obligations under the following clauses (amongst others but not limited to): Taxes (article 7 sub 8 and 7 sub 9), Intellectual Property Rights (article 9), Publicity (article 8 and 9 sub 4), Insurance (article 7 sub 8) and non-compliance with law.
4. Contractor shall take the necessary insurances appropriate and customary according to its professional standards and is at least insured for the following risks:
 - a. Professional liability (risks arising from Professional errors);
 - b. Company liability (including liability for damage caused to persons or goods owned by Client);
 - c. Loss of and damage to company inventory (including fire and theft), including the items which are the property of Client.
5. Contractor will provide Client, upon request, certificates or proof of insurance that are sufficient to cover the obligations of Contractor under this Agreement. Contractor is in this regard insured by a professional liability insurance with a minimum coverage of:
 - a. 150.000,- Euro per event and 300.000,- Euro per contract year or part of a year that the Agreement is in force for Assignments with a contract value below 50.000,- Euro;
 - b. 300.000,- Euro per event and 600.000,- Euro per contract year or part of a year that the Agreement is in force for Assignments with a contract value over 50.000,- Euro and less than 100.000,- Euro;
 - c. 500.000,- Euro per event and 1.000.000,- Euro per contract year or part of a year that the Agreement is in force for Assignments with a contract value over 100.000,- Euro and less than 221.000,- Euro;
 - d. 750.000,- Euro per event and 1.500.000,- Euro per contract year or part of a year that the Agreement is in force for Assignments with a contract value over 221.000,- Euro and less than 5.000.000,- Euro;
 - e. 1.500.000,- Euro per event and 3.000.000,- Euro per contract year or part of a year that the Agreement is in force for Assignments with a contract value over 5.000.000,- Euro.

Article 11 – Processing personal data

1. To the extent any personal data is processed and/or transferred (as defined by directive 95/46/EC of the European Parliament and of the Council, or any directive amending or replacing the same including but not limited to the GDPR (as from its effective date, jointly the "EU Data Privacy Directive"), Client and Contractor acknowledge that Client is to be considered the data controller (as defined by the EU Data Privacy Directive) and Contractor is to be considered the data processor (as defined by the EU Data Privacy Directive), and each party further agrees to comply with all of its respective obligations under the EU Data Privacy Directive, either as a data controller or a data processor, as the case may be.
2. Taking into account the nature of the Processing, Contractor and each Contractor affiliate shall assist Client by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Client's obligations, as reasonably understood by Client, to respond to requests to exercise Data Subject rights under the Data Protection Laws.
3. Contractor shall:
 - a. promptly notify Client if any Contracted Processor receives a request from a Data Subject under any Data Protection Law in respect of Client Personal Data, and;
 - b. ensure that the Contracted Processor does not respond to that request except on the documented instructions of Client or as required by Applicable Laws to which the Contracted Processor is subject, in which case Contractor shall to the extent permitted by Applicable Laws inform Client of that legal requirement before the Contracted Processor responds to the request.
4. Contractor shall notify Client without undue delay (within 48 hours) upon Contractor or Contractors affiliate becoming aware of a Personal Data Breach affecting Client Personal Data, providing Client with sufficient information to allow Client to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws.
5. Contractor and each Contractor affiliate shall make available to Client on request all information necessary to demonstrate compliance with the Agreement, and shall allow for and contribute to audits, including inspections, by Client or an auditor mandated by Client in relation to the Processing of the Client Personal Data by the Contracted Processors.

Article 12 – Applicable law and competent court

6. The Conditions, the Agreement, any subsequent agreements and/or any out of the Agreement forthcoming legal relationships between Client and Contractor are governed by Belgium law, excluding the choice of law principles and the United Nations Convention on Contracts for the International Sale of Goods.
7. Unless the law diverges compulsively, the court in Brussels (Belgium) is authorized to settle disputes between Parties.
8. Parties will however only appeal to the court after they have made every effort to settle the dispute by mutual understanding.



Article 13 – Final Provisions

1. The Conditions are written in the English language and the English translation shall always apply in the event of any conflict between the English version and any translation.
2. Obligations resulting from article 1325 of the Belgian civil code are waived, a signed copy of an Assignment, as provided for in electronic manner, shall be deemed to have the same evidential value as an original (signed) document.