

Relief International Terms and Conditions

1. DEFINITIONS AND INTERPRETATION

These terms and conditions ("Conditions") provide the basis of the contract between the Contractor ("Contractor") and Relief International ("Contracting Party"), in relation to the purchase order ("Order") (the Order and the Conditions are together referred to as the "Contract"). All references in these terms and conditions to defined terms - Goods, Services, Prices and Delivery - refer to the relevant provisions of the Order.

2. COMMUNICATION

Any written communication relating to the Contract between the Contractor and the Contracting Authority must state the Contract title and identification number, and must be sent by post, fax, e-mail or hand delivered to the Contracting Authority.

3. QUALITY AND DEFECTS

The Goods and the Services shall, as appropriate:

- Correspond with their description in the Order and any applicable specification;
- Comply with all applicable statutory and regulatory requirements;
- Be of the highest quality and fit for any purposes held out by the Contractor or made known to the Contractor by the Contracting Party;
- Be free from defects in design, material, workmanship and installation; and
- Be performed with the best care, skill and diligence in accordance with best practice in the Contractor's industry, profession or trade.

3.1 The Contracting Party (including its representatives or agents) reserves the right at any time to audit the Contractor's records, inspect work being undertaken in relation to the supply of the Goods and Services and, in the case of Goods, to test them.

4. ETHICAL STANDARDS

4.1 The Contractor shall observe the highest ethical standards during the performance of its obligations under this Contract including international labour standards promoted by the International Labour Organisation specifically in the areas of child labour and forced labour.

4.2 The Contractor, its Contractors and sub-contractors shall comply with all environmental statutory and regulatory requirements and shall not in any way be involved in (a) the manufacture or sale of arms or have any business relations with armed groups or governments for any war related purpose; or (b) terrorism, including checking its staff, Contractors and sub-contractors against the following sanctions lists: UK Treasury List, EC List, OFAC List and US Treasury List.

4.3 The Contractor certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any [U.S. Government department or agency/European Union department or agency] or any government department or entity in South Sudan.

4.4 The Contractor shall comply with the following Contracting Party Policies, which are available upon request: Child Protection Policy; and Conflict of Interest and Code of conduct.

5. ORIGIN

A certificate of origin for the supplies must be provided by the Contractor at the latest when he requests provisional acceptance of the supplies. Failure to comply with this condition may result in the termination of the contract.

6. DELIVERY/PERFORMANCE

6.1 The Goods shall be delivered to, and the Services shall be performed at the address and on the date or within the period stated in the Order, and in either case during the Contracting Party's usual business hours, except where otherwise agreed in the Order. Time shall be of the essence in respect of this Condition 5.1.

6.2 Where the date of delivery of the Goods or of performance of Services is to be specified after issue of the Order, the Contractor shall give the Contracting Party reasonable written notice of the specified date.

6.3 Delivery of the goods shall take place and title in the Goods will pass on the completion of the physical transfer of the goods from the Contractor or its agents to the Contracting Party or its agents at the address specified in the Order.

6.4 Risk of damage to or loss of the Goods shall pass to the Contracting Party in accordance with the relevant provisions of Incoterms rules as in force at the date the Contract is made or, where Incoterms do not apply, risk in the Goods shall pass to the Contracting Party on completion of delivery.

6.5 The Contracting Party shall not be deemed to have accepted any Goods or Services until the Contracting Party has had reasonable time to inspect them following delivery and/or performance by the Contractor.

6.6 The Contracting Party shall be entitled to reject any Goods delivered or Services supplied which are not in accordance with the Contract. If any Goods or Services are so rejected, at the Contracting Party's option, the Contractor shall forthwith re-supply substitute Goods or Services which conform with the Contract. Alternatively, the Contracting Party may cancel the Contract and return any rejected Goods to the Contractor at the Contractor's risk and expense.

6.7 If the Contractor fails under his own responsibility to deliver any or all of the goods or perform the services within the time limit(s) specified in the contract, the Contracting Party shall, without formal notice and without prejudice to its other remedies under the contract, be entitled, for every day which shall elapse between the expiry of the contractual period and the actual date of completion, to liquidated damages equal to 5/1000 of the value of the undelivered supplies to a maximum of 15% of the total value of the contract.

6.8 If the non-delivery of any of the goods prevents the normal use of the supplies as a whole, the liquidated damages shall be calculated on the basis of the total contract value.

6.9 If the Contracting Party has become entitled to claim at least 15% of the contract value it may, after giving written notice to the Contractor:

- Seize the performance guarantee.
- Terminate the contract, in which case the Contractor will have no right to compensation.
- The Contractor shall be liable for the additional costs and damages caused by his failure.

7. INDEMNITY

The Contractor, at the contractor's expense, shall defend, indemnify, and hold the Contracting Party harmless for any loss, expense, including attorney's fees, or claims asserted by third parties for damage to property or bodily injury or both, arising out of the activities indemnified by the Contractor or its staff under this Contract.

8. PRICE AND PAYMENT

Payment in arrears will be made as set out in the Order and the Contracting Party shall be entitled to off-set against the price set out in the Order all sums owed to the Contracting Party by the Contractor.

9. TERMINATION

9.1 Termination by the Contracting Party. The Contracting Party may, after giving the Contractor seven days' notice, terminate the contract in any of the following cases:

9.1.1 The Contractor substantially fails to perform his obligations under this contract;

9.1.2 The Contractor fails to comply within a reasonable time with a notice given by the Country Director requiring him to make good any neglect or failure to perform his obligations under the contract which seriously affects the proper and timely performance of the works;

9.1.3 The Contractor refuses or neglects to carry out administrative orders given by the Country Director;

9.1.4 The Contractor assigns the contract or subcontracts without the authorisation of the Contracting Party;

9.1.5 The Contractor is bankrupt or being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

9.1.6 The Contractor has been convicted of an offence concerning professional conduct by a judgment which has the force of res judicata;

9.1.7 The Contractor has been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;

9.1.8 Any organisational modification occurs involving a change in the legal personality, nature or control of the Contractor, unless such modification is recorded in an addendum to the contract;

9.1.9 The Contractor fails to provide the required guarantee or insurance, or if the person providing the earlier guarantee or insurance required under the present contract is not able to abide by his commitments;

9.1.10 Termination shall be without prejudice to any other rights or powers of the Contracting Party and the Contractor under the contract;

9.1.11 The Country Director shall, upon the issue of the notice of termination of the contract, instruct the Contractor to take immediate steps to bring the execution of the supplies to a close in a prompt and orderly manner and to reduce expenditure to a minimum.

9.1.12 In the event of termination, the Country Director shall, as soon as possible and in the presence of the Contractor or his representatives or having duly summoned them, draw up a report on the supplies delivered and the work performed and take an inventory of the materials supplied and unused. A statement shall also be drawn up of monies due to the Contractor and of monies owed by the Contractor to the Contracting Party as at the date of termination of the contract.

9.1.13 The Contracting Party shall not be obliged to make any further payments to the Contractor until the supplies are completed, whereupon the Contracting Party shall be entitled to recover from the Contractor the extra costs, if any, of providing the supplies or shall pay any balance due to the Contractor prior to the termination of the contract.

9.2 Termination by the Contractor

The Contractor may, after giving 14 days notice to the Contracting Party, terminate the contract if the Contracting Party:

- Fails to pay the Contractor the amounts due under the Contract
- Suspends the delivery of the supplies, or any part thereof, for more than **XX** days, for reasons not specified in the contract

9.3 If the Contractor fails under his own responsibility to deliver any or all of the goods or perform the services within the time limit(s) specified in the contract, the Contracting Party shall, without formal notice and without prejudice to its other remedies under the contract, be entitled, for every day which shall elapse between the expiry of the contractual period and the actual date of completion, to liquidated damages equal to 5/1000 of the value of the undelivered supplies to a maximum of 15% of the total value of the contract.

9.4 If the non-delivery of any of the goods prevents the normal use of the supplies as a whole, the liquidated damages shall be calculated on the basis of the total contract value. If the Contracting Party has become entitled to claim at least 15% of the contract value it may, after giving written notice to the Contractor:

- Seize the performance guarantee.
- Terminate the contract, in which case the Contractor will have no right to compensation.
- The Contractor shall be liable for the additional costs and damages caused by his failure.

10. CONTRACTOR'S WARRANTIES

The Contractor warrants to the Contracting Party that:

- It has all necessary internal authorisations and all authorisations from all relevant third parties to enable it to supply the Goods and the Services without infringing any applicable law, regulation, code or practice or any third party's rights;
- It will not and will procure that none of its employees will accept any commission, gift, inducement or other financial benefit from any Contractor or potential Contractor of the Contracting Party; and
- The Services will be performed by appropriately qualified and trained personnel, with the best care, skill and diligence and to such high standard of quality as it is reasonable for the Contracting Party to expect in all the circumstances.

11. FORCE MAJEURE

11.1 The following shall constitute Force Majeure: Labour disputes, flood, fire, rebellion, war, requirement or act of civil or military authorities, civil disorder, act of God and any other cause beyond the control of either party, which neither party is able to overcome. As soon as possible after the occurrence of such Force Majeure, if the Contractor is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Contract, he should inform the Contracting Party in writing.

11.2 If any events or circumstances prevent the Contractor from carrying out its obligations under the Contract for a continuous period of more than 14 days, the Contracting Party may terminate the Contract immediately by giving written notice to the Contractor.

12. GENERAL

12.1 The Contractor shall not use the Contracting Party's name, branding or logo other than in accordance with the Contracting Party's written instructions or authorisation.

12.2 CONTRACTOR shall not assign this Contract, in whole or in part, without the prior written consent of RI. With RI's written consent, CONTRACTOR may subcontract some or all of the services required under this Contract for Services.

12.3 Any notice under or in connection with the Contract shall be given in writing to the address specified in the Order or to such other address as shall be notified from time to time. For the purposes of this Condition, "writing" shall include e-mails and faxes.

12.4 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

12.5 Any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by both parties. The amended or revised clauses shall become effective from the date of their adoption.

12.6 This document constitutes the complete and exclusive Contract between the parties, superseding all representations, proposals or promises whether oral or written, and all other communications between the parties, relating to the subject of this Contract.

13. DISPUTES

13.1 The Contract printed in four originals, two in English language. The English version of the Contract shall always prevail in case of any dispute.

13.2 The parties shall try to settle dispute(s) arising from or in connection with the Contract amicably. If not, then the dispute(s) must be referred to an arbitration panel whose decision shall be final and binding upon all parties. The Contracting Party and the Contractor shall each appoint one arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the panel.

13.3 A person who is not a party to the Contract shall not have any rights under or in connection with it.

14. CHILD LABOUR

The Contractor represents and warrants that neither it, nor any of its Contractors are engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which, inter alia, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health and physical, mental, spiritual, moral or social development. Any breach of this representation and warranty shall entitle Relief International to terminate this Purchase Order immediately upon notice to the Contractor, at no cost to Relief International.

15. CONFIDENTIALITY AND NON-DISCLOSURE

14.1 The Contractor agrees to keep confidential and not to disclose, without the prior written approval of the Contracting Party's representative, any information or data confidential to the Contracting Party.

16. AUTHORITY AND BINDING EFFECT

16.1 By his or her signature, each signatory hereto represents and warrants that he or she is duly authorized to enter into the Contract on behalf of the party he or she purports to represent such that, upon execution and delivery, the Contract shall be a binding obligation of each party. The Contract shall be binding upon and inure to the benefit of each party's legal representatives, successors and permitted assigns.

17. TERRORIST FINANCING

17.1 It is the responsibility of CONTRACTOR to ensure that no resources and support under this contract for services are provided to individuals, organizations or private companies associated with terrorism and terrorist activities.

18. TAXES

18.1 The Contracting Party has the legal obligation to withhold the government tax according to the local tax law.

19. INSURANCE

19.1 The goods shall be insured by the Contractor. The Contractor shall hold the Contracting Party harmless for any loss or damage that may occur during the transportation and before the delivery and acceptance of the goods. The Contractor shall also hold the Contracting Party harmless for any liability resulting from the transportation of the goods. The Contractor shall provide the Contracting Party proof of insurance at contract signature.

20. RELATIONSHIP OF PARTNERS

The Contractor and the Contracting Party are independent parties and are not agents of each other, joint ventures, or partners. Neither party is authorized or empowered to act on behalf of the other with regard to any contract, warranty, or representation as to any matter. Each party will maintain sole and exclusive control of its own personnel and operations.

21. COMPLIANCE WITH LAWS

21.1 In the course of performance hereunder, the parties shall comply with all applicable local, state and federal laws and regulations. Contractor is reminded that U.S. executive order and U.S. law (including, without limitation, the USA Patriot Act) prohibit transactions associated with terrorism. It is the legal responsibility of CONTRACTOR to ensure compliance with such executive order and law.

22. GOVERNING LAW

22.1 The construction, validity, performance and effect of the Contract for Goods and services shall be governed by the laws applicable to South Sudan with regard to all purposes related to this Contract.

23. SEVERABILITY

23.1 Each provision of the Contract is severable. If one provision is declared void, illegal or unenforceable, the remaining Articles and paragraphs shall retain their full force and effect.

24. **Audit.** CONTRACTOR agrees to establish and maintain reasonable accounting measures that would enable RI to readily identify CONTRACTOR's assets, expenses, costs of goods, and use of funds. RI shall have the right, at its own expense, to audit and review any financial or operational information of CONTRACTOR, or any data collected from the field relating to the work performed. Additionally, CONTRACTOR may be subject to audit requirements by authorized representatives of the prime contractor or award agency relating to this agreement, under the control of RI

25. **Mandatory Principles a).** For the duration of the contract the Contractor and its staff shall respect human rights and undertake not to offend the political, cultural and religious mores of the beneficiary state. In particular and in accordance with the legal basic act concerned, lenders who have been awarded contracts shall respect core labour standards as defined in the relevant International Labour Organisation (ILO) conventions (such as the Conventions on freedom of association and collective bargaining, Abolition of forced and compulsory labour; Elimination of forced and compulsory labour; Abolition of child labor). b) The Contractor must at all times act impartially and as a faithful adviser in accordance with the code of conduct of its profession. c) RI reserves the right to suspend or cancel project financing if corrupt practices of any kind are discovered at any stage of the award process and if the contractor fails to take all appropriate measures to remedy the situation. For the purposes of this provision, "corrupt practices" are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or imp implementation of a contract already concluded with Relief International. d) Relief International reserves the right to suspend or cancel the contract, where the award procedure proves to have been subject to substantial errors, irregularities or fraud. Where such substantial errors, irregularities or fraud are discovered after the award of the Contract, Relief International may refrain from concluding the Contract.