**SPECIAL TERMS AND CONDITIONS FOR PROCUREMENT OF CONSULTANCY SERVICES OF MAKEDONSKI TELEKOM AD - SKOPJE**

**1. Scope of application**

(1) These Special Terms and Conditions shall apply for the procurement of consultancy services by Makedonski Telekom AD - Skopje (hereinafter referred to as “MKT” or “Purchaser”).

(2)    The application of the Special Terms and Conditions herein shall be defined in the specific Purchase Order.

 (3)    The Purchase Order shall obligatorily specify the application of these Special Terms and Conditions for Procurement and in such case the General Terms and Conditions shall be applicable only to the part which has not been regulated under the Special Terms and Conditions herein.

(4) The acceptance of the Purchase Order by the Vendor shall denote full acceptance of the Special Terms and Conditions herein, the General Procurement Terms and Conditions in the part which is not regulated under these Special Terms and Conditions, as well as the orders and the data defined in the Purchase Order itself.

(5) Any difference or amendment of the Special Terms and Conditions herein submitted by the Vendor shall be inapplicable unless such deviations have been agreed and accepted by the Purchaser and the Vendor.

**2. Integral parts of the Special Terms and Conditions**

The following documents constitute an integral part of the Contract, with priority as defined below:

* + Purchase Order
  + Specification
  + These Special Terms and Conditions for Procurement of Consultancy Services
  + General Procurement Terms and Conditions

**3. Service Rendering**

(1) The Service Provider shall render the contractual services independently and at its own responsibility.

(2) The Service Provider shall be entitled to seek the service rendering to be performed at a location defined thereby. If, due to the nature of the project, the services need to be rendered at the premises of the User, the Service Provider is prepared to accept the rendering of the services to be performed in the relevant premises of the User. The parties shall agree on the relevant location for service rendering, taking into account the nature of the specific project.

(3) The Service Provider is responsible solely for managing its own employees or the employees of the engaged subcontractor for service rendering. The Service Provider shall be entitled to organize the service rendering and to schedule the activities. However, the Service Provider shall be obliged to cooperate with the User, to the extent necessary, so as to define the date/dates for service rendering.

(4) The Service Provider shall be obliged to observe the agreed deadlines.

(5) In order to make any changes in the staff in the course of the duration of the training, a previous written consent from the User shall be required. If a certain employee does not meet the User’s requirements, the parties shall agree on his/her replacement. In the event of a replacement of certain employee, the Service Provider shall be responsible for the transfer of knowledge for the specific project.

**5. Scope of the Service**

(1) The Service Provider shall guarantee results that the User will be able to apply in its material, ideal and organizational capabilities and which take into account the required cost-effectiveness.

(2) The Service Provider shall be fully responsible for the assignment and the operation of its personnel with reference to the service rendering. When operating in the premises of the User, the Service Provider shall guarantee that its personnel handles the User's property with due care.

(3) The Service Provider’s accountability for the services which it needs to provide shall not be affected by any service that needs to be rendered by the User.

(4) The Service Provider shall cooperate and inform the User at all times about the status of the operation and shall grant access to the documentation.

(5) Rendering of partial services is possible only if the parties have previously agreed upon it in writing.

(6) The Service Provider undertakes to offer its services to the User under the most favourable conditions and prices which the Service Provider has granted to Deutsche Telekom AG and/or any other company within its Group worldwide, in terms of the amount, quality and market conditions for comparable/similar services. Makedonski Telekom AD - Skopje and the companies within its Group shall reserve the right to exchange relevant information.

(7) The agreed price is a fair compensation for all expenses incurred during the service rendering, including the operation of any sub-contractor, all unforeseen expenses and travel expenses. Unless otherwise agreed, no additional payments shall be made for the time spent in travel or waiting times.

(8) If a need occurs for additional services in the course of the validity of the Contract herein, and if such services affect the price, they must be agreed between the parties in writing prior to their rendering, even if such services are of crucial importance for the implementation of the Contract.

(9) If time units are taken as а basis for the charging of the rendered services, the evidence for such time units shall be submitted to the User. To that end, the Service Provider shall submit detailed vouchers with reference to the specific services which have been rendered and which can be attributed to the stated consultants, in each case stating the respective consultant category. The compensation shall be defined on the basis of the expenditure confirmed by the User.

(10) The unconditional payment of the invoiced amount by the User shall not constitute a confirmation that the services rendered by the Service Provider are in accordance with the Contract.

**6. Default, delay in performance, improper performance and determination of contractual penalty**

* 1. In the event of default in the performance of the obligation/s of the Vendor, the Purchaser shall be entitled:

- to request performance and to provide additional deadline to the Vendor during which period contractual penalty shall be calculated (if such provision of additional deadline does not jeopardise the operation of the Purchaser);

- to terminate the contract (cancel the Purchase Order and the performance)

In both cases, the Purchaser shall be entitled to seek damage compensation both under the general rules for damage liability in accordance with the Contract Law and under the Special Terms and Conditions herein.

* 1. In the event of delay in the performance of the obligations by the Vendor, the legal provisions, the provisions of these Special Terms and Conditions, i.e. the provisions of the Contract shall apply.
  2. If the Vendor is in delay with the performance of the obligations (or in the event of improper performance), the Vendor shall pay contractual penalty as penalties for the duration of the delay. The Vendor's request for contractual penalty shall not depend on the fact whether the damage has occurred, or whether there is actual danger for the occurrence of damage. The contractual penalty may be defined until the moment of the final payment.
  3. The Purchaser shall charge the penalties for the delay in the performance of the obligations arising from these contracting terms and conditions based on a submitted invoice for contractual penalty.
  4. The right of the Purchaser to request the payment of contractual penalty does not affect the right thereof to request the performance of the contracting obligation.
  5. If the contractual penalty is not defined in the Purchase Order, in the total amount or otherwise, in the event of delay in the performance, contractual penalty shall be charged as follows:

The Vendor undertakes to pay contractual penalty to the Purchaser in the event of delay in the performance (service rendering), in the event of delay in the performance of other obligations in the amount of 1% (one percent) a day and/or hour of the value of the Purchase Order, as well as in the event of improper performance of its obligations, but not more than 30% (thirty percent) of the total value of the Purchase Order.

The Purchase Order, i.e. the total amount without VAT shall constitute a basis for the calculation of the contractual penalty.

If the Purchaser has suffered damage which exceeds the amount of the contractual penalty, the Purchaser shall request the payment of the difference to the total amount of the damage in accordance with the liability rules.

**7. Service confirmation / acceptance**

(1) The User shall confirm the contracted services or the partial services when the Service Provider shall render the services in accordance with the service specifications.

(2) If certain results need to be achieved, then the services shall be accepted only when the operational results are in accordance with the agreed requirements.

(3) If the acceptance is rejected, the Service Provider needs to improve or subsequently provide the non-implemented services without delay, within the reasonable period defined by the User at the latest.

(4) The small inconsistencies shall be rectified without any delay if a new service is not recommended.

**8. Right of use**

(1) The User has exclusive, irrevocable, in terms of time, territory and manner, unlimited, assignable right and right to sub-licence for the use of the operating results in terms of which all payment requests have been settled with the agreed payment. The right of use also especially includes the right to publish the documents, entirely or partially, to copy, alter or process such documents, including their additional use for subsequent agreements with third parties.

The User’s right to use shall apply even in the case of termination of the Contract herein.

(2) For consultancy services with technical contents the following shall apply:

The Service Provider shall inform the User about the existing rights to industrial property and copyrights, if such rights are required for the creation, usage and application of the operating results. This includes information for every person authorised to exercise these rights. The User shall obtain non-exclusive and assignable right to use the industrial property rights and the copyrights of the Service Provider. The agreed price includes all rights to compensation arising from the above-stated.

(3) The User obtains non-exclusive, irrevocable, in terms of time, territory and manner, unlimited, and assignable right to use the knowledge given and obtained from the Service Provider in the process of performance of the task in terms of which all payment requests have been settled with the agreed payment.

**9. Rights of third parties**

(1) The Service Provider guarantees that the services which need to be rendered by the Service Provider do not concern any third party rights, especially the rights to industrial property of any third party which may limit or prevent the agreed usage.

(2) Should any third party initiate any claim against the User based on (alleged) violation or breach of any third party rights, the Service Provider shall indemnify the User in accordance with the claim, upon the first written request, without limitation. This indemnification obligation includes the liability for all costs and expenditures incurred by the User with reference to the claim initiated by any third parties.

**10. Responsibility for deficiencies**

(1) The Service Provider shall bear all cost and expenses incurred with reference to the deficiencies and their removal. The other legal requirements shall remain unaltered.

(2) MKT may lower the price or cancel the Contract and seek indemnification, if the deficiencies are not removed within a reasonable period defined by MKT or if such removal has been unsuccessful.

(4) The statute of limitation for the indemnification claims of the Service Provider based on unresolved ownership rights shall be three years as of the moment when the third party has initiated the indemnification claim for violation of industrial property rights or breach of any other rights or when the User has become aware of the defect in any other manner. In the event of fraudulent intent, the legal provisions shall apply.

(5) The statute of limitation for the liability for any deficiencies in quality or unresolved ownership rights shall be extended for the period over which the services could not have been used for the intended purpose.

**13. Representation**

The Service Provider shall observe the User’s rights and interests within the scope of the services it is to provide. The Service Provider shall not be entitled to represent the User before any third party or pose as a representative of the User.

The Service Provider shall indemnify the User in terms of all indemnification claims which may occur, in accordance with the principles which arise from the competence of the representative and which are a result of actions that are contrary to the conditions defined in the Contract.

**14. Subcontracting**

(1) For any engagement of third parties as sub-contractors, a written consent from the Purchaser needs to be obtained.

(2) Neither the Vendor nor the Purchaser shall assign the rights and obligations arising from these Special Terms and Conditions or the Contract, in whole or in part, without a prior written consent of the other contracting party. Any such assignment shall be null and void and of no force or effect. No permitted or implied assignment of all or any portion of the rights and obligations arising from these Special Terms and Conditions or the Contract shall result with a release of the transferor of its obligations under these Special Terms and Conditions or the Contract without an explicit written release from such obligations by the other contracting party.

**15. Transfer of receivables**

1. The Vendor’s receivables towards the Purchaser may be transferred only under an explicit written consent issued by the Purchaser.

**16. Final provisions**

* 1. Regarding all issues that are not regulated in the Purchase Orders and under these Terms and Conditions of the Purchaser, the provisions of the Contract Law and the laws of the Republic of Macedonia shall apply. In the event of a dispute, the competent court in Skopje, Republic of Macedonia shall rule under the Macedonian laws.
  2. If any of the provisions of the Terms and Conditions is not valid in terms of the respective Purchase Order, the other provisions of the Terms and Conditions shall remain valid in terms of the Purchase Order.
  3. The Purchase Order, the rights and the obligations arising therefrom may not be assigned, transferred or conveyed to any third party without a prior written consent from the Purchaser and any attempt for assignment or assigned liability by the Vendor to any third party without a written consent from the Purchaser, shall be null and void.
  4. The Terms and Conditions shall be considered a valid and binding contract between the Purchaser and the Vendor, unless it is stated otherwise in the Purchase Order to the Vendor.
  5. The Vendor shall be obliged to accept or reject the Purchase Order within three (3) working days as of the date of its submission to the Vendor, via e-mail, fax or in writing to MKT’s address. If the Vendor fails to reject the Purchase Order within the defined deadline, it shall be considered that the Purchase Order has been accepted in its entirety, in accordance with the Terms and Conditions. The commencement of the delivery of а part or the whole Purchase Order by the Vendor shall be considered as acceptance of the Purchase Order, regardless as to whether the Vendor has confirmed the acceptance.

The Terms and Conditions herein shall enter into force on the day of their adoption and apply as of the day of their publication on the official web site of Makedonski Telekom AD - Skopje.

**MAKEDONSKI TELEKOM AD - Skopje**

Translated by Lingva Ekspert