**SPECIAL TERMS AND CONDITIONS FOR THE PROCUREMENT OF TELECOMMUNICATIONS EQUIPMENT OF MAKEDONSKI TELEKOM AD - SKOPJE**

1. **Area of Application**
2. These Special Terms and Conditions shall apply for the procurement of telecommunications equipment - hardware and software which are required for its operation and installation (hereinafter referred to as "Equipment") by Makedonski Telekom AD – Skopje (hereinafter referred to as “**MKT or the Purchaser**”)
3. The application of the Special Procurement Terms and Conditions herein shall be defined in the specific Purchase Order.
4. The Purchase Order shall obligatorily specify the application of these Special Procurement Terms and Conditions, 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.
5. 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 in the Purchase Order itself.
6. 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.

1. **Integral parts of the Special Terms and Conditions**
2. The following documents as per the order and priority of importance shall be defined as follows:

* The Purchase Order;
* The specification and all agreed technical documents;
* These Special Terms and Conditions for the Procurement of Telecommunications Equipment;
* General Procurement Conditions
1. **Quality management, environmental protection**
2. The Vendor shall be obliged to adhere to the Purchaser's requirements for quality management and environmental and nature protection and promotion.

The Vendor, upon the performance of the scope of the procurement, shall be obliged to apply a system for quality management and environmental and nature protection and promotion in accordance with all applicable legal regulations in the Republic of Macedonia and the international standards pertaining to environmental protection.

1. The Vendor shall be obliged, if imposed by the legal regulations for environmental protection, to recover, free of charge, the packaging material and to collect and destroy it properly.
2. Upon the request of the Purchaser, it shall be obliged to provide a proof that such destruction is in compliance with the legal regulations in the sphere of environmental protection.

If the Vendor fails to comply with the foregoing obligation, the Purchaser shall be entitled to have the collection and the destruction of the packaging material effected at the expense of the Vendor.

1. **Delivery of the equipment**
2. The Vendor shall be obliged to deliver the equipment which constitutes the scope of the purchase order within the deadline, at the place and in the manner defined in the Purchase Order.
3. The Vendor shall be obliged, together with the equipment, to also deliver instructions for usage of the equipment, handling, usage and maintenance, as well as all other necessary documents for usage of the equipment, wherein they shall be delivered in Macedonian.

If they are not available in Macedonian, they shall be delivered in English. The instructions and documents are included in the price.

1. **Obligations of the Vendor**

1. The Vendor undertakes that the equipment shall be delivered in the agreed and accepted deadline and at the place defined in the Purchase Order.
2. The Vendor undertakes to deliver the equipment new from a factory and in a fully functional condition;
3. To provide a proof that the equipment has the prescribed quality and is in accordance with the technical requirements and standards for such type of equipment;
4. The Vendor warrants that the equipment supplied to the Purchaser shall comply with all mandatory laws and regulations applicable to its manufacturing, testing and delivery;
5. The Vendor warrants that it shall also provide all necessary licenses for the respective equipment (upon a request of the Purchaser or when it is necessary for the purposes of its functionality).
6. The Vendor shall be obliged, if necessary, to make a software update in the course of the warrantee period.
7. The quality of the equipment must correspond to the technical features of the manufacturer and the features, i.e. requirements stated by the Purchaser. Any possible returning of the equipment whose features differ from the ones of the manufacturer shall not release the Vendor from the obligation to deliver equipment with technical features that correspond to the features of the equipment which constitutes the scope of the procurement. For non-compliant delivery, the improper delivery penalty shall apply. The quality shall be warranted by the Vendor within the standards established by the manufacturer;

1. To provide the necessary documentation (warrantee/ warrantee document, usage instructions and other documents pertaining to the equipment) in Macedonian or in English.
2. To act within the warranty period in accordance with the provisions regulating the warranty;
3. To perform the servicing of the non-functional equipment within the warranty period and to provide spare parts for the equipment for at least 5 (five) years as of the expiry of the warrantee, if not otherwise agreed;
4. To inform the Purchaser without delay of the urgent unplanned issues, should any be deemed as necessary;
5. The Vendor shall provide the adequate original packaging for the equipment for the purpose of its protection from damaging or breaking in the course of its transport to the final destination. Any damage incurred during the transport shall be borne by the Vendor.
6. The Vendor shall be obliged to install the equipment which constitutes the scope of the procurement if it has not been regulated otherwise in a manner that shall not hinder the daily operation of the Purchaser.
7. The Vendor shall be obliged to submit the necessary documents necessary for installation of the telecommunications equipment in four copies for each equipment separately, on the first date of delivery of the equipment or at the beginning of its installation at the latest. The revisions made to the documents shall be submitted at the time of the provision of the certificate of acceptance at the latest.
8. The Vendor shall be obliged to also prepare documentation for implementation of the equipment which constitutes the scope of the procurement (conditions for installation, installation and testing schedule, testing protocol and other necessary documents depending on the specific subject of the procurement), as well as guidelines with procedures and protocol for the performance of tests of the equipment and the functionality of the system.

The documentation shall constitute an integral part of the respective purchase order.

1. If requested by the Purchaser, the Vendor shall provide instructions in terms of the operation of the equipment system, without special payment, at the latest at the time of provision of the certificate of readiness for acceptance at the latest or for partial acceptance.
2. **Time of performance**
3. The agreed time of performance of the subject of the procurement defined in the Purchase Order shall be binding.
4. The performance of the subject of the procurement in accordance with the Special Terms and Conditions herein shall entail the provision of a RFA certificate.
5. Unless otherwise agreed, the early or partial performance of the subject of the procurement shall require the Purchaser's explicit consent in writing. The early performance will have no effect on the start of the payment period if such start is linked to the date of performance.
6. The Vendor shall immediately inform the Purchaser in writing if any events or reasons which may prevent the adherence to the agreed deadlines for the performance of the subject of the procurement defined in the purchase order occur or become noticeable.
7. **Acceptance of the equipment**
8. For the delivery of the equipment which constitutes the subject of the procurement, as well as for the services for its installation, a certificate for acceptance shall be necessary, when applicable.
9. All documents prepared by the Vendor with reference to the equipment which constitutes the subject of the procurement shall become an ownership of the Vendor upon the delivery, i.e. the acceptance of the equipment, unless the Purchaser requests these documents at an earlier date.
10. For all consignments, the Vendor shall send a notice to the Purchaser at least 24 hours prior to the delivery thereof. The start of the installation shall be announced in a timely manner, in general, 7 calendar days in advance.

Should it become necessary to shut down any operating equipment, this shall be agreed in advance with the Purchaser.

Any costs that shall arise as a result of undertaken activities with reference to this item for which the Purchaser shall not be notified in a timely manner shall be borne by the Vendor.

1. **RFA certificate and certificate for acceptance test**
2. The Vendor is to provide a RFA certificate.

This shall also apply for the agreed partial services.

1. The Vendor, 3 calendar days in advance at the latest, shall submit to the Purchaser a written notice about the date at which it is planned to perform the acceptance, i.e. partial acceptance, unless agreed otherwise.

The Purchaser is to complete the acceptance test within 30 calendar days (acceptance period) after the issuance of a RFA or RFA for partial acceptance.

1. If the acceptance test requires network suitability tests or performance and reliability tests, the acceptance period shall be extended by the period of the implementation of the tests.
2. The conditions that are to be fulfilled by the Purchaser for the purposes of the performance of the subject of the procurement shall be previously determined and precisely defined.

If the acceptance/partial acceptance is postponed due to reasons on behalf of the Purchaser, new deadlines for the performance of the subject of the procurement shall be agreed.

If the acceptance/partial acceptance has not been made within the defined deadline due to reasons that can be assigned to the Vendor, for the period of default, the default provisions shall apply.

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1. If the acceptance date proves to be unrealistic in view of the scope of the respective matter, it shall be extended for an adequate period of time.
2. Upon the completion of the acceptance test, the Purchaser shall issue:
* A certificate for the acceptance test, in case of a complete performance in accordance with the terms and conditions herein, i.e. the purchase order.
* A certificate for a partial acceptance test, in case of agreed partial performance in accordance with the terms and conditions herein, i.e. the purchase order.
* The certificate for acceptance shall be submitted to the Vendor.
1. If upon the implementation of the acceptance test the services are not accepted by the Purchaser due to detected defects, the Purchaser shall be obliged to submit a list of defects to the Vendor.

The Supplier shall, without delay, within the reasonable time period defined by the Purchaser, correct the defects in the manner specified in the Special Terms and Conditions herein whereby it shall fully meet the acceptance conditions.

1. If the Minutes on the acceptance test (hereinafter referred to as: "acceptance") define priorities in terms of the errors and if the serious defects are described, such description shall be decisive for the assessment of the readiness for acceptance.

The individual errors which independently do not constitute sufficient grounds for rejection of the acceptance, may lead to its rejection if they appear several times.

If the acceptance is refused wholly or partially, it shall be deemed that the originally agreed deadline for the provision of the certificate for acceptance, i.e. the certificate for partial acceptance has not been met.

1. The following shall not constitute a reason for denial of the certificate for acceptance, i.e. the certificate for partial acceptance:
* Works that by their nature can only be executed after the provision of a certificate for acceptance or a certificate for partial acceptance,
* System errors without significant impact that can be cleared within an agreed error reporting and change procedure,
* Other defects that represent an insignificant reduction in the suitability of the services.
1. For agreed partial acceptances, the last of the partial acceptance tests shall be carried out as an acceptance test with respect to the conformity of the overall services with the Contract.
2. The result of the acceptance test and the compliance with the deadlines shall be documented by the Purchaser and, at its request, ascertained jointly with a Minutes on acceptance test.

, Both parties shall receive a copy of the minutes on acceptance test.

If the minutes on acceptance test has been prepared solely by the Purchaser, the Vendor may submit a complaint pertaining thereto within 7 days. Otherwise, the minutes shall be deemed to be accepted.

1. The defects that do not prevent the acceptance must be cleared without delay, except if there is a need for a new delivery or reinstallation. The Purchaser shall be informed of the relevant dates in writing immediately.
2. On the date of the provision of the certificate for acceptance, i.e. the certificate for partial acceptance, the Vendor shall issue to the Purchaser a list of all available devices and equipment within the system, as well as a report for performed tests and measurements which shall be signed by the Vendor and the Project Manager by the Purchaser.

Any devices and equipment that have been dismantled or exchanged shall remain the property of the Purchaser, unless otherwise agreed.

1. **Default, delay in performance, improper performance and determination of contractual penalty**
2. In the event of failure to perform the obligation/s by the Vendor, the Purchaser shall be entitled:
* to request performance and to provide additional deadline to the Vendor during which period a 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)

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 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 Contract provisions shall apply.
2. If the Vendor is in delay in the performance of the obligations (or in the event of improper performance), the Vendor shall pay contractual penalty as penalty for the duration of the delay. The Vendor's request for contractual penalty shall not depend on that whether the damage has occurred, or whether there is actual danger for the occurrence of the damage. The contractual penalty can be asserted until the final payment has been made.
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 the 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, a contractual penalty shall be charged, as follows:

The Vendor undertakes to pay contractual penalty to the Purchaser in the event of a delay in the performance (delivery/service rendering, response times or deadlines for recovery after failures of the systems or devices), in the event of delay in the performance of other obligations (repair and replacement of inadequate equipment/service) in the amount of 1% (one percent) a day and/or an 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.

1. If the part of the products and services that are not provided on time is a sub-quantity - with an unspecified price - of a larger function or price unit, then the price of this larger function or unit shall apply.
2. **Liability**
	1. **Warranty of quality**
3. If the Vendor performs its services by successive instalments, at the acceptance of the final perform­ance, if such acceptance takes place, the overall func­tionality shall be tested, in particular in respect of the error-free co-action. The performance shall only be considered as free of defects if the overall functional­ity of the successive instalments is given. The period of warranty in respect of the overall functionality shall start to run with the acceptance of the last successive instalment. Starting with the acceptance, the period of warranty shall start to expire which shall be 36 months.

Hence, the claims shall come under the statue of limita­tions in the context of the warranty of quality of 36 months starting with the acceptance of the performance at the place of the performance or starting with the accep­tance, if such has to take place.

The period of the statue of limita­tions shall be interrupted for the number of days in which the Purchaser was not able to use the subject of the procurement due to a defect.

1. The Vendor shall be obliged to eliminate the defect immediately by adequate subsequent activities (replacement, repair or recreation). If the defect can not be removed in a short time, the Vendor shall be obliged- so far as possible and ap­propriate in terms of the effects of the defect – to pro­vide a provisional solution.
2. If the defect is not removed even within an adequate time given to the Vendor for subsequent activities, the Purchaser shall be entitled to reduce the price or to withdraw from the contract and to demand compensation in accordance with the legal regu­lations within the defined limitations.
	1. **Liability for Defects**
3. The Vendor shall be liable for the defects in the course of the warrantee period, starting from the date of the risk transfer, or if acceptance has been defined, upon the acceptance by the Purchaser.
4. The Vendor shall be obliged to bear all costs and expenses arising in connection with the liability for defects.

This shall be without prejudice to any additional legal claims.

1. The Vendor warrants that the products and the services which constitute the subject of the procurement are in accordance with the agreed conditions, without defects and fully functional.

The period of liability is extended by the time the products or services cannot be used correctly.

1. The Vendor shall also be liable for the defects that have appeared in the same kind of telecommunications equipment for the first time, provided that the defects are system errors and arise during the period of liability.
2. System error means any defective functions that are contained in the entire equipment.

Software errors are always system errors unless they are data errors specific to individual equipment.

Hardware errors are system errors whenever they cannot be cleared by restoring the delivery target status. Errors in the system documentation are treated as system errors.

1. The Vendor shall be liable if it fails to provide urgent written information in terms of the visible defects in the delivered equipment which constitutes the subject of the procurement to the Purchaser or to a third party determined by the Purchaser.

This also applies in the cases when the Vendor does not provide plans, drawings and calculations for analysis prior to the realization of the subject of the purchase order, in case when they constitute a basis for the Purchase Order.

1. The Vendor shall clear all defects that shall occur within the warrantee period without delay and to undertake everything necessary so as to ensure the operability of the telecommunications equipment or to restore it in full without delay.

In the event of defects with significant impact, the Vendor shall take immediate measures and, if necessary, lend compatible telecommunications equipment. The Vendor shall bear the transport costs and the transport risk.

1. In urgent cases and in order to avoid property damage and personal injury, the Purchaser has the right to take immediate measures itself. The Vendor shall bear the costs thereof.
	1. **Liability for violation of intellectual property rights**
2. The Vendor shall indemnify the Purchaser from all claims by the owner of the intellectual property rights, provided that the violation of the intellectual property rights occurs as a result of a breach of the con­tractual performances. In order to enable a further use, the Vendor shall immediately, at his own expense, either change or replace the contractual performances arising from the Agreement in such a manner that the intellectual property right shall no longer be violated and nevertheless the contractually agreed characteristics shall be contained or the necessary licenses shall be provided. If the aforementioned alternatives do not lead to success, the Vendor shall, depending on the Purchaser’s choice, take back the contractual performances in accordance with the Agreement and refund the money paid by the Purchaser or reduce the consideration by the amount that corresponds to the decrease of use by the Purchaser. The foregoing obligations of the Vendor shall apply only if the Vendor is promptly informed by the Purchaser in terms of any claims made against the Vendor, and if all protective measures, including out-of-court proceedings, remain with the Vendor, and if the violation of the industrial property rights is not caused by changes or use within the performance of the works in contravention of the contract/the purchase order and the Terms and Conditions herein.
	1. **Other liability**

The parties shall assume unlimited liability in the case of wilful intent or gross negligence, personal in­juries, acceptance of a guarantee or if an unlimited liability has been obligatorily regulated by law.

For all cases of damage which exceed the amount of the contractual penalty, property or financial damages, the parties shall be liable for an amount up to 150% of the agreed fee, at least up to the amount of the agreed compensation, unless otherwise agreed in a written agreement.

1. **Right of use/interfaces**
2. In terms of the software, and for the purposes of meeting the agreed functions, the Vendor shall give the Purchaser a non-exclusive, irrevocable and unrestricted right to use such software that can be transferred to Purchaser or the company or a company within its Group for the purposes of the operation and for which all claims have been settled according to the agreed payment.
3. The Purchaser shall be entitled to reproduce and change the software for the purposes within the Deutsche Telekom AG Group, unless otherwise agreed.
4. The Vendor shall be obliged to name the external and internal hardware and software interfaces for the Purchaser and to immediately disclose them upon request. More specifically, the Vendor shall grant the Purchaser the right to disclose the specifications, external and internal interfaces, etc. from the Vendor's domain so that they would be used by third parties for Purchaser's purposes such as to ensure the interoperability with third parties' deliveries, or to have the systems, applications, etc. run or maintained by third parties.

The aforementioned obligations shall be settled in accordance with the agreed payment.

1. The Purchaser shall pass on the software received with the rights specified in paragraph 1 to third parties (network operators) - after previously informing the Vendor - only to the extent this is necessary for the operation of the telecommunications equipment and shall impose the same obligations on the third party as it has undertaken itself.

1. **Subcontracting**
2. For any engagement of third parties as sub-contractors, written consent from the Purchaser needs to be obtained.
3. 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.
4. **Assignment of claims**
5. The Vendor’s receivables towards the Purchaser may be transferred only under an explicit written consent issued by the Purchaser.
6. **Final provisions**
7. Regarding all issues that are not regulated in the purchase orders and under these Special 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 in accordance with the Macedonian laws.
8. If any of the provisions of the Special Terms and Conditions is not valid in terms of the respective purchase order, the other provisions of the Special Terms and Conditions shall remain valid in terms of the purchase order.
9. 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.
10. The Special 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.
11. 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 wherein it shall be deemed accepted in its entirety and in accordance with the Special Terms and Conditions. The commencement of the delivery of part or the whole purchase order by the Vendor shall be considered as acceptance irrespective whether the Vendor has confirmed the acceptance thereof.
12. If the Vendor fails to reject the purchase order within the defined deadline, it shall be deemed that the Vendor has accepted the purchase order.
13. The Special Terms and Conditions herein shall enter into force on the day of its adoption and shall be applied as of the day of their publication on the official web site of Makedonski Telekom AD - Skopje.

 Makedonski Telekom AD - Skopje