

## Attachment 4

## General Terms and Conditions for Services and Works

**1. General/Form of legally binding declarations**

- 1.1.** These General Terms and Conditions ("GTCs") shall apply exclusively to companies within the meaning of Section 1 of the Code of Commerce, that is, individuals or legal entities that provide the service in the exercise of their commercial activities or independent professional activities.
- 1.2.** Different terms and conditions of the Supplier shall only apply if and to the extent expressly acknowledged by the Ordering Party in writing (signed). The Ordering Party's silence regarding such different terms and conditions shall not be deemed in particular to acknowledgement or consent, and this shall also apply to future contracts.
- 1.3.** These GTCs shall apply in place of any terms and conditions, especially general terms and conditions of the Supplier, also where such terms and conditions stipulate that a purchase order or call-up is deemed to be the unconditional recognition of the general terms and conditions, or the Ordering Party orders/calls up, after the Supplier has referred to the validity of its general terms and conditions, unless the Ordering Party has expressly waived the validity of these GTCs. With the acceptance of the order confirmation, the Supplier expressly acknowledges that it waives its legal objection derived from its general terms and conditions for contracting or other conditions of the Supplier. In the area of this contractual relationship, legally binding statements of shall of the Ordering Party shall only be valid when given in writing (signed), unless, in accordance with these GTCs, it is sufficient in text format (fax, electronic mail). These GTCs are applicable to all provision of Services carried out by the Supplier and are additional in nature to any specific agreement made between the Ordering Party and the Supplier (the "**Contract**"), which shall prevail over these in case of discrepancy.

**2. Purchase Orders**

- 2.1.** Purchase orders and their amendments/ modifications shall only be valid when given in writing. The conveyance of purchase orders and call-ups via remote data transmission and EDP printouts, especially from the Ordering Party's order centers, shall be valid without signature.
- 2.2.** If the Supplier does not accept the order in a period of fourteen calendar days from its receipt, the Ordering Party can revoke it. Purchase orders shall be deemed accepted if the Supplier does not contradict them in writing or text form within 5 calendar days, if the Ordering Party has expressly indicated this legal consequence in the purchase order/call-up.

**3. Implementation of the contractual relationship**

- 3.1.** The Supplier shall provide its services in its own name and for its own account as an independent entrepreneur. The Supplier shall not be authorized to represent the Ordering Party in legal transactions. The Supplier is not authorized to appear as a partner, agent or representative of the Ordering Party, nor shall it have any express or tacit representation to act in its name, except with express written mandate or special empowerment. No agreement, pact or promise, declaration or action of any class realized by the Supplier with infringement of the provision in this paragraph shall relate the Ordering Party in any way whatsoever, the Supplier being the sole responsible party before third parties for such actions. In its condition of independent entrepreneur,

the Supplier shall assume exclusive responsibility for the results of its professional activity.

- 3.2.** The Supplier, within its own authority and organization, shall act independently or autonomously with regard to the Ordering Party, although he/she must follow the instructions that said party indicates with regard to the provision of the Services assigned to him/her by the Ordering Party. In the performance of its activities, the Supplier shall not be subject to the instructions of the Ordering Party or its employees. The GTCs do not suppose, in any case, the creation of an employment relationship between the Ordering Party and the Supplier, or between the former and employees of the latter. On the contrary, the contracted activity is configured as the Supplier's own business, which he/she shall conduct at its own risk, assuming the results of the same.

- 3.3.** For the fulfilment of the agreed Services the Supplier shall use its employees in sufficient number to perform said Services with full effectiveness, and within the working hours agreed with them, although striving to ensure that the provision of the Services is always in accordance with the terms agreed and the needs of the Ordering Party.

- 3.4.** The Supplier shall be obligated to perform a suitable evaluation of the risks and the fulfilment of the regulations of Occupational Risk Prevention. The work material or the installations that require special supervision must be submitted to necessary inspections. In case of handling hazardous substances in the provision of service, the corresponding safety sheets must be attached.

- 3.5.** When additional documentation is needed for the use or enjoyment of the Services contracted, the Supplier shall submit it to the Ordering Party even when it had not been agreed on expressly.

**4. Requests for change. Additional expenses**

- 4.1.** The Ordering Party shall have the right to request variations in the scope of the service, in accordance with the stipulations established later, as long as, taking into account the experience and knowledge of the Supplier and its portfolio of orders, it can objectively be considered that it is fair that said modifications can be assumed by the Supplier from a technical and logistic viewpoint. The Supplier shall study the request for change of the Ordering Party as soon as possible and shall notify said party immediately and in writing of the results. This notification of the Supplier shall include a statement regarding the viability of the changes requested from the technical and logistic viewpoint, as well as a report and detailed offer regarding the effect they could have on the scope of the services, on the delivery periods and dates, as well as on acceptance and the price. The execution of the changes derived from a modification may only begin when there is written authorization by the Ordering Party of the corresponding detailed and estimated offer of the Supplier.

- 4.2.** When the changes requested by the Ordering Party relating to the object or to the execution of the order are not technically and economically significant for the Supplier, the latter may not request a change in the terms of the Contract.

- 4.3.** Expenses or compensation in addition to those agreed on shall only be reimbursed when this has been expressly agreed on.

**5. Acceptance of the work**

**5.1.** The Supplier shall deliver the work on the date or in the periods fixed on the order form, and according to the agreed requirements. The periods established shall be understood as agreed with essential nature for the Ordering Party, and as obligatory and non-extendable for the Supplier. If a period or limit has not been agreed on, the work shall be accepted by the Ordering Party after its correct finalization.

**5.2.** Once provided by the Supplier, the work shall be submitted to an acceptance test. Once said test of acceptance has concluded successfully, the Ordering Party shall declare that the execution of the work does not show defects.

**5.3.** The acceptance of the work must always be granted expressly in writing, electronic mail or fax. Tacit acceptance of the work is excluded, except solely in the event that the Ordering Party uses the work delivered for the planned purpose and resists without justification the performance of the planned acceptance trials for more than fourteen calendar days.

## **6. Compensation**

**6.1.** As compensation for its services and for the rights assigned and/or transferred to the Ordering Party according to condition 10 of these GTCs, the Ordering Party shall pay the Supplier the agreed amount once the services have been provided correctly and within the planned period.

**6.2.** Unless otherwise agreed, the agreed compensation shall cover all the services provided by the Supplier, as well as other expenses relating to them.

**6.3.** Travel expenses shall only be reimbursed if this has been agreed in writing, and as long as they are justified with the corresponding invoices and copies of the documentation that supports them. Any exception shall require the prior written consent of the Ordering Party.

## **7. Invoices and payments**

**7.1.** Unless otherwise agreed, payments shall be made without deductions or discounts for prompt payment, in a period of sixty days from the date of the invoice, and the Ordering Party receives the duly issued invoice.

**7.2.** The invoices must include the list of the tasks performed and the order number of the Ordering Party.

**7.3.** Payments, in themselves, shall not imply acknowledgement or agreement of the Ordering Party that the services comply with the Contract.

**7.4.** The Supplier shall be responsible for the correct payment of taxes relating to all the payments made by the Ordering Party. The price shall be paid together with the Value Added Tax at the corresponding rate, always to the extent at which the services of the Supplier are subject to said tax and the Supplier issues a correct invoice in accordance with the provisions of the Royal Decree 1619/2012 of 30 November, approving the Regulations by which the invoicing obligations, or the rule that substitutes or modifies them, are regulated. As applicable, if the services of the Supplier are not subject to the Value Added Tax, the Supplier shall reimburse the Ordering Party immediately the amount paid erroneously for said item and shall have no right to any claim whatsoever for said reimbursement.

## **8. Responsibility for damages. Delay in the execution period**

**8.1.** The Supplier shall provide all the Services with the greatest diligence possible, and shall be responsible for the damages and harm caused directly or indirectly to the Ordering Party or to third parties, by the Supplier or by its personnel, as the result of deficient provision of Services, as well as those caused by a

malicious or negligent conduct by the employees of the Supplier in the provision of said services.

**8.2.** The Supplier shall be responsible for and shall indemnify Ordering Party for all expenses, responsibilities, damages and harm that may be caused to it by the non-fulfilment of any obligation, for an unsuitable provision of the Services or because of any non-compliance by him/her of the labour rules, of Social Security and/or tax rules.

**8.3.** The amounts that the Ordering Party may be obliged to pay, or the expenses that are caused to it for any reason, shall be first compensated to the extent of their scope with the outstanding payments of those stipulated.

**8.4.** In any case, if said pending payments are not sufficient, the Supplier shall fully return to the Ordering Party the amount of the damages and/or expenses that have been caused to it within ten calendar days from the date on which said damages and/or expenses were caused.

**8.5.** When a delay is evident in the period of execution of the Services, in part of them, or in complementary tasks; or from the time that the Supplier becomes aware of the causes thereof, the Supplier must immediately notify the Ordering Party in writing or in text format, as well as the corresponding request for extension, specifying the time of the required extension and accompanying the information and data accrediting the alleged facts and their consequences on the Services, their influence on the planned period of execution and the measures proposed to attenuate their consequences.

## **9. Non-execution or defective execution/defects**

**9.1.** In case of non-execution or of defective execution of the service ("defects"), at the choice of the Ordering Party, the Supplier shall correct the defect or shall again provide its services correctly, at its cost and in a reasonable period of time. If the Supplier does not correct the defect in a reasonable period or if the new provision of services is again defective, or the defects are irremediable, the Ordering Party may terminate the contract or request its fulfilment, consisting of reducing the Price proportionately or of correcting the defect or of assigning its correction to a third party at the expense and under the responsibility of the Supplier, and in both cases it shall have the right to claim indemnification for the damages derived from said non-fulfilment.

**9.2.** In the case of work, the action for the claims for defects against the Supplier shall expire in the period indicated in the second paragraph of article 1591 of the Civil Code. In the case of services, the action for claims for defects against the Supplier shall expire in the period indicated in article 1964 of the Civil Code for personal actions.

**9.3.** The foregoing is to be understood as notwithstanding any other actions or rights to which the Ordering Party is entitled in accordance with the provisions included in the legal system.

## **10. Results of the Work, inventions, industrial property rights and copyright**

**10.1.** The Supplier states and guarantees the Ordering Party that the creations, plans, drawings, specifications, documents, procedures, methods, services rendered and products supplied, prepared or elaborated by the Supplier and the use of any of the same, do not infringe the rights of third parties. Consequently, the Supplier guarantees the Ordering Party peaceful use and the ownership of the work. In case of claim or action on the part of a third party asserting the infringement of any intellectual or industrial property right of those that are the object of assignment in accordance with this condition, the Supplier shall hold harmless the Ordering Party and the third parties to whom the Ordering Party may assign the contract against all damages

(including costs and expenses) that may occur, and must obtain for the Ordering Party the right to use, or to continue using, the services or works and equipment. Any delay in the execution of the work due to this cause shall neither exempt the Supplier from any type of responsibility due to delays, nor shall it empower him/her to increase the price.

**10.2.** The Supplier shall deliver all the results of the work required according to the order by the Ordering Party.

**10.3.** The **"Results of the Work"** are all those results and findings, including the results subject to protection, produced by the Supplier and/or third parties that receive an order from the Supplier during the provision of the requested services, in particular the works, intermediate results and/or derivative products objects, concepts, graphics, sketches, reports, documents, computer programs and their source code.

**10.4.** The Supplier agrees to give notice of these Results of the Work immediately after their creation and in the manner requested by the Ordering Party, in writing or in text format. If possible, the Results of the Work shall become the property of the Ordering Party from their creation and in their respective states of transformation. The Supplier shall diligently guard the Results of the Work in representation of the Ordering Party until their delivery.

**10.5.** The Ordering Party shall have the exclusive and irrevocable right to the use of the Results of the Work, either for itself or through third parties, including the right to exploitation, reproduction, transformation, dissemination, public communication and availability. The Ordering Party may transmit said right to third parties and sublicense it, without restrictions of time, space, or content. If the assignment of the entitlement of the right is not legally possible, the Supplier shall guarantee in writing the assignment to the Ordering Party of the right to use with the maximum scope allowed by current law.

**10.6.** The compensation agreed on shall include the assignment and transfer from the Supplier to the Ordering Party of all the rights to the Results of the Work, as well as to the rights derived from them, including the industrial and intellectual property rights that may be founded in them. Unless otherwise agreed, the Supplier guarantees that, with regard to the Results of the Work, the author or inventor waive their right to be mentioned.

**10.7.** The Supplier may not claim from the Ordering Party any right established in the Law on Intellectual Property for the Results of the Work, inventions, industrial and intellectual property rights assigned in accordance with these GTCs. The Supplier guarantees this same waiver of its employees and collaborators that receive an order from him/her.

## **11. Open-source computer programs**

**11.1.** The Supplier agrees that its services include only free, open-source, computer programs, whose use has been previously accepted in writing by the Ordering Party.

**11.2.** "Free open-source software" ("**FOSS**") are programs provided by the owner of the right to any user, royalty-free, with the right to modify them or disseminate them, on the base of a licence or other contractual licence

**11.3.** If the Supplier uses FOSS, he/she shall be obliged, notwithstanding its obligation to fulfil the terms of the licence, to provide the Ordering Party with a list of all the FOSS components used, indicating the respective licences that must be used, a copy of the full text of the licence and the existing information and notifications relating to the copyright, as well as to make available to the Ordering Party the corresponding source code of the FOSS components.

## **12. Corporate civil liability insurance**

The Supplier agrees to contract and to maintain a civil liability insurance policy that is suitable for corporate activity, for the period of validity of the contractual relationship and for at least five years after the finalization of the contract.

## **13. Provision of objects, documentation and material**

**13.1.** The Ordering Party shall maintain the ownership of the documents or objects provided to the Supplier, which must be stored separately at no charge, labelled and managed as property of the Ordering Party. The supply or provision of information shall not constitute any type of transfer of intellectual or industrial property; its use shall be authorized exclusively for the purposes of the Contract between the Supplier and the Ordering Party. The Supplier must compensate any damage caused to the Ordering Party derived from the deterioration, loss or destruction of said objects, documentation or material.

## **14. Return of the documentation. Confidentiality**

**14.1.** The Supplier shall maintain absolute confidentiality regarding the existence, content and execution of the contracts that bind him/her with the Ordering Party, the business transactions, the specific knowledge and the experience in the provision of services acquired from or about the Ordering Party or other information ("**Information**") obtained in the area of the relation as confidential. Confidentiality shall be maintained with regard to unauthorized third parties as long as the information does not become of public domain, unless there exists a legal duty to disclose it or the Ordering Party has consented in writing for said information to be transmitted in a specific case. The Supplier shall use this information exclusively for the purposes pursued for the provision of the Services. This obligation of confidentiality shall be extended indefinitely after the finalization of the contractual relationship and until such information is made public lawfully and without breach of the Contract.

**14.2.** The Supplier agrees to keep in a safe place all the property of the Ordering Party, especially keys, files, electronically stored data and any other document relating to the business activities of the Ordering Party, so that they cannot fall into the hands of unauthorized third parties. All documents must be submitted to the Ordering Party whenever it so requests. If the contractual relationship ends without the Ordering Party having requested them, they shall be submitted to it or they shall be destroyed. In the case of data transmitted by the Ordering Party to the Supplier, the Ordering Party may require the Supplier to sign a cease and desist declaration regarding the use of these data, which includes a penalty in case of non-compliance, in favour of the Ordering Party.

**14.3.** The Supplier shall subscribe a commitment of confidentiality under the same terms of this condition 14 with those third-party collaborators referred to in clause 3.4., and shall accredit this to the Ordering Party when the latter so requires.

## **15. Data protection, information security**

**15.1.** In the event that the Supplier has Access to personal data that is the responsibility of the Ordering Party, the Supplier agrees to respect its corresponding obligations as Supervisor of Processing, according to the provisions of the Organic Law of 15/1999 on Personal Data Protection and its regulatory development, as well as in the rest of the applicable regulations. In particular, the Supplier must fulfil the following obligations:

- a) Process the data exclusively following the instructions provided by the Customer; the use of the data for purposes other than those expressly indicated in these GTCs is prohibited.
- b) To not disclose, transfer, assign or in any other manner, communicate the File(s) or the Data contained in them, either

verbally or in writing, by electronic means, paper, or by computer access, even for their storage, to any third party, unless there is express authorization by the Ordering Party.

- c) To implement and maintain the security measures required by Title VIII of the Royal Decree 1720/2007, of 21 December, which implements Law 15/1999.
- d) To destroy or return to the Ordering Party (as the latter indicates on the termination, for any cause, of the relationship between both Parties) the data, as well as any copies or supports in which these are contained in accordance with the current law. For these purposes, the Supplier shall issue a certificate that confirms said destruction or return, as applicable.
- e) The Supplier may subcontract the processing of data set out here in whole or in part, as long as (i) he/she reports this previously to the Ordering Party and obtains a specific authorization from the Customer for these purposes; (ii) subscribes an agreement of manager of processing in the name of and on behalf of the Ordering Party that includes obligations similar to those provided here with the subcontractor involved. For the purposes of the Spanish law on data protection, the subcontractors shall have the consideration of managers of processing, and therefore, must follow the express instructions of the Ordering Party for the processing of data. Nevertheless, the Ordering Party accepts that said instructions are given and transmitted to the third parties by the Supplier.

**15.2.** The signatory is informed that the personal data provided to the Ordering Party by the acceptance of these GTCs, as well as all those that he/she provides in the future as a result of its relation with the Ordering Party (the **"Data of the Signatory"**), shall be included in a file owned by the latter.

**15.3.** The purpose of the processing of the Signatory's Data shall be the maintenance, development, control and execution of the professional relationship that, in the framework of the provision of Services, the Ordering Party maintains with the Supplier.

**15.4.** The signatory may, at any time, exercise the rights of access, rectification, cancellation and opposition by submitting the corresponding request by post to the Ordering Party, with domicile for these purposes at Parque Empresarial Plaza, Ronda del Canal Imperial, 18-20, Zaragoza, 50197, or sending an e-mail to the following address: [PMP-SeguridadDatos@bshg.com], indicating in both cases its name and surnames, accompanied by a photocopy of its National I.D.

## **16. Responsibility for dependent personnel and Subcontractors**

**16.1.** The Supplier is responsible in accordance with the stipulations of the GTCs for all the work performed by him/her or by the persons for which he/she is responsible legally or contractually, including the Subcontractors, the suppliers of the equipment and of the construction machinery and other third parties who work under him/her.

**16.2.** Between the personnel working under the Supplier (including in the same the Subcontractors and suppliers of equipment and construction machinery) and the Ordering Party, there shall be no employment relationship of any nature. The Ordering Party shall not be responsible for the managerial obligations of the Supplier or of its Subcontractors, who shall be solely responsible before the Administration, the Courts and their employees.

**16.3.** The Supplier shall be responsible for the discipline of its own personnel and the personnel of its Subcontractors (including the suppliers of equipment and construction machinery and any other

third parties under him/her). At the justified requirement of the Ordering Party, the Supplier shall remove all personnel unsuited for the work assigned.

**16.4.** The Supplier must also require its Subcontractors and suppliers of equipment and construction machinery and any other third parties who work under him/he, to comply with the provisions in this section.

**16.5.** The relations of the Supplier with the Subcontractors must be formalized in writing. In any case, the Supplier agrees to pact in the contracts entered into with the Subcontractors, their express waiver of any right to claim against the Requester, including the one stated in article 1.597 of the Civil Code. Likewise, the obligation of the Subcontractors shall be agreed on to regulate in the contracts that the latter enter into with their subcontractors said express waiver.

## **17. Certificates / declarations:**

**17.1.** At the request of the Ordering Party, the Supplier must show it all the documents that accredit its fulfilment of the wage, tax and social security obligations, as well as others in relation to its personnel (including the Subcontractors, suppliers of equipment and construction machinery and any other third parties that work under him/her); the Ordering Party may withhold from the amount to be paid to the Supplier, the amounts sufficient to cover the non-compliances that are verified of said obligations.

**17.2.** Specifically, before starting to provide the Services, at the beginning of each calendar year and no later than 31 January, and at any time at the request of the Ordering Party, the Supplier agrees to make available to the Ordering Party the documents that accredit the relation of the workers and the fulfilment of its labour, fiscal and Social Security obligations, and especially the following:

- a) Tax certification of being up to date in fulfilment of tax obligations;
- b) Certification of the Social Security Management Entity of being up to date in payments.
- c) All other documents that can accredit the fulfilment of said obligations.
- d) The declarations of the personnel relating to their duty to maintain confidentiality (condition 4.4),
  - a) The declaration of the Supplier that:
    - Its Company complies with the regulations of work permits of employees of non-EU nationalities and with the provisions of the laws relating to insurance and personal income tax, both for full-time and for part-time employees;
    - The provisions of labour law are fulfilled;
    - The provisions of the collective agreements declared binding in general are fulfilled;
    - Wages are paid according to the collective agreement, overtime, bonuses for night work and for adverse conditions;
    - The employees know the occupational safety and fire safety regulations applicable to the building.

**17.3.** Monthly, the Supplier agrees to make available to the Ordering Party the following documents:

- a) Updated Social Security documents (models TC-1 and TC-2).
- b) Documents accrediting the payment of salaries.

**17.4.** In the event that the Ordering Party determines that on the part of the Supplier there is non-compliance with the obligations assumed in these GTCs, of which a third party could make the Ordering Party responsible, solidarily, subsidiarily or by the exercise of another direct action against it, the latter, notwithstanding the power of termination provided in art. 1.124 of the Civil Code may proceed to withhold all payments for any item that are outstanding to be made to the Supplier, in sufficient amount to safeguard said responsibilities.

**18. Corporate social responsibility / Non-discrimination**

**18.1.** The Supplier agrees to comply with the applicable laws, not to tolerate any form of corruption or bribery, to respect the fundamental rights of its employees and the prohibition of child labour or forced labour. Moreover, the Supplier is responsible for the safety and health of its employees in the workplace, for providing them with a work timetable and a fair wage, as well as the fulfilment of the environmental law, and shall do everything possible to promote and require the fulfilment of these principles by its own suppliers.

**18.2.** The Supplier agrees to comply with article 4.2 of the Workers' Statute, that is, to prevent or eliminate discrimination for reasons of race or ethnic origin, gender, religion or ideology, disability, age or sexual orientation. This prohibition of discrimination is applicable to the relationship with employees, agents and outside collaborators.

**19. Assignment of rights and actions**

The Supplier may not, except with express prior written authorization from the Ordering Party, transfer or assign to third parties, in whole or in part, its rights and obligations under the contract, or carry out any other operation that involves disposition by any lien, commitment and/or total or partial transaction, over said rights and credits.

**20. Applicable law and competent jurisdiction**

**19.1** To know of all discrepancies or claims that may arise from the interpretation or execution of the legal relationship between the Supplier and the Ordering Party, both, expressly waiving any other jurisdiction to which they may be entitled and notwithstanding the mandatory regulations regarding judicial authority, submit themselves voluntarily to the Courts of Zaragoza, Spain.

**19.2** This contractual relationship is governed exclusively by the laws of Spain, without consideration of the regulations or rules of conflicts that are applicable and with exclusion of the uniform law of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

In ....., on .... of ..... of 2015