

## General Terms & Conditions of Contracts of the International Science and Technology Center

The International Science and Technology Center (hereinafter – the “ISTC”) is an intergovernmental organization established by a 1992 treaty Agreement giving the ISTC the status of a legal entity with diplomatic privileges and immunities.

The following terms and conditions apply to contracts for the ISTC’s purchase of goods as well as services and may be varied only with the prior written agreement of the ISTC.

1. None of the terms or conditions tendered by a contractor/bidder (hereinafter – the “Contractor”) shall be binding upon the ISTC or form any part of an ISTC contract/purchase order (hereinafter – the “Contract”) without the ISTC’s prior written consent.
2. **Legal Status** – All Contractors shall have the legal status of an independent contractor absent some other express written arrangement. Likewise, none of the personnel or staff of either a Contractor or its sub-contractors shall be considered as either ISTC agents or employees absent such explicit memorialized agreement.
3. **Payment** – as long as no other payment conditions are agreed upon:
  - a. Payment up to and through the 30<sup>th</sup> day is considered to be the same as net, i.e. following the fulfilment of all delivery terms and unless otherwise provided in writing, the ISTC will issue payment within 30 days of its receipt of the proof of delivery (e.g. AWB);
  - b. The ISTC payment against all such invoices will reflect all discounts shown in the payment terms of the overarching Contract;
  - c. Unless otherwise authorized by the ISTC, only one invoice may be submitted.
4. **Exemptions to Taxes and other Charges** – The Contractor’s price shall include any and all applicable exemption to tax and other charges to which the ISTC is entitled to by virtue of the diplomatic privileges and immunities it enjoys as an intergovernmental organization.
5. **Additional or Supplemental Work(s) and/or supplies** – The Contractor shall not carry out any other additional or supplemental work(s) and/or supplies (including but not limited to the provision of either materials or services) that results in any charges to or liabilities for the ISTC above the original purchase price without prior written authorization from the ISTC.
6. **Instructing Authorities and Sources** – In the performance and fulfilment of this Contract, the Contractor shall neither seek nor accept instructions from any source external to the ISTC unless so instructed by the ISTC. Moreover, the Contractor shall refrain from any and all actions that might adversely affect the ISTC and shall fulfil its commitments with maximum attention to and care for the interests of the ISTC.
7. **Responsibility for both Employees and Sub-Contractors** – The Contractor shall be responsible for both its employees as well as sub-contractors as regards their technical competences plus professional integrity. This includes but is not limited to assuring that for work under this Contract, these will be individuals who will perform efficiently, respect local laws as well as customs, and conform to the highest standards of moral and ethical conduct. When the services/supplies being provided are upon the premises of the ISTC, all of the ISTC’s rules and regulations regarding discipline, modes of work, safety, and security are mandatory.
8. **Assignment** – Without the prior written consent of the ISTC, the Contractor shall not assign, transfer, pledge, or make any other disposition of this Contract.
9. **Subcontracting and Subcontractors** – Without the prior written consent of the ISTC, the Contractor shall not use subcontractors. Even in the case of a subcontractor approved by the ISTC, the Contractor is not relieved from any of its obligations under this Contract. In the case of any conflict between the terms of any subcontract and this Contract (including these “Generally Applicable Conditions”), the underlying ISTC Contract shall control.
10. **Affirmation of Objectivity** – The Contractor affirms that no one at the ISTC has been offered or will receive any benefit arising from this Contract. The Contractor further agrees that benefiting any individual at the ISTC would be a fundamental as well as legally fatal breach of this Contract.
11. **The Indemnification of the ISTC** – The Contractor promises to indemnify, hold harmless, and to vigorously defend at its own expense the ISTC, including its management, officials, employees, and agents from and against all lawsuits, claims, demands, and liability of every nature and kind arising out of the acts or omissions of the Contractor or its management, officials, employees, agents, and subcontractors in the execution of this Contract. This indemnification responsibility shall extend to and include, but not be limited to, workman’s compensation claims, damages from defective products, plus liabilities arising out of the use of associated inventions or devices.
12. **Insurance Coverage and Liability to Third Parties** – The Contractor shall secure and maintain insurance coverage against –
  - a. all risks in respect to the property or any equipment owned or leased by the Contractor that is used or needed to be used in the fulfilment of this Contract;
  - b. third-party claims for
    - i. death or bodily injury, or

- ii. the loss of or damage to property arising from or in connection with the provision of services under this Contract or in the operation of any motor vehicles, boats, aircraft, or other equipment either owned or leased by the Contractor.

Upon the request of the ISTC, the Contractor shall promptly provide proof of the existence of the insurance coverage that is required under this paragraph.

13. **Attachments/Liens/Encumbrances upon the ISTC** – The Contractor shall neither cause nor permit any attachment, lien, or encumbrance to be placed on file, or to remain on file, with any governmental office or on file with the ISTC for any moneys due or that may become due for any work done or materials furnished under this Contract or by reason of any other claim or demand against the Contractor.
14. **Title and Risk to ISTC-Provided Equipment and Supplies** – The title to all ISTC-provided equipment or supplies shall remain with the ISTC. All such equipment shall be returned to the ISTC at the completion of this Contract or earlier if no longer needed by the Contractor. Such equipment shall be returned in the same condition as when delivered to the Contractor, subject to the wear and tear from normal usage. The Contractor shall be liable to compensate the ISTC for equipment that has been damaged beyond what might be reasonably anticipated from normal usage.
15. **Foreground Intellectual Property Rights** – Regarding the providing of services the ISTC shall be entitled to all foreground intellectual property and any other proprietary rights (including but not limited to patents, copyrights, trademarks with regard to products plus documents and other materials) that are connected with or are produced in the course of the fulfillment of this Contract. At the ISTC's request, the Contractor shall undertake all necessary steps, execute all necessary documents, and generally assist in the securing of such foreground intellectual property and other proprietary rights including their transfer to as well as registration in the name of the ISTC (or its designee).
16. **Use of the ISTC's Name, Emblem, and Seal** – Absent the written permission of the ISTC –
  - a. the Contractor shall neither advertise nor otherwise make public the fact of its work with the ISTC;
  - b. nor shall the Contractor make any use of the ISTC's name, emblem, and seal.
17. **Ownership, Confidentiality, and Non-Disclosure** – All documents, drawings, estimates, maps, mosaics, photographs, plans, recommendations, reports plus all data compiled or received by the Contractor under this Contract shall –
  - a. become the property of the ISTC, and
  - b. be treated as confidential i.e. delivered only to authorized ISTC management and officials.The Contractor further promises not to communicate at any time or to any other person, government, or authority external to the ISTC any information that has been made known to it by reason of its work or association with the ISTC that has not previously been made public. Similarly, the Contractor promises not to use this information at any time to its private advantage.
18. **Force Majeure** – This means acts of God, law, or regulations, industrial disturbances, acts of the public enemy, civil disturbances, explosions, fires, and any other or similar causes or equivalent force not caused or within the control of either the ISTC or the Contractor that neither can overcome.

If, in the event of a force majeure, the Contractor is rendered unable, in whole or in part, to fully perform its obligations as well as responsibilities under this Contract, both notice plus confirming particulars shall be given in writing to the ISTC. Such notice to be valid must be within fifteen (15) days of the start of such force majeure. Upon receipt of a notice of force majeure, the ISTC shall have seven (7) days within which to give notice to the Contractor of its termination of this Contract on grounds of convenience.
19. **Suspension of ordered services** –
  - a. Upon receipt of a suspension notice from the ISTC, the Contractor shall, unless the notice directs otherwise, immediately halt its services.
  - b. Upon the ISTC's giving of at least five (5) working days notice, it may suspend performance of all or any part of the services that are the subject of this Contract. This suspension may be for up to sixty (60) days during which period the ISTC may at any time, by written notice, require the Contractor to resume performance. If at the end of sixty (60) days ISTC has not directed a resumption of those services, the unfulfilled portion of the services that has been suspended may be terminated by either party.
  - c. The ISTC shall not be liable for any damages, anticipated profits, or costs incurred with respect to suspended services during any period of suspension.
20. **Termination** – Upon receipt of a termination notice from the ISTC, the Contractor shall, unless the notice directs otherwise, immediately discontinue its services and/or deliveries.
  - a. **Default by the Contractor** – Should the Contractor at any time refuse or neglect to supply sufficient and properly skilled workers, or fail in any respect to prosecute the services or any separable portion, with promptness and diligence, or fail in the performance of any portion of this Contract required for the satisfactory completion of the services, or become insolvent, ISTC may terminate this Contract on the ground of default. In such a case, termination will be effective forty-eight (48) hours after written notice has been given to the Contractor to correct the deficiency.

In the event of a termination by the ISTC for default, the Contractor shall not be entitled to receive any further payment, if any may then be due, until the services are completed to the ISTC's full satisfaction. That is, the ISTC may choose, in the manner it considers appropriate, replacement services similar to those terminated for default. In such a case, the Contractor shall be liable for, and pay to, ISTC any reasonable cost, including the cost for additional managerial and administrative services, in excess of the price of the original Contract.

- b. *Convenience of the ISTC* – Upon ten (10) days advance written notice, the ISTC may terminate a Contract. Such termination shall be effective in the manner that are specified in the notice and shall be without prejudice to any claims that the ISTC may have against the Contractor.

If this Contract is terminated for ISTC's convenience, the obligations of this Contract shall continue as to services already performed, as to obligations entered into before the date of termination, and as to obligations not reasonably terminable thereafter. The Contractor shall be entitled to relative proportions of the originally agreed upon Contract price for those portions of the services done before the effective termination date. The Contractor shall be entitled to neither profit nor fee on any unperformed services.

21. ***Dispute Resolution*** – The ISTC and the Contractor should act in good faith and practice fair dealing with one another. The ISTC and the Contractor waive seeking judicial resolution of any and all disputes and exclusively substitute alternative dispute resolution, i.e. self-administered arbitration under the Law on International Commercial Arbitration of the Republic of Kazakhstan.

For dispute resolution the following Standard Terms & Conditions are valid:

1. When the principal place of business of the supplier in the CIS region, the place/seat of conciliation and arbitration will be Nur-Sultan (Astana), Kazakhstan. The applicable substantive law will be that of the Republic of Kazakhstan. The procedures for the conciliation and arbitration will be those of the Law on International Commercial Arbitration of the Republic of Kazakhstan.
2. When the principal place of business of the supplier is in Europe, the place/seat of the arbitration will be London, England, the U.K. The applicable substantive law will be that of the United Kingdom. The procedures for the arbitration will be those of the London Court of International Arbitration.
3. When the principal place of business of the supplier is in North America, place/seat of the arbitration will be New York City, New York State, USA. The applicable substantive law will be that of the State of New York. The procedures for the arbitration will be those of the American Arbitration Association. Partners to a contractual dispute may choose any other forum within North America, which is acceptable for them.
4. When the principal place of business is in Asia, the place/seat of the conciliation and arbitration will be Tokyo, Japan. The applicable substantive law will be Japanese. The procedures for the conciliation and arbitration will be those of the UNCITRAL.

In all cases:

- The language for the alternative dispute resolution will be English;
- There will be a more elaborate statement of how the alternative dispute resolution mechanism will operate e.g., adding a conciliation step as a precursor to arbitration; minimizing the number of arbitrators; minimizing the potential for conflicts of interests; provide that the losing disputant shall be liable for all costs and attorney's fees;
- There will be possibly incorporate (based upon considerations of scale, type, and location) the 1980 U.N. Convention on Contracts for the International Sale of Goods or the Uniform Commercial Code;
- There will be more detailed suspension and termination provisions, including but not limited to an unconditional option for the ISTC to terminate based upon its "convenience".

22. ***The ISTC's Diplomatic Privileges and Immunities*** – Nothing in this Contract shall be construed as a waiver of any of the privileges or immunities according to the ISTC by its immediate parties and the international treaties to which they have subscribed.

23. ***Amendments to this Contract*** – This Contract may only be changed by a written amendment.

24. ***Coordinates for the Giving of Legally Effective Notice*** – The legally effective service of any notice in connection with this Contract –

- a. must be in English;
- b. must be sent by either registered mail, facsimile, or e-mail to the individuals identified in the underlying Contract at the addresses set forth in same.