



## Deutsche Welthungerhilfe e.V. — Terms and Conditions for International Procurement of Goods and Services

### Preamble

Deutsche Welthungerhilfe e.V., Friedrich-Ebert-Straße 1, 53173 Bonn/Federal Republic of Germany (hereinafter referred to as “**Welthungerhilfe**” or “**WHH**”) was established in 1962 and is today one of the largest private organizations working in the area of development cooperation and humanitarian aid in Germany. The organization is non-profit-seeking, non-partisan and non-denominational. Donations from the population at large fund our work in over 30 countries in Africa, Asia and Latin America. Welthungerhilfe receives grants from institutional donors, such as the the German Federal Government, British Department for International Development (UK DFID), the European Union (EU), the United Nations (UN), the United States Agency for International Development (USAID) and others.

Since Welthungerhilfe is committed towards its private and institutional donors to use its funds as efficiently as possible, contracts for the supply of Goods and Services will be awarded only following a competitive procurement procedure. Welthungerhilfe therefore asks for your understanding that not every offer can lead to an order.

To achieve a maximum of transparency, accountability, equality and fair competition Welthungerhilfe requires from its suppliers consent to and strict compliance with the following Terms and Conditions for International Procurement of Goods and Services of Welthungerhilfe (hereafter „Terms and Conditions“).

### 1. DEFINITIONS

In this Terms and Conditions

"Contract" means the applicable WHH purchase order accepted by the Contractor. Any amendment to the Contract, once agreed between WHH and the Contractor in accordance with Article 4 below, shall also form a part of the Contract.

„Purchase Order“ means any written/formal purchase order of WHH including any exhibits thereto, any communication by WHH under Article 4 below, and these Terms and Conditions.

"Contractor" means the party set out in WHH's purchase order with whom WHH is entering into an agreement for the supply of Goods and/or Services. This Terms and Conditions apply exclusively to Contractors who are companies within the meaning of Section 14 BGB [German Civil Code] i.e. natural persons or legal entities which, in respect of the supply of Goods and Services, are acting in the performance of their commercial or independent professional activities.

"Goods" includes in particular without limitation equipment, spare parts, commodities, live plants or animals, seed, raw materials, components, intermediate products, or products, as specified in the Purchase Order.

"Force Majeure" shall mean acts of God, war (whether declared or not), invasion, revolution, insurrection or other acts of similar nature or force. A default or a delay by a supplier or authorized sub-contractor, among others, of the Contractor shall not constitute an event of Force Majeure.

"Services" means any services other than the delivery of Goods, as specified in the Purchase Order.

## **2. APPLICATION OF TERMS AND CONDITIONS**

(1) These Terms and Conditions shall apply exclusively to any Contract. WHH does not acknowledge any general terms and conditions of the Contractor which are contrary to or differ from this Terms and Conditions unless WHH has expressly approved their validity in writing. These Terms and Conditions shall also apply if WHH accepts or pays for deliveries of Goods or Services by the Contractor in the knowledge of terms and conditions of the Contractor which are contrary to or differ from this Terms and Conditions. Terms and conditions of the Contractor shall not apply even if WHH does not specifically object separately to their validity.

(2) These Terms and Conditions shall also apply to all deliveries of Goods or Services to WHH in the future until new Terms and Conditions apply.

## **3. RENUNCIATION OF TERRORISM AND MONEY LAUNDERING**

WHH renounces all forms of terrorism and money laundering and will never knowingly support, tolerate or encourage terrorism or money laundering or the activities of those who embrace terrorism or money laundering. Consistent with numerous United Nations Security Council resolutions, including S/RES/1269(1999), S/RES 1368(2001) and S/RES1373(2001) and European Union resolutions, WHH is firmly committed to the international fight against terrorism and in particular against the financing of terrorism. It is the policy of WHH to seek to ensure that none of its own or its donors' funds are used, neither directly nor indirectly, to provide support to individuals or entities associated with terrorism or money laundering. Therefore, WHH will match any candidate, tenderer or Contractor against the sanctions lists, as applicable from time to time, on a regular basis.

## **4. ACCEPTANCE OF PURCHASE ORDER, AMENDMENTS**

(1) The Purchase Order may only be accepted by Contractor signing and returning to WHH an acknowledgement copy of the Purchase Order, by providing a corresponding order acknowledgement to WHH, by commencement of performance of the Purchase Order in a timely fashion or by timely delivery of the Goods, or timely provision of the Services, specified in the Purchase Order, in each case in accordance with the terms specified in the Purchase Order. Acceptance of the Purchase Order shall effect a contract between WHH and Contractor under which the rights and obligations of the parties shall be governed solely by this Terms and Conditions and the Contract.

(2) No amendment to the Contract shall be valid or enforceable against WHH unless it is in writing and signed by the same WHH authorised staff member who signed the Purchase Order or his superior and a duly authorised representative of Contractor.

(3) Verbal agreements after conclusion of a Contract, especially subsequent amendments and modifications of our Terms and Conditions, including this written form clause and collateral agreements of any kind, shall only be valid when confirmed in writing by WHH authorised staff member who signed the Purchase Order or his superior and a duly authorised representative of Contractor. This shall not affect the precedence of an individual agreement pursuant to Section 305b BGB (German Civil Code).

## **5. PERFORMANCE BOND & BANK GUARANTEE**

If a performance bond or bank guarantee is specifically required by the terms of the Contract, then such bond or guarantee, in the amount specified in the Contract, shall be issued by Contractor through a primary bank of Contractor's choice which must be a first class international accepted bank and must cooperate with Commerzbank ([www.commerzbank.com](http://www.commerzbank.com)) in Germany. The bond or guarantee will be issued on forms either furnished by or acceptable to WHH. Failure to deliver an acceptable bond or guarantee within two weeks from the date of Contractor's acceptance of the Purchase Order, unless otherwise specified in the Contract, shall be deemed a "default" by Contractor and the provisions of Article 17 below will apply.

## **6. EXPORT LICENCES, GOVERNMENTAL AUTHORIZATIONS**

(1) If one or more export licenses and/or other governmental authorizations are required for the delivery of the Goods to, or the provision of Services at, the location specified in the Contract, it is

the obligation of Contractor to check all applicable regulations – especially of the European Union (EU), Germany resp. other EU Member States and, if applicable, the USA or Asian or Arab countries and all third countries involved - and obtain necessary licenses and/or authorizations prior to delivery of the Goods or performance of the Services.

(2) The Contractor shall in particular check and ensure, and, on request, provide evidence to WHH that

- no companies and persons specified on the US Denied Persons List (DPL) are involved in the supply with original US goods, US software and US technology;
- no companies and persons specified on the US Warning List, US Entity List or US Specially Designated Nationals List involved in the supply with original US products without relevant authorisation;
- no companies and persons are supplied who are specified on the List of Specially Designated Terrorists, Foreign Terrorist Organizations, Specially Designated Global Terrorists or the EU Terrorist List or other relevant negative lists for export controls;
- no recipients are supplied that violate other export control regulations, especially of the EU or the ASEAN countries;
- all early-warning indications of the competent German or national authorities of the respective country of origin of the delivery are complied with.

(3) The Contractor shall immediately notify WHH if it encounters difficulties in obtaining a required export license and/or other governmental authorization. The late issuance or refusal of any such license and/or authorization for all Goods or Services or any part thereof shall be deemed a "default" by Contractor and the provisions of Article 17 below will apply.

(4) The Contractor shall indemnify and hold WHH harmless against all damages and expenses resulting from the negligent breach of the foregoing obligations pursuant to this Article 6. para. (1) to (3).

## **7. INSURANCE**

Unless otherwise specified and agreed upon in the Purchase Order, WHH will arrange for all risk insurance of the Goods. However, WHH reserves the right to request that Contractor provides appropriate insurance coverage.

## **8. NON-COLLABORATION WITH CERTAIN COUNTRIES**

Notwithstanding Article 6 above, WHH reserves the right to communicate in text form to Contractor from which countries no Goods or Services shall be purchased directly or indirectly for purposes of delivery, distribution, installation, or use under the Contract. These communications shall be deemed a condition of the Contract and be incorporated by Contractor in any contracts with authorized sub-contractors.

## **9. DELIVERY AND PERFORMANCE**

(1) The Contractor shall deliver the Goods and perform the Services in accordance with the terms specified in the Purchase Order and the other terms and conditions of the Contract. The time of delivery and/or performance as specified in the Purchase Order is an essential term of the Purchase Order. Whenever an INCOTERM is used in the Contract, it shall be interpreted in accordance with the latest version of the INCOTERMS adopted by the International Chamber of Commerce.

(2) WHH may at any time by written instruction to the Contractor modify details of the delivery of the Goods and/or the performance of the Services, and the Contractor shall be obliged to deliver the Goods and/or perform the Services in accordance with such modifications in a timely manner. If any such modification causes an increase or decrease in the price agreed for the Goods and/or Services or the time required for the performance of Contractor's obligations under the Contract, a reasonable adjustment to the agreed price and/or the delivery and/or performance schedule shall be agreed between WHH and Contractor, and the Contract shall be amended accordingly in accordance with Article 4 above.

(3) Any claim by Contractor for adjustment under the preceding paragraph must be asserted within thirty (30) days from the date of receipt by Contractor of WHH's written modification instruction; providing, however, that WHH may, at its sole discretion, receive and act upon any such claim

asserted at any time prior to final payment under the Contract. Failure to agree to such adjustment shall be a dispute subject to the provisions of Article 38 below. However, nothing in this Article 9 shall release the Contractor from its obligation to proceed with the performance of the Contract as modified.

## **10. FITNESS OF GOODS INCLUDING PACKAGING**

(1) Contractor warrants that the Goods, including their packaging, conform to the specifications set out in the Purchase Order including any applicable standards provided for in the Contract or, if no applicable standards are provided, the most recent authoritative standards issued by the relevant institution in the Goods' country of origin. Contractor further warrants that the Goods are fit for the purposes for which such goods are ordinarily used and for purposes expressly made known to Contractor by WHH, are of current manufacture and are free from defects in design, workmanship and materials.

(2) The Contractor also warrants that the Goods are securely contained, packaged and marked in accordance with normal commercial standards of export packing for this type of goods and in a manner so as to protect the Goods while in storage or in transit to their ultimate destination. The Contractor undertakes to use environmentally friendly products and processes for its Goods and Services and also for supplies or ancillary services of third parties as far as economically and technically feasible. The Contractor is liable for the environmental compatibility of the delivered Goods and packaging materials and for all consequential damages incurred by the culpable violation of its statutory disposal obligations. At the request of WHH, the Contractor shall issue a certificate of inspection for the delivered Goods.

(3) All such warranties for the Goods shall remain in effect for a period of two (2) years or for such longer period that Contractor normally provides for such goods or for any longer period agreed upon in the Contract, in each case after the Goods are placed in use (the "Warranty Period").

(4) If, during the Warranty Period, the Goods or any part thereof purchased under the Contract are found to be defective, non-conforming, damaged as a result of faulty or inadequate packaging or otherwise in violation of the warranties of fitness provided for in this Article 10, Contractor shall, upon written notification by WHH, promptly and at its own expense, correct or repair such Goods from any such defect, non-conformity, damage or violation or replace such Goods at WHH's discretion. Unless otherwise provided for in the Contract, the correction, repair or replacement shall take place at the following locations in the following order of precedence: at the loading address of the Contractor or its sub-contractor, at the point of delivery, or at the location where the Goods are, or shall be, placed in use. In the event Contractor fails to correct, repair or replace defective, non-conforming, damaged or otherwise violative Goods within a reasonable time, WHH may correct, repair or replace such Goods and charge or debit Contractor for all costs connected therewith or, if such correction, repair or replacement is not practicable, exercise its rights under Article 17 and Article 18 below.

## **11. INSPECTION, ACCEPTANCE, AND REJECTION**

The Contractor shall provide and maintain an inspection, quality, and process control system acceptable to WHH covering the Goods under the Contract. Records of all inspection work by Contractor shall be kept complete and available to WHH during the performance of the Contract and for twenty-four (24) months after completion, if not otherwise specified in the Contract. Copies of all material certifications and test results will be submitted to WHH upon request.

WHH reserves the right to inspect and test through its representatives all Goods ordered under the Contract at any time and place. The Contractor, without additional charge, shall provide all facilities for inspection and all necessary support to ensure that inspections can be performed in such a manner as not to unduly delay delivery of the Goods.

WHH may reject any Goods supplied under the Contract that do not meet the requirements of the Contract or apply a penalty for Goods not fully conforming to such requirements as per Articles 17 and 18 below. Rejection of the Goods shall be made as soon as practicable after delivery of the Goods to their final destination.

Neither any inspection carried out by representatives of WHH nor any acceptance of the Goods or part thereof by WHH nor any omission by WHH to inspect, accept and/or reject the Goods or part thereof shall release Contractor from its responsibility for such Goods that are not in accordance with the requirements of the Contract, including warranties.

## **12. AFTER SALES SERVICE, SUPPLY OF SPARE PARTS**

(1) For Goods ordered, Contractor shall provide and maintain a service organization reasonably constituted to handle requests from WHH or other ultimate beneficiaries for technical assistance on maintenance, service repairs, and overhaul of the Goods. If the presence of a local service agent has been requested by WHH and confirmed by Contractor, its presence in the country where the Goods are, or shall be, placed in use becomes a condition of the Contract. The Contractor must inform WHH of any changes in the local service structure prior to delivery of the Goods.

(2) The Contractor undertakes to supply WHH with spare parts for the Goods delivered for a further 10 years starting from the date of delivery.

## **13. CONTRACTOR'S RESPONSIBILITY FOR EMPLOYEES**

(1) For the purposes of the provision of Services (if any) and/or production of Goods delivered under the Contract, Contractor shall provide all necessary personnel and shall be fully responsible for their employment, work permits, payment, and administration in strict conformity with all applicable laws and regulations, including any applicable collective labour agreements, legal minimum wages and prohibition of illegal employment.

(2) Contractor shall be responsible for the professional and technical competence of its employees and will select, for providing Services and/or producing Goods under the Contract, reliable individuals who will perform such Services and/or production of Goods effectively, respect the local customs, and conform to a high standard of moral and ethical conduct. Contractor's employees working on WHH's premises will comply with WHH's rules, policies, and procedures regarding conduct and security.

(3) The Contractor shall be liable towards WHH for any damage arising as a result of negligent failure to comply with the obligations pursuant to Article 13, para. (1) and (2).

## **14. WORKMEN'S COMPENSATION AND OTHER INSURANCE**

For the purposes of provision of Services (if any) and/or production of Goods delivered under the Contract, the Contractor and any of its authorized sub-contractors shall procure and thereafter maintain all appropriate workmen's compensation, employer's liability, comprehensive general liability (bodily injury) and comprehensive automobile liability (bodily injury and property damage) insurance and take any necessary measures to ensure compliance with the labour laws applicable in the countries where their employees habitually work and where the Services shall be performed and/or production of Goods. Contractor shall also provide such other insurance as WHH may require, to the extent and in the amounts specified in the Contract. If any of Contractor's required insurances is cancelled or reduced during its term, Contractor and Contractor's insurance company are required to give ten days prior notice to WHH. Upon request by WHH, Contractor shall have its insurer furnish a copy of a "Certificate of Insurance" evidencing Contractor's compliance with the insurance requirements of the Contract. In the event that Contractor fails to maintain such insurance WHH may take out such insurance, pay such premiums as may be necessary and deduct the amount so paid by WHH from any moneys due or which may become due to Contractor or recover the same as a debt from Contractor.

## **15. LABOUR STANDARDS**

Contractor shall:

- (a) respect the prohibition of child labour as defined by International Labour Organization (ILO) Conventions No. 138 of 1973 and No. 182 of 1999 or below 14 years of age or the minimum age for employment permitted by law or the age of the end of compulsory schooling in the area in question, whichever is the higher;
- (b) respect the prohibition of forced or compulsory labour in all its forms;
- (c) respect the freely exercised right of workers, without distinction, to organize, to further and defend their interest as well as the protection of those workers who exercise their right to organize;
- (d) ensure equality of opportunity and treatment in respect of employment and occupation; and
- (e) ensure fair and reasonable conditions of safety, health and welfare.

Any breach of these obligations shall entitle WHH to terminate the Contract immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind of WHH.

## **16. ENVIRONMENTAL STANDARDS**

Contractor shall, as a minimum, comply with all applicable statutory and other legal or regulatory requirements relating to environmental impacts of its business. This applies in particular without limitation to the following areas:

- (a) waste management;
- (b) packaging and paper;
- (c) conservation;
- (d) energy use; and
- (e) sustainability.

## **17. REMEDIES FOR DEFAULT**

In case of failure by Contractor to perform in accordance with the terms and conditions of the Contract, including but not limited to failure to make delivery of all or part of the Goods by the scheduled date(s), or to complete the Services required within the scheduled date(s), WHH shall be entitled to penalties in accordance with Article 18 below or, after a reasonable written notice to perform has lapsed and without prejudice to any other rights or remedies, exercise one or more of the following rights:

- (a) procure all or part of the Goods and/or Services from other sources, in which event WHH may hold Contractor responsible for any costs and damages incurred in connection therewith;
- (b) refuse to accept delivery of all or part of the Goods and/or to accept provision of all or part of the Services and reduce the Contract price accordingly;
- (c) require Contractor to ship all or part of the Goods via premium means of transportation at Contractor's expense, to meet the delivery schedule; or
- (d) terminate the Contract without liability for WHH.

No action or omission by WHH envisaged in Article 11 above or in this Article 17 shall be deemed a waiver of WHH's rights to hold Contractor liable for any loss and/or damage resulting from any default or breach of any term or condition of the Contract or shall act as a modification of Contractor's obligations under the Contract.

## **18. LIABILITY, PENALTY FOR DELAY, NONCONFORMING GOODS OR SERVICES, SHORTFALLS**

(1) The Contractor shall be liable according to statutory legal provisions, especially for its own negligent breach of duty and negligent breach of duty by its legal representatives or vicarious agents.

(2) Contractor recognizes that the Contract concerns delivery of Goods and/or provision of Services where "time is of the essence" and that failure to deliver the Goods and/or provide the Services by the scheduled date(s) or in accordance with the quantities and/or quality specified in the Contract may cause irreparable harm to WHH.

(3) Therefore, if the Contractor culpably defaults in remedying a defect or making a delivery - fully and timely -, WHH shall have the right to request lump-sum damages due to default for the defective resp. late delivery without further proof of damage, of 0.2 % of the net remuneration agreed for the defective resp. late delivery and/or service for each period of default of 1 working day (Monday to Saturday) but at most 5 % of the agreed net remuneration for the defective resp. late delivery and/or service. The Contractor shall, however, have the opportunity to prove to WHH that WHH has incurred no damage or materially lesser damage.

(4) The remedy in Article 18 (3) is without prejudice to any other right or remedy that may be available to WHH, including cancellation, for Contractor's non-performance or breach of any term or condition of the Contract. The above lump-sum damages shall however be set off in full against any further damage claim.

## **19. FORCE MAJEURE**

Contractor shall give notice in text form to WHH providing full particulars as soon as possible after the occurrence of any event constituting Force Majeure (as defined herein) whereby Contractor is rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under the Contract. Contractor shall also notify WHH of any other changes in conditions or the occurrence of any event which interferes or threatens to interfere with its performance of the Contract. On receipt of the notice required under this Article 19, WHH shall take such action as it, in its sole discretion, considers being appropriate or necessary in the circumstances, including the granting to Contractor of a reasonable extension of time in which to perform its obligations under the Contract or termination under Article 22 below.

If WHH determines that the Contractor is rendered unable, wholly or in part, by reason of Force Majeure to perform any of its obligations or meet any of its responsibilities under the Contract, WHH shall have the right to suspend or terminate the Contract without liability to WHH effective immediately upon Contractor's receipt of notice of suspension or termination. Neither party shall be held responsible for failing to perform any of their respective obligations under the Contract if such failure is the result of an event of Force Majeure.

Notwithstanding anything to the contrary in the Contract, Contractor recognizes that delivery of Goods and provision of Services may from time to time occur under harsh or hostile conditions, including civil unrest. Consequently, any delay or failure to perform caused by events arising out of, or in connection with, such conditions shall not on its own constitute Force Majeure.

## **20. COPYRIGHT, PATENTS, AND OTHER PROPRIETARY RIGHTS**

WHH shall be entitled to all intellectual property and other proprietary rights including but not limited to patents, copyrights, and trademarks, with regard to documents and other materials which are prepared in the course of the performance of the Contract. At WHH's request, Contractor shall take all necessary steps, execute all necessary documents, and generally assist in securing such proprietary rights and transferring them to WHH in compliance with the requirements of applicable law.

## **21. INTELLECTUAL PROPERTY INDEMNITY**

(1) The Contractor guarantees and warrants that all deliveries of Goods and performance of Services are free of third-party property rights and in particular that the delivery and use of the Goods and Services does not infringe patents, licences or other third-party property rights.

(2) The Contractor shall defend, at its own expense, any suit or proceeding brought against WHH, in so far as it is based on a claim that any Goods delivered, or any Services provided, under the Contract, or the normal use thereof, constitute an infringement of any patent, copyright, trademark or any other intellectual property right. WHH shall promptly notify any such occurrence to Contractor and give it reasonable authority, information and assistance (at Contractor's expense) as required for the appropriate defence of such suit or proceeding. The Contractor shall pay all damages and costs awarded therein against WHH.

(3) In case the delivery of said Goods or any part thereof, or the provision of said Services or any part thereof, or the normal use of said Goods and/or Services or any part thereof is enjoined, Contractor shall, at its own expense and, unless set out otherwise in the Contract, at its choice, either procure for WHH the right to continue using such Goods and/or Services; or, subject to WHH's approval, modify such Goods and/or Services so that they become non-infringing; or remove such Goods and/or reverse such Services and refund to WHH any payments made by WHH with respect to such Goods and/or Services and compensate WHH for any other damages suffered by WHH as a result of the infringement.

## **22. TERMINATION FOR SPECIAL CONVENIENCE**

WHH may, in its sole discretion, terminate the Contract, in whole or in part, for any reason upon written notice to Contractor without liability other than that set forth herein. Upon receipt of notice of termination, which shall be deemed as the effective date of termination, Contractor shall take immediate steps to limit the incurrence of any additional costs, bring any work and Services to a close in a prompt and orderly manner, reduce expenses to a minimum and shall not undertake any

forward commitment from the date of receipt of notice of termination. In the event of such termination, no payment shall be due from WHH to Contractor except as herein provided:

- (i) for work and Services satisfactorily performed or in process prior to termination and any related expenses for materials;
- (ii) for reasonable expenses necessary for the prompt and orderly termination of the work, and
- (iii) for the cost of such necessary work as WHH may request Contractor to complete.

In no case shall WHH be liable to Contractor for any sum in excess of the total price stated in the Contract for the Goods and/or Services nor shall this Article 22 be deemed to apply in cases where WHH terminates the Contract on grounds other than convenience. Costs attributable to the termination as per this Article 22 shall be computed and substantiated in accordance with standard accounting practices.

### **23. SOURCE OF INSTRUCTIONS**

The Contractor shall neither seek nor accept instructions from anyone external to WHH in connection with the performance of the Contract. The Contractor shall refrain from any action which may adversely affect WHH and shall perform its obligations with the fullest regard to the interests of WHH.

### **24. COMPLIANCE WITH LAWS AND REGULATIONS**

(1) WHH has declared the notion of compliance to be a key company value. WHH expects the Contractor, therefore, to comply with respectively applicable national and international statutory provisions within the scope of its business activities on behalf of and with WHH. This applies in particular to legal requirements in relation to industrial safety and employee protection, compliance with human rights, prohibition of child labour, criminality of corruption and the granting of advantages of any kind and in relation to environmental protection etc. Furthermore, WHH expects the Contractor to communicate these principles and requirements to its sub-contractors and suppliers and to encourage them to comply with these laws as well.

(2) Contractor guarantees that neither Contractor, nor any of its affiliates, nor any subsidiaries controlled by Contractor, is/are engaged in the sale or manufacture of anti-personnel mines or of components primarily utilized for the manufacture of anti-personnel mines. Any breach of this guarantee shall entitle WHH to terminate the Contract immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind of WHH.

### **25. DELIVERY DOCUMENTS**

(1) Immediately, upon shipment of Goods, Contractor shall, unless stipulated differently in the Contract, send the following to consignee:

- (a) one negotiable bill of lading or airwaybill;
- (b) two copies of the commercial invoice;
- (c) one copy of the consular or legalised invoice, if required by the Contract;
- (d) one certificate of origin;
- (e) one copy of the packing list;
- (f) original Certificate of Insurance, if Contractor has been requested to provide insurance.

(2) Freight shall be pre-paid by Contractor. Freight charges must be shown separately on the invoice. Supporting documents, i.e. original invoices covering freight charges, shall be supplied with the invoice.

### **26. PAYMENT AND SUPPORTING DOCUMENTS**

(1) Payment of submitted invoices by WHH does not imply acceptance of Goods or Services or any related work under the Contract. Unless otherwise specified in the Contract, the following provisions will apply concerning payment and supporting documents.

(2) WHH shall generally make payment through banking channels to Contractor within 30 days upon receipt of the following documents and any other documents/reports that may be specified in the Contract, to be sent directly to Deutsche Welthungerhilfe e.V., Procurement Department, Friedrich-Ebert-Strasse 1, 53173 Bonn, Germany:

- (a) remaining negotiable & non-negotiable copies of the bill of lading or airwaybill;



- (b) commercial invoice with valid banking instructions;
- (c) copy of the consular or legalised invoice, if required by the Contract;
- (d) copy of the certificate of origin;
- (e) copy of the packing list;
- (f) Copy of the Certificate of Insurance, if Contractor has been requested to provide insurance.

(3) In case of installation of Goods by the Contractor the payment terms will be negotiated case by case.

(4) WHH will make payment to the bank account indicated by Contractor in its invoice, providing that the bank account is in the name of Contractor and located in its country of residence. Any request for payment to a bank account other than that of Contractor or to a bank other than one located in Contractor's country of residence must be specified and justified by Contractor at the time of making its offer.

(5) WHH may withhold payment, in whole or in part, without liability and without prejudice to any other of its rights or remedies under the Contract, should Contractor fail to provide the documents required by this Article 26 or as otherwise specified in the Contract or in the event that Contractor fails to perform or comply with its obligations under the Contract, including without limitation the warranties for the Goods set forth in Article 10 above.

## **27. INDEMNIFICATION**

Contractor shall indemnify, hold harmless and defend, at its own expense, WHH and WHH's personnel from and against all third-party suits, claims, demands, and liabilities of any nature or kind arising out of acts or omissions of Contractor or its employees, agents or other representatives or authorized sub-contractors in connection with the performance of Contractor's obligations under the Contract. This shall equally apply to suits, claims, demands, and liabilities regarding worker's compensation or arising out of the use of patented or copyrighted inventions or goods in accordance with the provisions of Article 20 above.

## **28. WHH STAFF MEMBERS NOT TO BENEFIT**

Contractor warrants that no staff member or representative of WHH or any family member of any such person shall have any interest in Contractor's business, or has received or will be offered by Contractor any direct or indirect gift, payment or other benefit of any kind in connection with or arising from the Contract or the award thereof. In particular, Contractor warrants that no staff member or representative of WHH or any family member of any such person holds or shall hold any direct or indirect financial interest in Contractor's business. For the purposes of this Article 28, the mere holding of shares in a publicly listed company shall not be considered a financial interest, provided that such shares do not confer a power to control, or otherwise significantly influence the management of, Contractor's business. Should Contractor fail to comply with this obligation, WHH shall have the right to terminate the Contract at any time, in accordance with the provisions of Article 22 above.

## **29. TITLE TO EQUIPMENT**

Title to any equipment and supplies which may be furnished by WHH shall rest with WHH and any such equipment shall be returned to WHH at the completion or termination of the Contract or when no longer needed by Contractor. Such equipment when returned to WHH shall be in the same condition as when delivered to Contractor, subject to normal wear and tear.

## **30. ASSIGNMENT, SUBCONTRACTING**

(1) Contractor shall have the sole and full responsibility for the performance of its obligations under the Contract. Contractor may not assign, transfer, pledge, sub-contract, or otherwise dispose of the Contract or any part thereof, or any of Contractor's rights or obligations under the Contract without the prior written consent of WHH, which WHH may not unreasonably withhold. Any assignment by Contractor which is not authorized by WHH will be void and WHH reserves the right in such case, without prejudice to other rights or remedies, to cancel the Contract without liability effective upon Contractor's receipt of WHH's notice of termination. The approval by WHH of an assignee or sub-contractor shall not release Contractor of any of its obligations under the Contract.

(2) Contractor agrees that WHH may, at its discretion, assign, transfer, pledge, sub-contract or otherwise dispose of the Contract or any part thereof, or any of WHH's rights or obligations under the Contract, subject to written notification to the Contractor within a reasonable period of time either prior to or following such assignment, transfer, pledge or sub-contracting arrangement.

(3) The terms of any assignment, transfer, pledge, sub-contracting arrangement or other disposition in accordance with this Article 30 shall be subject to and in accordance with the provisions of the Contract.

### **31. CONFIDENTIALITY**

(1) All designs, drawings, specifications, reports, data, computer programs, and any other technical or proprietary information furnished or disclosed to Contractor by WHH under or in connection with the Contract shall remain the property of WHH and shall be treated as confidential and safeguarded by Contractor. This shall not apply insofar and as long as such information is proven to be in the public domain or a legal or official obligation of disclosure exists.

(2) Unless otherwise authorized in text form by WHH, Contractor shall use such information only in the performance of his obligations under the Contract. Upon completion or termination of the Contract, Contractor shall return such information to WHH.

(3) Unless otherwise authorized in text form by WHH, Contractor may not communicate at any time to any third party any non-public information known to it by reason of the fact that it is furnishing or has furnished goods or services to WHH.

(4) Contractor shall not at any time use such information to its own personal benefit. The obligations under this Article 31 shall survive the termination of the Contract.

### **32. NO USE OF NAME, EMBLEM OR OFFICIAL SEAL OF WHH**

Contractor shall not use, in any manner whatsoever, the name, abbreviation of the name, emblem or official seal of WHH for any purpose. Unless otherwise authorized in text form by WHH, Contractor shall not advertise or make public the fact that it is furnishing or has furnished goods or services to WHH.

### **33. INDEPENDENT CONTRACTOR**

Contractor shall, for the purposes of the Contract, have the status of an independent contractor, and shall be fully responsible, in particular for any acts or omissions of its personnel, agents, or other representatives. Contractor, its personnel, agents, or other representatives and authorized sub-contractors shall not be considered in any respect as being employees or agents or other representatives of WHH. Contractor, its agents or other representatives, and authorized sub-contractors shall comply with all laws and regulations applicable to their relations to third parties, including their employees, and with all laws and regulations applicable to them by reason of their trade, business or activities. The Contractor shall promptly correct any violations of such laws and regulations and shall keep WHH informed of any dispute or issue arising in relation to any authority with respect to any such violation.

### **34. CHANGE OF CONTROL, INSOLVENCY, BANKRUPTCY**

Contractor shall immediately report any change in its legal status or in its control to WHH. In the event that Contractor becomes insolvent or bankrupt or the control or legal status of Contractor changes for any other reason, WHH may terminate the Contract, without prejudice to any other rights and remedies, effective upon Contractor's receipt of WHH's notice of termination.

### **35. NOTICES AND COMMUNICATION**

All notices and other binding communication shall be in English, or the language of the Purchase Order, and shall be deemed to be validly given if sent by registered mail, by fax, by email with return receipt or by cable to the other party at the address or numbers of either party as indicated in the Contract.

### **36. PRIVILEGES AND IMMUNITIES**

Nothing contained in or relating to the Contract shall be deemed a waiver, express or implied, of the privileges and immunities of WHH, nor as conferring any privileges or immunities on Contractor or its employees.

### **37. APPLICABLE LAW**

Unless provided otherwise in the Purchase Order, the Contract shall be subject to and construed in accordance with the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

### **38. SETTLEMENT OF DISPUTES, CONCILIATION AND ARBITRATION**

Any dispute between the parties concerning the interpretation and the execution of the Contract will be settled or, if not settled by negotiation between the parties or by another agreed mode of settlement, shall, at the request of either party, be submitted to one conciliator. Should the parties fail to reach agreement on the name of a sole conciliator, each party shall appoint one conciliator. The conciliation shall be carried out in accordance with the Conciliation Rules of the United Nations Commission on International Trade Law (UNCITRAL), as applicable from time to time. Any dispute between the parties concerning the interpretation and the execution of the Contract that remains unresolved after conciliation shall, at the request of either party, be settled by arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL Arbitration Rules), as applicable from time to time. The conciliation or the arbitration proceedings shall be conducted in the language of the Purchase Order. The parties may request conciliation during the performance of the Contract, during any Warranty Period as defined in Article 10 above, or within a period not to exceed twentyfour months after the completion or termination of the Contract. The parties may request arbitration not later than ninety days after the termination of the conciliation proceedings. Decisions of the arbitral tribunal shall be final and binding upon the parties. The arbitral tribunal shall have the authority to award punitive damages and, unless otherwise expressly provided in the Contract, to award interest. The place of arbitration shall be Austria.

Bonn, August 2018