

Transports Publics Genevois (TPG) is an establishment incorporated under Geneva public law.

The term "Agreement" means any agreement signed by the supplier or any order made by TPG for the purchase of goods or services which the supplier has not refused in writing within 5 business days of receipt.

The term "Contractor" is the supplier who has signed an agreement with TPG.

The term "Service" means any goods and/or services provided by the Contractor.

TPG shall be mindful, within the context of their procurement policy, to carefully select Contractors whose policies promote quality assurance and environmental management.

## **1. Scope**

- 1.1. These general conditions of purchase shall apply to all agreements awarded by TPG which are entered into with suppliers.
- 1.2. Any confirmation or performance of the Agreement shall constitute acceptance of these general terms. The latter shall prevail over all of the Contractor's terms and conditions, unless expressly agreed by TPG.
- 1.3. Only this version of the general terms (2020 version) shall be binding: any previous version shall be null and void.
- 1.4. Any derogation from these general conditions of purchase must be made in writing and signed by TPG.

## **2. Contractual obligations of the Contractor**

- 2.1. The Contractor declares that it has been informed of all conditions relating to the performance of the Agreement and guarantees that the agreed price allows it to perform its obligations with the appropriate professional level of quality. The Contractor undertakes to provide goods or service in accordance with the Agreement. The quality of the Contractor's services shall form the basis of ongoing appraisals.
- 2.2. The Contractor undertakes to provide TPG with all of the contractually stipulated documentation and, more generally, any documentation which is useful for the use of the equipment/resources. Failing which, TPG reserves the right to suspend its contractual obligations. The receipt of documents by TPG does not relieve the Contractor of its contractual liability.
- 2.3. The Contractor agrees to comply with all legal and regulatory provisions applicable to the subject matter of the Agreement.
- 2.4. For services supplied in Switzerland, the Contractor agrees to comply with the provisions relating to the protection of workers and with conditions of employment in force at the place where the service is provided. The Contractor guarantees, in particular, to provide equal treatment to men and women in terms of wages and to comply with conditions of employment set out in collective bargaining agreements and standard employment agreements or, failing which, standard conditions of employment in the Canton of Geneva and relating to the relevant profession.  
The Contractor's failure to comply with one or more of these conditions may be grounds for the immediate termination of the Agreement.
- 2.5. The Contractor agrees to provide its service in line with the state of the art and with all due diligence.
- 2.6. The Contractor shall regularly update TPG of the performance of its obligations and shall inform it immediately in writing of any circumstances that impede the performance of the Agreement. TPG may demand, at any time, checks or information relating to any event relating to the Agreement or its performance.
- 2.7. The Contractor shall provide, for the performance of the Agreement, only carefully selected employees who benefit from a level of training which is suitable for the nature of the Agreement. At TPG's request, the Contractor shall replace, within a reasonable timeframe, those employees who do not have the requisite knowledge or who hinder the performance of the Agreement.
- 2.8. The Contractor undertakes to comply with and promote the principles of sustainable development in accordance with the commitment to comply with the principles of sustainable development issued by TPG.

## **3. Subcontracting**

- 3.1. The Contractor agrees to notify TPG of each subcontractor involved in the performance of its obligations. Failure to comply with this provision shall result in the immediate suspension of the performance of the Agreement.
- 3.2. In all cases, the Contractor shall be liable for the subcontracted services as it would be for its own services.
- 3.3. The Contractor shall also be responsible for ensuring that each subcontractor complies with these terms and conditions.

## **4. Confidentiality**

- 4.1. The Contractor shall, prior to entering into the Agreement and at the term thereof of it, keep confidential all facts or information which it has become aware through the performance of this Agreement and who are neither public nor publicly available. The legal obligation to inform the authorities is excluded from the above provision.
- 4.2. In the event of a breach of article 4.1., the Contractor shall be liable to a contractual penalty of CHF 100,000.- per incident/event, unless it proves that it has not committed a breach. The possible right to terminate the Agreement shall also remain reserved.

## **5. Protection of personal data**

- 5.1. In the event that the Agreement also involves the management, analysis or processing of any kind of personal data, then the Contractor guarantees compliance with the (federal, Geneva and European) data protection legislation by all of its employees.
- 5.2. In particular, the Contractor guarantees that it has taken all organisational and security measures necessary for the collection, transfer, storage and processing of personal data, in particular, with respect to its subcontractors.
- 5.3. For the remainder, the addendum set out in the schedule and on the website [www.tpg.ch](http://www.tpg.ch) shall form an integral part of these CGAs and is also applicable to any subcontractors authorised by TPG.

## **6. Intellectual property**

- 6.1. All intellectual and/or industrial property rights, whether they are economic or moral, resulting from the performance of the Agreement shall be assigned by the Contractor, who declares that it is the holder of such rights, following payment of the agreed price and without any additional compensation being due.
- 6.2. The Contractor shall protect TPG against any third-party proceedings, claim, demand or opposition relating to rights set out in article 6.1. It will, if necessary, bear all costs and damages related thereto. It undertakes, furthermore and as necessary, to replace, at its expense, the goods or services provided to TPG with other goods or services.
- 6.3. TPG agrees to immediately notify the Contractor of any third-party claim due to a breach of intellectual and/or industrial property rights and to provide all documents necessary for its defence, subject to its confidentiality obligations.

## **7. Equipment, appliances, tools provided by TPG**

- 7.1. The Contractor shall use the equipment, appliances and tools provided by TPG solely for the performance of its contractual obligations.
- 7.2. The equipment, appliances and tools are provided "as is", without warranty.
- 7.3. The Contractor shall be liable for any loss of or damage to TPG's equipment, appliances or tools made available to it. It shall replace or repair any lost or damaged TPG equipment at its own expense.

## **8. Prices**

- 8.1. The agreed Prices are fixed, final and not subject to revision until the full completion of the entire Agreement.
- 8.2. Unless otherwise agreed, prices shall include shipping, packaging and recovery of any included packaging.
- 8.3. Unless otherwise agreed, the prices shall not include VAT or any taxes whatsoever.
- 8.4. Unless otherwise agreed, the prices shall be Delivered Duty Paid (DDP) Geneva (Incoterms 2020). Formalities and customs charges shall be borne by the Contractor, in principle, if it does not have a representative in Switzerland.

## **9. Invoicing**

- 9.1. All invoices must always refer to the Agreement number and must be addressed to TPG's accounts payable department, under penalty of being returned. The Contractor alone shall be solely liable for any breach of this clause and the consequences thereof (including payment arrears).
- 9.2. Any invoices that are issued, upon the express request of TPG on behalf of DI, must be addressed to TPG with words "au nom du DI p.a. TPG Route de la Chapelle 1 – Case postale 950 – 1212 Grand Lancy 1"
- 9.3. The deadline for payment shall be 30 days net.
- 9.4. Exceptionally, and with the express authorisation of TPG, the payment of a deposit shall be possible on condition of the issuance of an advance payment bank guarantee for the same amount. This bank guarantee must be issued by a first-class Swiss bank and remain in force at least until the delivery of the ordered goods, or the provision of the services.
- 9.5. An amount equal to 10% of the Agreement value shall be withheld until the expiry of the guarantee for at least 24 months, unless it has been covered by a bank guarantee for performance of the same amount and covering the guarantee period.

## **10. Delivery**

- 10.1. The Contractor must strictly comply with the place of delivery specified in the Agreement (DDP Geneva, Incoterms 2020).

- 10.2. The transfer of risk shall pass to the purchaser from the date the goods have been delivered (DDP Geneva. Incoterms 2020).
- 10.3. All deliveries must always be accompanied by a delivery note bearing the Agreement reference information.
- 10.4. Partial or early deliveries shall be accepted only with the express agreement of TPG. In the event of non-compliance with the delivery deadline, the Contractor shall automatically be in default.
- 10.5. TPG may grant the Contractor an additional delivery period, drawing its attention to the legal consequences (article 107 of the Code of Obligations) of non-performance.

#### **11. Penalties for late delivery**

- 11.1. If the delivery deadlines set out in the Agreement are not met, or in the event of incomplete delivery, the Contractor shall incur late fees, without prior notice and without prejudice to any other existing rights.
- 11.2. This shall be subject to payment of a late fee corresponding to at least 0.5% of the price of the services, per day the delivery is late, amounting to no more than 10% of the total Agreement amount. The payment of a contractual penalty shall not, however, relieve the Contractor of its contractual obligations.
- 11.3. Delivery delays shall entitle TPG to reject or refuse any delayed delivery and to terminate the Agreement, without prejudice to their rights to damages.

#### **12. Acceptance procedure**

- 12.1. The receipt of goods shall be evidenced by a written document drawn up by TPG.
- 12.2. The goods shall be deemed to have been accepted by TPG if no default notice is sent within 30 days from receipt of the goods. Issues regarding latent defects shall be reserved.
- 12.3. Any rejected goods shall be returned at the Contractor's expense, accompanied by a packing slip indicating the nature of their non-conformity.

#### **13. Warranty**

- 13.1. The Contractor warrants that the delivered goods possess the requested qualities and have no material defects or defects of title reducing their value or their suitability for their purpose. It likewise guarantees the services that are provided.
- 13.2. In the event that the delivered goods are defective, TPG have the option of either reducing the price depending upon the nature and extent of the defect, or demanding redelivery of defect free goods (replacement delivery), or terminating the Agreement and claiming damages. In the event of any failure on the part of the Contractor, TPG may, after formal notice has been provided, enforce or order the specific performance of the Contractor's services at the Contractor's expense.
- 13.3. The warranty shall be valid for at least 24 months following delivery of the Services.
- 13.4. The Contractor shall be bound to perform, at its sole expense, any action required to satisfy the conditions of the Agreement.
- 13.5. For replaced goods, the warranty period shall run again in full as from the date on which they are delivered. For repaired or altered goods, the warranty period shall be extended by a period being equal to that during which the goods are unavailable.

#### **14. Certificates**

- 14.1. The Contractor agrees to provide upon TPG's request, at any time, all the documents referred to in the Geneva regulations on public procurement. This obligation extends to all of its subcontractors.
- 14.2. In the event of non-compliance with article 14.1., the Contractor shall be liable to pay a contractual penalty that is equal to 10% of the total Agreement amount. Notwithstanding the foregoing, TPG reserves the right in this case to terminate the Agreement without it being liable to pay any compensation.

#### **15. Liability and insurance**

- 15.1. If the poor performance of the Agreement has caused damages, the Contractor shall be liable for its repair, unless it is proven that it has not committed any fault.
- 15.2. Liability for damages caused to persons shall be unlimited. With respect to property damage, liability shall be limited to the Agreement amount.
- 15.3. The Contractor certifies that it is the beneficiary of insurance policies which are sufficient to cover its services and all risks inherent in its business and those of its employees/subcontractors. The Contractor agrees to provide renewed insurance certificates at the beginning of each calendar year.

#### **16. Assignment and pledges**

- 16.1. The obligations of the Contractor arising under the Agreement may not be assigned or pledged without the prior written agreement of TPG.

#### **17. Early termination of the Agreement**

- 17.1. TPG may at any time terminate the Agreement, whether in whole or in part, with immediate effect, without prejudice to any right to compensation for damages it incurred, in the following cases:
  - gross negligence of the Contractor, or
  - insolvency of the Contractor confirmed by an official body (state of suspension of payments or opening of restructuring or bankruptcy proceedings) or
  - breach by the Contractor of its contractual obligations, despite a formal notice sent by registered mail; or
  - an event of force majeure, lasting more than 60 calendar days.
- 17.2. As TPG is associated with the Republic and Canton of Geneva by a four-year service agreement, any amendment to the Agreement or to the financial investments made by the State shall require TPG to review this Agreement or even terminate it without the payment of compensation to the Contractor.

#### **18. Applicable law and jurisdiction**

The parties acknowledge that the courts of Geneva shall have exclusive jurisdiction, subject to appeal to the Federal Court, ruling in accordance with Swiss law.

#### **19. Other provisions**

Any amendment, addition or termination of the Agreement may be effected solely if carried out in writing and after having been signed by the authorised parties. If any provision of these general terms or of the Agreement is invalid, the validity of the remaining provisions shall not be affected. Any invalid provision shall be replaced by a legally valid provision, the content of which - from an economic point of view - shall be as close as possible to that of the invalid provision. Unless otherwise specified, all documents relating to the Agreement shall be in French.

**It is recalled that only the French language version shall prevail.**



## *Addendum - General Conditions of Purchase of Goods or Services - Data Protection*

This Data Protection Addendum ("DPA") relating to the processing of personal data ("Personal Data") applies to the processing of any personal data by any Contractor contracting with the Transports Publics Genevois (TPG) in relation to personal data on behalf of the latter within the context of providing the Cloud Services and other Services agreed in the Agreement. This DPA is subject to the provisions of the General Conditions of Purchase (hereinafter, the "CGA"). In the event of any dispute, the DPA shall prevail over the Agreement, unless explicitly stated in the Agreement identifying the relevant article in the DPA over which it prevails.

### **1. Processing**

- 1.1 The Contractor shall be joint and severally liable with the TPG with respect to the Processing of Personal Data. The Contractor acknowledges it has received instructions or obtained approval from TPG's Data Processing Manager(s) to process the Personal Data. The TPG hereby appoints the Contractor as a Subcontractor for the processing of Personal Data. If there are other Data Processing Managers, the Contractor shall identify them and immediately inform the TPG, in any event, before supplying or sharing the Personal Data.
- 1.2 A list of categories of relevant persons, types of Personal Data, special categories of Personal Data and processing operations may, upon express request, be provided to the Contractor. The term for the Processing shall correspond to the term of the Service or the agreed characteristic performance, unless otherwise specified in the Agreement. The nature, purpose and scope of the processing shall be the provision of the Service, as described in the Agreement.
- 1.3 The Contractor agrees to process the Personal Data in accordance with the instructions provided by TPG. The context for the instructions relating to the Processing of its Personal Data shall be defined by the Agreement, this DPA and, if appropriate, the use, and configuration of the Service's features and authorised users. TPG may provide additional instructions that are legally required ("Additional Instructions"). If a Party considers that an Additional Instruction constitutes a breach of the RGPD or other applicable data protection regulations, the Party shall promptly inform the other Party and may discontinue the Service until the Additional Instruction is amended or until the legality of this Instruction is established. If the Contractor informs the TPG that an Additional Instruction is not feasible or if the TPG informs the Contractor that they do not accept the quote for the Additional Instruction prepared in accordance with article 10.2, then the Party in question may terminate the Agreement by sending a letter within one month of being notified of its decision.
- 1.4 In the event of subcontracting, the Contractor shall remain the sole point of contact with the TPG. Similarly, TPG shall be the Contractor's sole point of contact for its obligations as a Subcontractor under this DPA.
- 1.5 The Parties hereby guarantee that they shall comply with all data protection laws and regulations ("Data Protection Laws"). The TPG shall not be liable for the implementation of the applicable legal provisions and their compliance by the Contractor and its collaborators. Between the Parties, the Contractor remains liable for the legality of the processing of the Personal Data. The Contractor shall not use the Services combined with Personal Data, if such use is contrary to the Data Protection Laws.

### **2. Technical and organisational measures**

- 2.1 The Contractor undertakes to set up and maintain technical and organisational measures to ensure a level of security adapted to the risk. These Technical and Organisational Measures may evolve according to technical progress. Consequently, the Contractor reserves the right to modify the technical and organisational measures provided that the operation of, and security of, the Services are not degraded.
- 2.2 The Contractor guarantees that the technical and organisational measures provide an appropriate level of protection for the Personal Data taking into account any risks associated with their processing.

### **3. Rights and requests from data subjects**

- 3.1 The Parties undertake to jointly collaborate in requests from Client(s), namely any data subjects directly involved with the processing of personal data, who wish to exercise their rights in accordance with the relevant legislation relating to Personal Data (such as their right to make corrections, delete and block personal data). The TPG shall remain liable for responding to such requests from a data subject. The Contractor undertakes, to a reasonable extent, to assist TPG in responding to requests from a data subject.
- 3.2 If a data subject of the processing of his/her personal data, such as a Client, commences proceedings directly against TPG for a breach of his/her rights, the Contractor shall assist TPG with respect to any costs, expenses, damages, outlays or losses arising from such proceedings, provided that TPG has notified the Contractor in writing of the action and have given the Contractor the opportunity to cooperate with TPG within the context of the defence and settlement of such proceedings. In all cases, TPG shall have a right to institute proceedings for recourse against the Contractor, if it is established that the latter has been negligent in terms of security and thus breached its obligations under Swiss and/or European legislation related to personal data.

### **4. Claims from Third Parties and confidentiality**

- 4.1 The Contractor undertakes not to disclose the Personal Data transmitted to it pursuant to the Agreement to any third party, unless TPG authorises it, or unless the law so requires it to do so. If a government or supervisory authority requires access to Personal Data, the Contractor shall inform TPG prior to disclosure, unless prohibited by law.
- 4.2 The Contractor shall ensure that only trained employees are authorised to process the Personal Data, while complying with confidentiality and that they do not use the Personal Data for other purposes than those defined in the Agreement, except upon receiving contrary instructions from TPG or unless the applicable law requires it.

## **5. Audit**

- 5.1 The Contractor agrees to carry out audits, including inspections, by the TPG or by another auditor, on behalf of the latter. The Contractor shall contribute to these audits in accordance with the following procedures:
- a. At the written request of TPG, the Contractor undertakes to provide it, or its authorised auditor, with the most recent certifications and/ or summaries of the audit reports that the Contractor has properly prepared to test and assess the effectiveness of the Technical and Organisational measures.
  - b. The Contractor shall cooperate with the TPG by providing it with any additional information available that relates to the Technical and Organisational Measures, in order to assist the latter better understand them.
  - c. If additional information is required by TPG to comply with its own audit obligations or those of other Data Processing Managers, or to respond to the request of a competent supervisory authority, TPG undertake to inform the Contractor in writing, to enable it provides such information or provides access to it.
  - d. Provided that it is not otherwise possible to comply with an auditory requirement imposed by the applicable law, only the competent supervisory authorities, TPG or its authorised auditor may carry out an on-site inspection of the facilities used for the provision of the Service, during business hours and, subject to disrupting the Contractor's activities as little as possible, after having agreed upon the date of the on-site inspection.
- 5.2 Each party agrees to bear its own costs under paragraphs a. and b. of article 5.1. Any other assistance shall be provided in accordance with article 10.2.

## **6. Restitution or deletion of the Client's Personal Data**

- 6.1 At the term of the Agreement, regardless of the cause, the Contractor undertakes to delete or return to TPG any Personal Data that may still be in its possession, unless otherwise provided by applicable law.

## **7. Subsequent Subcontractors**

- 7.1 TPG may authorise the Contractor to use subcontractors to process Personal Data ("Subsequent Subcontractors"). The Contractor shall inform TPG in writing, in advance, of any change to the Subsequent Subcontractors. TPG shall have 30 days from the date of this information to object to these changes which may place them in breach of their applicable legal obligations. TPG's objection must be made in writing and must be proven, including any specific reasons and proposed alternatives, if any. If TPG does not raise any objections within the aforementioned time frame, the Subsequent Subcontractor in question may be made responsible for processing the Personal Data. The Contractor shall ensure that any data protection obligations that are substantially similar to those set out in this DPA shall apply to any Subsequent Subcontractor, prior to processing the Personal Data.
- 7.2 If TPG formulates a legitimate objection to the addition of a Subsequent Subcontractor and the Contractor can not reasonably accept TPG's objection, then the Contractor shall notify TPG thereof. The Contractor may terminate the Agreement by serving written notice to TPG within one month of providing notice to TPG. The Contractor undertakes to reimburse part of the prepaid amounts, on a pro rata basis, for the period after the term of the Agreement for the Services in question.

## **8. Cross-border data processing**

- 8.1 By accepting this DPA, the Contractor hereby guarantees that the DPA shall apply and be enforced against any Subsequent Subcontractors operating outside the European Economic Area or outside countries that the European Commission deems have providing an adequate level of protection, in the event that it uses this type of service. The Contractor shall ensure that the same obligations imposed on it under the RGPD shall also be imposed on the Subcontractor(s). In this sense, the Contractor shall ensure that the other Data Processing Managers, accept on their behalf, or on behalf of TPG, not only this DPA but also any Standard Contractual Clauses of the European Commission (Commission Decision of 5 February 2010; 2010/87/EU), including any resulting claims, shall be subject to the provisions of the Agreement, including exclusions and limitations of liability. In the event of a dispute, the Standard Contractual Clauses of the European Commission shall prevail.
- 8.2 The Contractor shall notify TPG in writing that it is using or adding another Data Processing Manager. The Contractor shall attach to the written notice, any documents certifying that the cross-border data processing meets the requirements of the RGPD and this DPA. The TPG shall then have 30 days following this notice to approve the subcontracting.

## **9. Breach of Personal Data**

- 9.1 The Contractor undertakes to inform TPG of any breach of Personal Data within the framework of the Services as soon as possible, but no later than 72 hours after becoming aware thereof. The Contractor undertakes to promptly investigate any such breach of the Personal Data if it has been reported in relation to TPG's infrastructure, or in an area or in a particular area for which TPG is responsible for, and to assist them as indicated in article 10.

## **10. Support**

- 10.1 The Parties undertake to seek assistance and provide mutual assistance, to the extent possible, through the technical and organisational measures, with the aim of complying with the obligations deriving from the rights of the data subjects, and also to ensure the data processing remains secure. In this regard, the Contractor shall establish an internal procedure and adequate resources to detect, analyse and report a breach of Personal Data.
- 10.2 The Contractor shall submit a written request for any assistance mentioned in this DPA. The TPG shall invoice the Contractor a reasonable price for the said assistance or the Additional Instructions, such price shall be either quoted by the parties or processed within the context of the change management procedures set out in the Agreement.

By signing this document, the Contractor shall apply the legal provisions relating to the protection of data for itself and for any subcontractors. The Contractor shall also undertake to verify that their subcontractors also comply with them.

Name of the company/business

Name:

Address:

Telephone:

Fax:

Place and date of valid\* signature(s) and the company stamp of the company/business

*\*Signatures shall only be valid if made by people who have the authority to bind the company or the office, or the consortium of companies, or the association of offices, as applicable.*