



## The European Central Bank's specific contract terms for the performance of works

### Section 1 - Scope of Application

These specific contract terms (SCTs) for the performance of works shall apply to all kinds of contracts for the provision of works as defined in Section 631 – 650o of the German Civil Code (*Bürgerliches Gesetzbuch*) unless the Contract sheet specifies that different conditions shall apply. The SCTs form an integral part of the contract between the ECB and the Contractor (the 'Contract').

### Section 2 - Scope of the Work

**2.1** The Contractor shall perform the work defined in the Contract sheet and its Annexes ('Deliverables').

**2.2** The ECB may, within reasonable limits and within the limits of the scope stipulated in the Contract and its Annexes, specify the scope of the Deliverables and how they are to be performed by means of instructions in line with the ECB Procurement Rules. The Contractor shall comply with such instructions.

**2.3** Unless specified otherwise, the Contractor shall provide the Deliverables in English and all communication between the ECB and the Contractor shall be in English.

### Section 3 - Contractual dates, penalty for delay

**3.1** The Contractor shall perform the Deliverables by the dates set out in the Contract sheet. The Contractor shall immediately notify the ECB in writing if the Deliverables cannot be performed by the agreed dates. The Contractor may request an extension of the agreed contractual dates by a reasonable period of time if the Contractor can prove that the delay is due to reasons for which it is not responsible.

**3.2** If a contractual penalty for delay has been agreed in the Contract sheet, the following shall apply: If the Contractor fails to complete the Deliverables by the agreed date, the Contractor shall pay a penalty of 0.2 % of the agreed net Contract value for each Working day of delay, unless the Contractor can prove that it is not responsible for the delay. The total amount of the penalty for delay shall not exceed 5 % of the agreed net Contract value. The ECB may reserve the right to assert the contractual penalty until the final invoice falls due for payment. This penalty shall not prevent the ECB claiming further damages for delay.

**3.3** A contractual penalty that has been incurred shall be deducted from a damages claim due to the same default. Section 8.4 of the GCTs applies.

### Section 4 - Acceptance

**4.1** Except where intellectual work is the subject matter of the Contract, on completion of the Deliverables the Contractor shall request the ECB to formally accept the Deliverables. The ECB shall review the Deliverables and issue an acceptance certificate to the Contractor within 10 working days of receiving the request or reject the acceptance according to Section 4.5.

**4.2** If intellectual work (reports, studies and similar Deliverables) forms the subject matter of the Contract, on completion of the Deliverables, the Contractor shall submit the Deliverables to the ECB in the agreed format. The ECB may ask the Contractor to present the Deliverables to the ECB. The ECB shall review the Deliverables within 10 Working days of its submission or presentation, as the case may be. Either the ECB shall issue an

acceptance certificate for the Deliverables as submitted, or it shall request the Contractor to correct or amend the Deliverables in response to any comments of the ECB and re-submit it within a reasonable time limit set by the ECB. The ECB shall review the revised Deliverables, and issue an acceptance certificate to the Contractor or reject the acceptance according to Section 4.5 within 10 calendar days of receiving the revised Deliverables.

**4.3** Unless agreed otherwise in the Contract sheet, partial acceptances are excluded. If the Contract sheet provides for the ECB to pay instalments for the delivery of part of the work ('milestones'), such payment shall not constitute partial acceptance.

**4.4** Implied acceptances are excluded. However, if the Contractor has set a reasonable deadline for the ECB to accept the Deliverables and the ECB fails to reject the acceptance specifying at least one defect within this deadline, the Deliverables shall be deemed to have been accepted.

**4.5** ECB may refrain from issuing an acceptance certificate if the Deliverables do not meet the contractual requirements, unless the outstanding work or defects are minor in kind and extent and will not substantially affect the use of the Deliverables for their intended purpose. If the Contractor cannot remedy substantial defects within a reasonable time limit set by the ECB, the ECB may avail itself of remedies provided for by statutory law.

**4.6** The Contractor shall remedy any minor defects listed in the acceptance certificate within the reasonable time limit set by the ECB or, if no time limit is specified, without undue delay.

### Section 5 - Intellectual Property Rights

**5.1** Unless otherwise agreed, the Contractor hereby transfers to the ECB, and the ECB accepts, all of its present and future transferable rights and claims in and to the Deliverables and to all documents, data, information, scripts, tools, presentations and other work results that the Contractor produces in carrying out the Deliverables, either alone or together with third parties, (together the 'Work results'), in each case as from the time when such rights are or will be created, so that the ECB becomes the owner of all such rights in the Work results. Only the ECB shall be entitled (but not obliged) to apply to register worldwide intellectual property rights for the Work results in its own name and shall become the owner of all such intellectual property right applications and all resulting intellectual property rights.

**5.2** To the extent that the rights in the Work results are not transferable as such (particularly in the case of copyrights under German law), the Contractor hereby irrevocably grants to the ECB, and the ECB accepts, the exclusive right to use the Work results from the moment the Work results are protected by law. The ECB's right of use shall not be subject to any restriction in terms of time, place or application and it shall cover all forms of use known at the time of entering into this Contract.

**5.3** The right to use granted in Section 5.2 shall include in particular, but not limited to, the rights to copy, distribute, process, modify, further develop and/or dispose of the Work results or create derivative works based on the Work results and use them to the same extent as the original results. The granting of rights refers also to types of use unknown at the present time, whereby the Contractor's mandatory rights provided for under the applicable law



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(e.g. with regard to a withdrawal or an adequate remuneration), if any, shall remain unaffected.

**5.4** The ECB may transfer the rights of use or may grant rights thereon (sublicenses) to third parties in whole or in part.

**5.5** The Contractor's rights (in particular moral rights), if any, shall remain unaffected.

**5.6** Without prejudice to Section 5.1 above, the Contractor shall remain the owner of all rights relating to documents, tools, methodologies, processes, ideas and know-how that the Contractor developed/owned prior to entering into the Contract or develops/acquires independently of the Deliverables ('Pre-existing deliverables'). If Pre-existing deliverables are made available to the ECB under the Contract, the Contractor shall grant to the ECB the irrevocable, non-exclusive, perpetual right to use, copy and distribute such Pre-existing deliverables internally and within the European System of Central Banks to the extent that such use is necessary in order to use the Deliverables in accordance with the Contract.

**5.7** The Contractor hereby transfers and assigns to the ECB its ownership of all physical items containing, embodying or representing the Work results. ECB hereby accepts such transfer and assignment.

**5.8** The charge for transferring ownership rights and granting the rights of use set out in Sections 5.1 to 5.7 is included in the agreed remuneration.

**5.9** The Contractor represents and warrants (i) that it is authorised to transfer and grant the rights as set out in Sections 5.1 to 5.7 and (ii) that the use of such rights, of the Work results and of the Deliverables by the ECB in accordance with this Contract does not infringe any third party rights. In the event of a dispute the Contractor shall indemnify the ECB from and hold it harmless against all third party claims in accordance with statutory law.

### Section 6 - Duration and termination

In addition to Section 12 of the GCTs, the following shall apply:

**6.1** The Contract shall become effective upon its signature by both Parties. Subject to the agreed warranty period and notwithstanding any specific delivery dates agreed in the Contract sheet, it shall remain in force until the Deliverables are finally accepted, including the correction of all reserved minor defects, or until the Contract is terminated in accordance with its terms or in accordance with any statutory provision.

**6.2** The ECB may terminate (*kündigen*) this Contract at any time and without cause in accordance with Section 648 of the German Civil Code (*Bürgerliches Gesetzbuch*).

**6.3** If the ECB terminates this Contract in accordance with Section 6.2, the Contractor may claim the agreed remuneration. However, the Contractor shall allow the ECB credit for expenses which it saves by virtue of the termination and for the income which it obtains, or maliciously fails to obtain, by using its workforce elsewhere. The saved expenses shall be determined in accordance with statutory law.

**6.4** If a Party terminates the Contract in accordance with Section 12.4 of the GCTs, the Contractor may claim remuneration for the part of the Deliverables duly delivered up to the date of termination, provided however that in the event the Contractor has caused the reason for termination in accordance with Section 12.4 of the GCTs,

the Contractor may only claim remuneration] to the extent that the parts of the Deliverables duly delivered up to the date of termination are of value for the ECB.

**6.5** If a Party terminates the Contract in accordance with Section 12.4 of the GCTs, also a partial termination shall be possible with regard to separable (*abgrenzbare*) parts of the Deliverables. Section 648a para. 2 of the German Civil Code (*Bürgerliches Gesetzbuch*) shall apply.

**6.6** If this Contract is a Framework Agreement the Contract shall become effective upon its signature by both Parties and shall remain in force for the period of time defined in the Contract sheet or, if no Version 1.1 fixed term is agreed, until the completion of the Deliverables, or until the Contract is terminated in accordance with its terms or in accordance with any statutory provision.

### Section 7 – Warranty

**7.1** The Contractor's warranty for defects shall be governed by statutory provisions.

**7.2** The statutory limitation periods shall apply for claims based on defects.