General Terms of Contract governing Contracts with Appraisers/Firms of Consultants (local)

January 2011

1. General Principles and Obligations

1.1. Scope of application

The General Terms of Contract apply to contracts concluded for the implementation of German Technical Cooperation projects with developing countries. The Appraiser/Firm of Consultants shall clearly indicate that they are carrying out the tasks within the scope of a project assisted by the Government of the Federal Republic of Germany and in performance of their Contract with the Deutsche Geselschaft fuer Internationale (GIZ) GmbH as the client, hereinafter referred to as the GIZ.

1.2 Cooperation with Other Institutions

The Appraiser/Firm of Consultants shall undertake to cooperate in an appropriate manner with the German mission abroad, with other specialists engaged in the country of assignment within the scope of German technical or financial cooperation activities, and with representatives and experts of multilateral organisations, insofar as these have an impact on project/programme activities.

1.3 Observance of Project Arrangements

The Appraiser/Firm of Consultants undertakes to observe the arrangements under international law between the Federal Republic of Germany and the country of assignment and, where applicable, the arrangement on project implementation between the project executing agency and the GIZ.

1.4 Discretion and Comments vis-à-vis Third Parties

All data, other information and business and operational data of a confidential nature which become known to the Appraiser/Firm of Consultants in the course of or in connection with the execution of the Contract, as well as any documents and work results, shall be treated confidentially insofar as this is called for by the nature of the matter or is expressly required by the GIZ. The utilization of such data and information for the Appraiser/Firm of Consultant's own purposes is not permitted. Sentences 1 and 2 shall remain in force for a period of five years after acceptance of the work to be performed or following the end of the contractually agreed period of assignment.

The Appraiser/Firm of Consultants shall refrain from making any comments which might be construed by third parties as an undertaking to make further contributions within the framework of Technical Cooperation between the Federal Republic of Germany and the country of assignment.

1.5 Conduct in the Country of Assignment/Regulations of the Country of Assignment

The development-policy mandate entails an obligation to adapt personal conduct to the local conditions.

The Appraiser/Firm of Consultants shall observe all frontier-crossing regulations and any other national regulations in force at the time, and take account of the terms of the respective agreements/ exchange of notes and of foreign exchange regulations.

1.6 Design of Business Cards and Business Stationery

The use of project or programme-related business cards and/or business stationery by the Appraiser/Firm of Consultants shall require the consent of the GIZ. The GIZ and partner organisation must be consulted on the design of such materials. In all cases, the Appraiser/Firm of Consultants must use the GIZ's logo and include the following information (if appropriate, in the pertinent *lingua franca*): A project/programme assisted by the German Government via the GIZ.

1.7 Code of Conduct

The Appraiser/Firm of Consultants shall take note that GIZ employees are obliged to observe the principles contained in the Code of Conduct valid within the GIZ in its respective version, and shall undertake to respect the directives and guidelines of this Code when dealing with GIZ employees.

The Appraiser/Firm of Consultants shall always act impartially and loyally in their capacity as an advisor. They shall accept commissions where a conflict of interest is to be anticipated due to the nature of the commission, or due to personal or financial connections with third parties, only after prior consultation with the GIZ. If, in the course of an existing contractual relationship, any such conflict of interest should arise, the Appraiser/Firm of Consultants must reveal this to the GIZ without delay and agree upon the further procedure with the GIZ.

In the event of a violation of the above provisions, the GIZ shall be entitled to terminate the Contract immediately pursuant to Section 8.3 of these General Terms of Contract. This right of termination also applies if, in the course of an existing contractual relationship, a conflict of interest arises for the Appraiser/Firm of Consultants and the Appraiser/ Firm of Consultants and the GIZ are unable to reach agreement on the further procedure.

1.8 Passing on of Personal Data by the GIZ

The Appraiser/Firm of Consultants agrees to the processing of personal data by the GIZ. The Appraiser/Firm of Consultants shall ensure that their personnel also declare that they are in agreement with the processing of personal data. The GIZ guarantees data protection. It shall process personal data only insofar as this is necessary for material or organisational reasons.

2. Assignment and Replacement of Personnel

The Appraiser/Firm of Consultants shall ensure that they and, if applicable, their personnel are in possession of the professional and personal qualifications necessary to fulfil the required tasks successfully. The GIZ is entitled to demand the replacement of personnel at the expense of the Appraiser/Firm of Consultants if an expert does not meet these requirements or contravenes the duties imposed on him/her by the Appraiser/Firm of Consultants in connection with the execution of the Contract. The replacement of personnel at the instigation of the Appraiser/Firm of Consultants requires the GIZ's prior written consent, which may be denied only on good and sufficient grounds.

3. Rights of Use/Documentation on Work Results

3.1 Waiving the author's or originator's right to be named, the Appraiser/Firm of Consultants shall assign to the GIZ, for the duration of the statutory copyright period, an exclusive, assignable, sublicensable right without content-related restriction to reproduce, distribute, make publicly accessible, process and redesign the work results, including studies, drafts, documentation, articles, information, files, illustrations, drawings, calculations, materials and other documents ("work results") that are produced and/or procured in connection with the performance of the Contract. In particular, the GIZ shall be entitled to reproduce, distribute and publish the work results in print and electronically via all known media, including newspapers, magazines, television, radio and the internet.

3.2 To the extent this is required to use and exploit the work results, the Appraiser/Firm of Consultants shall assign to the GIZ a non-exclusive right also to use studies, drafts, documentation, articles, information, files, illustrations, sketches, drawings, calculations and other materials provided from the existing resources of the Appraiser/Firm of Consultants ("existing results") to the extent stipulated under Section 3.1.

3.3 The contractually agreed remuneration for the implementation of the project/programme by the Appraiser/Firm of Consultants encompasses the assignment of the right of use pursuant to Section 3.1.

3.4 Work results in the sense of Section 3.1 shall also include computer programs that the Appraiser/Firm of Consultants creates, adapts, procures or provides in the performance of the Contract. The right of use transferred to the GIZ pursuant to the above provisions shall include in particular the right to load, display, run, transmit, save, adjust, translate, edit and reproduce the programs. For the purpose of processing, the Appraiser/Firm of Consultants shall hand over to the GIZ the relevant source code and the program documentation, which the GIZ may also hand over to third parties in the form of copies.

3.5 The obligation to grant rights of use pursuant to this Section 3.1 shall also apply if the Appraiser/Firm of Consultants calls in a third party to furnish the services. The Appraiser/Firm of Consultants shall ensure vis-à-vis all persons participating in producing the work results that the Appraiser/Firm of Consultants is entitled to grant the rights of use to the GIZ to the extent outlined in this Section 3.1.

3.6 The Appraiser/Firm of Consultants shall ensure that the work results are not encumbered with copyright or other rights of third parties that would restrict the use of the work results to the extent defined under Section 3.1. The Appraiser/Firm of Consultants shall indemnify the GIZ against all claims of third parties arising from the granting or exercise of the right of use pursuant to this Section 3.1 and shall reimburse GIZ for all costs arising in connection with a corresponding legal defence.

4. Publications

Publications on the project/programme or the activities of the Appraiser/Firm of Consultants within the framework of the project/programme require the prior written approval of the GIZ, even after acceptance or conclusion of the contractually agreed period of assignment. Approval from the GIZ is not required for brief descriptions of the contract work and of the scope of activities that are designed for use in the public relations work of the Appraiser/Firm of Consultants. In all cases a clear indication must be given that the activity took place in connection with a project/programme assisted by the Government of the Federal Republic of Germany and on behalf of the GIZ.

5. Keeping of Documents

As a rule, documents and work results shall be kept by the Appraiser/Firm of Consultants for ten years following acceptance or the expiry of the contractually agreed period of assignment and shall be surrendered to the GIZ for inspection on demand.

6. Reports

6.1 Costs of Reports

The costs of the reports shall be calculated as part of the expert settlement and shall not be remunerated separately. If requested, the Appraiser/Firm of Consultants shall also provide the reports in electronic form.

6.2 Special Reports

In the event of important incidents or circumstances, the Appraiser/Firm of Consultants shall, at no extra charge, without delay and without a specific request to that effect, draw up special reports, which it shall forward to the GIZ in quintuplicate in each case. Important incidents or circumstances for the purposes of this section shall include major changes in terms of the risk assessment of the project; major time, development policy, financial or technical changes, as well as risks to the security or health of personnel. In addition, the GIZ may request special reports on particular procedures and issues at any time.

7. Obligation to Provide Information

The GIZ shall be entitled to review at any time the progress and results attained in respect of the execution of the Contract. The Appraiser/Firm of Consultants shall ensure that the documents necessary in this regard are available at all times and shall provide the information required. At the request of the GIZ, the Appraiser/Firm of Consultants shall also furnish information to the German Federal Ministry for Economic Cooperation and Development (BMZ) and other persons or organisations commissioned by the GIZ, and enable the same to carry out inspections.

8. Termination

8.1 The GIZ may terminate the Contract at any time either wholly or in respect of individual parts of the work.

8.2 If the GIZ terminates the Contract for a reason for which the Appraiser/Firm of Consultants is not answerable, the Appraiser/Firm of Consultants shall be entitled to demand the agreed sum in remuneration. However, the Appraiser/Firm of Consultants shall agree to non-incurred or avoidable expenses being deducted, as well as such amounts the Appraiser/Firm of Consultants earns by working elsewhere, or by malicious intent fails to earn.

8.3 If the GIZ terminates the Contract for a reason for which the Appraiser/Firm of Consultants is answerable, remuneration shall be paid for the work already executed, provided the GIZ can utilize it, in accordance with the Contract prices, or, that part actually executed shall be remunerated as a proportion of the total contractual work on the basis of Contract prices.
Expenses will be remunerated in the same proportion. The work that has been executed but that the GIZ cannot utilize shall be returned to the Appraiser/Firm of Consultants at the latter's expense. Insofar as the contractual work comprises the rendering of services, the services rendered up to the date of termination shall be deemed work that can be utilized. The right of the GIZ to claim damages shall remain unaffected.

8.4 The GIZ is entitled to terminate the Contract immediately in accordance with this Section 8.3 if the Appraiser/Firm of Consultants or one of its employees gives or offers a gift or other benefit to a GIZ staff member, a family member of a GIZ staff member, or any other person associated with the staff member in connection with the award or execution of the Contract. The same applies if the Appraiser/Firm of Consultants or one of their employees accepts gifts or other benefits from third parties in connection with the execution of the Contract.

9. Health Requirements and Exclusion of Liability

The Appraiser/Firm of Consultants is responsible for ensuring that they and the personnel assigned by them to the project/programme satisfy the health requirements for work in the country of assignment. The Appraiser/Firm of Consultants shall ensure that the necessary inoculations are obtained. The GIZ disclaims all liability consequential to property damage, sickness, personal injury or death in respect of the Appraiser/Firm of Consultants and the personnel assigned by them to the project/programme. The Appraiser/Firm of Consultants undertakes to purchase sufficient insurance cover for themselves and the personnel assigned by them to the project/programme. The GIZ shall not reimburse the Appraiser/Firm of Consultants for the cost of taking out health, life and accident insurance.

10. Remuneration and Terms of Payment

10.1 The contractually agreed remuneration rates are binding.

10.2 As a rule, payments shall be effected only against submission of the relevant forms. All the necessary vouchers must be attached in the original.

10.3 Any rebates, discounts, refunds and all other price reductions are to be passed on to the GIZ.

10.4 The Appraiser/Firm of Consultants shall submit the final invoice together with the certificate of performance/acceptance signed by the officer responsible for the contract and cooperation immediately after the end of the contractually agreed period of assignment or the contractually agreed time for completion of the work. It must be verifiable and contain all the necessary details (and all the required documentary evidence). Immediately after submission of accounts, the Appraiser/Firm of Consultants shall reimburse to the GIZ those amounts paid by the latter in excess of its liability for payment.

If the Appraiser/Firm of Consultants does not submit the final invoice within fifteen days of having received a reminder from the GIZ, they shall be obliged to refund the advance payment immediately.
The claims of the Appraiser/Firm of Consultants shall become due upon expiry of a verification period of fifteen days after receipt of the final invoice, and if applicable, acceptance of the work. The partial or final payment shall be effected no later than thirty days after the claims become due, to the amount established and, where applicable, corrected by the GIZ.

10.5 Unless the GIZ is liable for wilful intent, the claims of the Appraiser/Firm of Consultant to remuneration arising from the Contract shall become statute-barred if they are not asserted vis-à-vis the GIZ in writing within one year. Irrespective of whether the Appraiser/Firm of Consultants has become aware of the underlying circumstances for the claim or should have become aware of these circumstances without gross negligence, the statutory period of limitation shall commence at the end of the year in which the contractual period of assignment ends or in which the contractually specified time for the completion of work lies.

10.6 Costs in a foreign currency shall be settled, as a matter of principle, at the rate shown by the corresponding vouchers for the purchase of foreign exchange to be attached to the Appraiser's/Firm of Consultants' statements of account. If such vouchers are not attached, currencies included in the monthly GIZ exchange-rate list shall be converted at the applicable rate given in this list.

10.7 Where Appraisers/Firms of Consultants are obliged to provide collateral in the form of a bank guarantee, its content must be approved by the GIZ. Such guarantees shall be issued by a bank acceptable to the GIZ, shall be without any time limitation and shall contain an explicit waiver of any plea or objection. Moreover, they shall be payable upon the first written demand of the GIZ and contain a declaration that the place of jurisdiction will be Frankfurt am Main, Federal Republic of Germany.

11. Procurement of Materials and Equipment

In the case of the contractually agreed procurement of materials and equipment, confirmation of handover to the recipient designated in the Contract shall be submitted in addition to the vouchers required pursuant to Section 10.2. Materials and equipment shall be procured in line with the principles of economic efficiency. In general, three comparable bids must be obtained. The Appraiser/Firm of Consultants shall observe the GIZ rules for inventorising equipment and materials (see GIZ website under "Bidding opportunities/Important documents").

12. Acceptance/Certificate of Performance

Confirmation that the work has been accepted/performed shall be provided by the officer responsible for the contract and cooperation specified in the Contract within sixty days of receiving the written notification of readiness for acceptance**/**performance of the work or of delivery of the work by the officer responsible for the contract and cooperation. Acceptance**/**performance of the work shall be documented by means of the certificate of performance/acceptance signed by the officer responsible for the contract and cooperation. Advance payments and payments on account shall not constitute partial acceptance. However, partial acceptance may be agreed for sections of the work. Final payment by the GIZ shall not constitute acceptance.

13. Covenant Against Assignment

The assignment of claims arising from the contract is excluded, unless the GIZ has agreed to such assignment in writing.

14. Contractual Penalty

14.1 If the Appraiser/Firm of Consultants fails to meet the agreed dates and deadlines, or to deliver the work within the period of grace set by the GIZ, then the GIZ is entitled, as soon as the period of grace has expired, to demand a contractual penalty of 1% of the remuneration for each week that begins after expiry of the set period of grace; however, the contractual penalty shall not exceed a total of 10% of the remuneration.

14.2 In each of the cases specified in Section 8.4, the Appraiser/Firm of Consultants is obliged to pay the GIZ a contractual penalty of EUR 25,000 for each commission; however, the penalty payable shall amount to at least the value of the benefit granted. Further rights of the GIZ to claim damages shall remain unaffected. However, the contractual penalty shall be deducted from such claims for damages.

15. Liability

The Appraiser/Firm of Consultants shall be liable to the GIZ for loss or damage caused through negligence or wilful intent. Unless the Appraiser/Firm of Consultants is liable owing to wilful intent or gross negligence, the contractual liability of the Appraiser/Firm of Consultants shall be limited to EUR 250,000 if the remuneration pursuant to Section 10.1 does not exceed this amount. Otherwise, unless the Appraiser/Firm of Consultants is liable owing to wilful intent or gross negligence, the contractual liability of the Appraiser/Firm of Consultants shall be limited to the amount of remuneration pursuant to Section 10.1.

16. Applicable Law/Place of Jurisdiction

The Contract shall be governed by the law of the Federal Republic of Germany. Exclusive place of jurisdiction for legal action brought by the Appraiser/Firm of Consultants is Frankfurt am Main/Germany, provided the Appraiser/Firm of Consultants is a merchant, legal entity under public law or a special fund under public law, or has no general place of jurisdiction in Germany. The GIZ may bring legal action against the Appraiser/Firm of Consultants in Frankfurt am Main or alternatively before the competent courts at the Appraiser's/Firm of Consultants' place of residence.

17. Amendments/Written Form/Original Copies

The Contract, any amendments and additions thereto and all fundamental communications shall be valid only if made in writing.
The Contract shall be drawn up in two originals. The Appraiser/Firm of Consultants shall retain one original copy.

18. Components of the Contract

The following are components of the Contract:
1. The Contract with its annexes
2. The present General Terms of Contract