

# Annex 2. Special Terms and Conditions for Client's Application Procurements under Software Terms Other than Open Source (JIT 2025 – Client's Applications Non Open)<sup>1</sup>

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## Instructions for use

The special terms and conditions concerning the client's application procurements comprise the Special Terms and Conditions for Client's Application Procurements under Open Source Software Terms (*JIT 2025 – Client's Applications Open Source*) and the Special Terms and Conditions for Client's Application Procurements under Software Terms Other than Open Source (*JIT 2025 – Client's Applications Non Open*). Before any application procurement, the client must always carefully select the most suitable special terms and conditions. In some cases, it may be appropriate to enable, in the invitation to tender, the submission of tenders based on different special terms and conditions.

In the special terms and conditions for the client's application procurements, 'client's application' means a program or its part produced specifically for the client, and expansions, modifications, additions (such as interfaces), configurations and parameterisations of standard software made by the supplier for the client. The delivery of the client's application may also include standard software if so explicitly agreed in the contract.

These terms and conditions are intended to be used in the procurement of the client's applications in cases where the client does not require that the client's application to be licensed under the terms and conditions of open source code. These terms and conditions result in the supplier providing the client with a non-open but

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<sup>1</sup> This annex corresponds to pp. 53–66 in publication [The General Terms and Conditions of Public IT Procurement \(JIT 2025\)](#).

otherwise extensive licence to the client's application. **When the client requires open source code rights, the Special Terms and Conditions for Client's Application Procurements under Open Source Software Terms (*JIT 2025 – Client's Applications Open Source*) must be used instead.**

These terms and conditions further specify the client's rights of use so that the client may use the client's application not only in its own activities but also in other activities agreed upon separately. The specification is necessary in contexts such as when the client procures an application for the use of other organisations in public administration in the role of, for example, a service centre. The intended use must be described clearly in the contract.

These terms and conditions are mainly suitable for the client's application procurements implemented following what is known as the waterfall model. When procuring IT expert work, such as when procuring software developers or managers for a project led by the client itself, the Special Terms and Conditions for Procurement of Expert Work (*JIT 2025 – Expert Work*) should be used.

The client's application must fulfil the requirements and the specifications concerning implementation set out in the contract. The contracting parties should pay attention to ensuring that the specifications fulfil the requirements. If it becomes apparent in the specification phase that a requirement will not be fulfilled or that it will not be, for example, expedient to implement it, the supplier must notify the client of this and the matter must be handled through the change management procedure.

A client often procures an application so that it is built on standard software which is parameterised or supplemented to meet the client's requirements. The object of delivery, which consists of the client's application and any standard software possibly included in the delivery, must be specified in the contract. Attention should also be paid to the following:

- The contracting parties should draw up and maintain a project plan on the agreed more detailed delivery phases and schedules, organisation of the project, shared work methods and other necessary aspects.
- The testing and acceptance procedures should apply to the entire object of delivery, including any related standard software.
- The special terms and conditions for application procurements include provisions on the testing and acceptance procedure. However, it may be necessary to agree upon the testing and acceptance process in more detail in the contract. Documentation constitutes an integral part of the

product or service. This means that documentation also needs to be inspected in connection with testing.

- If the delivery includes standard software programs, they must be itemised in the contract. Rights of use to standard software are primarily determined based on software-specific licence terms and conditions.
- The scope of the rights of use to standard software must conform to the requirements stated by the client in its invitation to tender.
- If the subject matter of the contract is software critical to the client, it is advisable to prepare for the end of software maintenance or any discontinuation of the operations of the software supplier. The source code and associated document material related to software important to the client may be stored in the possession of an independent provider of a source code storage service (escrow agent) by entering into a separate source code storage agreement. The provider of the source code storage service will store the material and, in case of problems, release the source code under the terms and conditions agreed in the storage agreement. It should be noted that the source code of third-party standard software cannot usually be obtained or stored even by escrow agents. In these situations, the source code can principally be stored solely for that part of the solution the source code of which is held by the supplier and the source code of which it is entitled to hand over.

In the application procurement phase, special attention must be paid to the prevention of vendor lock-in by, in particular, preparing for phaseout from the system during or at the end of the system life cycle and for the costs resulting from this. Any costs arising from phaseout from the application should already be taken into account in the tender comparison phase when procuring the application in question.

The client is encouraged to ensure that the application contains open interfaces. Requirements concerning the use of open interfaces should preferably be defined in the invitation to tender. Supporting material for the use of open interfaces can be found from sources including the Public Administration API Principles (see <https://www.avoindata.fi/en/api-principles> <https://www.avoindata.fi/en/api-principles>) and the Information Management Board recommendation concerning technical interfaces and viewing access (see (in Finnish and Swedish) <https://vm.fi/tiedonhallintalautakunta>).

These instructions for use do not constitute part of the contract.

Date of contract:

Number of contract:

Number of annex:

## **JIT 2025: Special Terms and Conditions for the Procurement of Client's Application under Software Terms Other than Open Source (JIT 2025 – Client's Applications Non Open)**

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### **1 Scope of application**

(1) The Special Terms for Client's Application Procurements under Software Terms Other than Open Source shall be observed in the client's application procurements based on assignments by public contracting entities if these Special Terms and Conditions are referred to in the contract and to the extent that they have not in some respects been otherwise agreed upon in writing.

(2) These Special Terms and Conditions shall be used together with the General Terms and Conditions of Public IT Procurement.

## 2 Definitions

In addition to the following definitions of the Special Terms and Conditions, the definitions of *JIT 2025 General Terms and Conditions* shall be observed.

**development environment**

The technical platform required for the development of the client's application under the contract, such as hardware, software and data connections, and the required user licences and their maintenance.

**operating environment**

The technical platform (servers, system software, data connections, etc.) on which the object of delivery is installed for testing or production use.

**handover**

The handover of the object of delivery to the client for acceptance testing.

A part of delivery can also be handed over for acceptance testing.

**specifications**

The technical and functional characteristics defined by the contracting parties for the object of delivery on the basis of the requirements on which the contracting parties have agreed or will agree in writing.

**client's application**

Software or its part created for the client, expansions and additions (such as interfaces) to standard software made by the supplier for the client, configurations, parameterisation and any other possible programs delivered by the supplier as part of rollout, excluding standard software.

The client's application also includes its documentation.

**standard software**

Software or its part developed and marketed by the supplier or a third party and specified as standard software in the contract, together with its documentation.

Standard software may be open source software. Standard software or its documentation does not constitute the client's application(s).

**error**

The object of delivery does not fulfil the agreed requirements and specifications or does not function in accordance with them.

### 3 Delivery

(1) The object of delivery and the client's application are specified in the contract. If the object of delivery includes standard software, such software and any special terms and conditions applicable to it shall be stated in the contract.

(2) Unless otherwise agreed, the delivery includes the design, specification, implementation, testing and rollout of the client's application. In addition, the delivery may include other work, such as that associated with data conversion and personnel training if this has been agreed upon in the contract, and the delivery of any agreed standard software and ensuring its interoperability.

(3) The delivery phases, delivery schedule and resources required shall be agreed upon in the contract.

(4) The support, maintenance and further development of the object of delivery shall be agreed upon separately.

### 4 Testing and acceptance of delivery

(1) The supplier shall perform the supplier's tests agreed in the contract for the object of delivery or its part before the supplier hands over the object of delivery or its part to the client for intermediate testing or acceptance testing. Unless otherwise agreed, the supplier shall perform the tests in accordance with its practices using the material supplied by the client in advance. The accepted performance of the supplier's testing is an absolute prerequisite for the supplier being able to hand over the object of delivery or its part to the client for acceptance testing. The supplier's testing shall be deemed as having been performed acceptably when the object of delivery meets the agreed handover criteria. The supplier's testing shall be deemed as having been performed acceptably when the tests performed by the supplier no longer reveal any errors which the client might justifiably regard as preventing acceptance testing from being performed. The supplier shall notify the client when the object of delivery or its part is ready for the client's acceptance testing and provide the client with a report on the testing performed and its results.

(2) Unless otherwise agreed on the matter, the client shall, at its own expense, bring the operating environment required in testing into compliance with the contract. The supplier shall hand over the object of delivery for acceptance testing so that it is installed in the operating environment in accordance with the contract according

to the delivery schedule. The supplier shall provide the client with user instructions for the client's acceptance testing as well as the documentation concerning the object of delivery. The supplier shall also provide the client's representatives with the agreed training for the performance of the tasks in question.

(3) The client shall perform the acceptance testing. The client shall provide an acceptance testing plan for the supplier in advance for comments. The acceptance testing plan shall not, however, be binding. Instead, the client shall have the right, without being limited by the plan, to perform all tests it deems necessary. Unless otherwise agreed, the client shall have 30 days to perform the client's acceptance testing, starting from the date on which the supplier has notified in writing that the object of delivery or its agreed part is ready for acceptance testing and has handed over the object of delivery for testing in accordance with clause 4(2). The supplier may not hand over the object of delivery or its part to the client for acceptance testing before the mutually agreed date unless the client gives its explicit written consent to this. The contracting parties may agree that the supplier assists the client in acceptance testing.

(4) Unless otherwise agreed, the client shall test the agreed interim phases within 7 business days after the supplier has notified in writing that testing may be started. The acceptance of an interim phase does not release the supplier from liability concerning errors which are revealed during later testing phases and which could not be and cannot be reasonably expected to have been detected during testing at interim phases. Unless otherwise agreed on the matter, the acceptance of an interim phase is a precondition for the commencement of the next phase.

(5) The supplier shall rectify any error detected during acceptance testing without undue delay. The time reserved for acceptance testing shall be extended by the time the supplier needs to rectify the error and the client reasonably needs for the testing and acceptance of the rectifications of error. The supplier shall hand over the object of delivery, the errors of which have been rectified, for the client's acceptance testing at the new time agreed with the supplier. If an error detected in the object of delivery in acceptance testing is caused by standard software included in the delivery, the supplier shall rectify the error caused by the standard software or have the error caused by the standard software rectified at its own expense and within its capabilities. The contracting parties may also agree that the supplier will work around the error at its own expense. If creating a workaround is not reasonably possible through generally available means, the parties may agree upon additional work to work around the error, or the client shall be entitled to a price

reduction. If the error is so material that, due to the error, the purpose of the contract remains materially unfulfilled, the client shall have the right to cancel the contract, unless the error concerns standard software required by the client.

(6) The client shall notify the supplier in writing of any errors detected by the client in the application without delay and in any event no later than within 3 business days after the time reserved for the client's acceptance testing has ended.

(7) The object of delivery or its part shall be deemed accepted if the client has not given any notification of errors within the time stated in clause 4(6) or if the client takes the object of delivery or its part into production use.

(8) Acceptance shall not be prevented by minor errors that do not prevent the object of delivery from being used in the agreed intended use or prevent its operation. The supplier shall, however, be obligated to rectify also such errors and deficiencies free of charge and without undue delay.

(9) With regard to fixed-price deliveries, both contracting parties shall be responsible for their own costs associated with the performance of acceptance testing. With regard to deliveries priced on the basis of working hours, the client shall, however, compensate the supplier for its work performed in relation to acceptance testing so that the supplier is responsible for its own costs associated with any re-testing performed due to the rectification of any errors.

(10) Unless otherwise agreed, the delivery shall be deemed to have taken place when the object of delivery has been accepted and the supplier has fulfilled all of its obligations under the contract related to the rollout of the product or the final outcome of the service.

## **5 Project organisation and implementation**

(1) The contracting parties shall set up a project and a project steering group for the fulfilment of the contract and for cooperation between the parties. Both contracting parties shall appoint their representatives to the steering group, which shall supervise the implementation of the project as a cooperation organisation of the contracting parties. The tasks and decision-making powers of the steering group shall be specified in the contract, and the group shall meet upon the request of a contracting party as necessary and at a minimum after each delivery phase. Minutes shall be kept of the meetings of the steering group. The steering group may not amend the contract.



(2) The supplier shall appoint a project manager whose task is to report on the status and progress of the project to the project steering group. The other tasks shall be specified in the contract. Both contracting parties shall designate a contact person whose task is to monitor and supervise the fulfilment of the contract and to communicate matters related to the fulfilment of the contract within their organisation and to the other contracting party. Unless otherwise agreed, the supplier's project manager shall be the supplier's contact person. Each contracting party shall notify the other contracting party in good time of any replacement of their contact person.

(3) The contracting parties shall designate the required human resources for the project. Designated key persons may be agreed upon in the contract.

(4) The contracting parties shall respectively reserve the necessary work premises and equipment for the project.

(5) A contracting party shall contribute to the implementation of the project in contexts that can be controlled or managed by the contracting party. Both contracting parties shall make the decisions required to implement the project without delay.

(6) Unless otherwise agreed, the supplier shall produce the client's application and perform other tasks belonging to the project using the supplier's work methods.

(7) The contracting party responsible for the development environment shall be responsible during the project for the backup copies belonging to the subject matter of the contract and concerning the object of delivery and for verifying that they are functional.

(8) The delivery project shall end once the object of delivery has been accepted and taken into use.

## **6**      **Supplier's resources**

(1) The supplier shall ensure for its part that a sufficient number of persons will be available for the delivery.

(2) The supplier shall not replace the key persons designated in the contract without the client's permission for reasons other than those beyond the control of the supplier. The client may not, without a justified reason, refuse its permission for

such replacements. The supplier shall always notify the client in advance in writing of any replacement of key persons and shall without delay designate a new person in place of the person to be replaced.

(3) Upon the justified request of the client, the supplier shall replace an individual it has designated for the project without any undue delay.

(4) The new person shall fulfil the agreed requirements in terms of competence.

(5) If a person is replaced for a reason attributable to the supplier, the supplier shall be responsible for providing the new person with the required training and induction at its own expense.

## **7 Warranty**

(1) During the warranty period, the supplier shall, free of charge and without any undue delay, rectify any errors detected in the object of delivery. Rectification shall also include making changes corresponding to the rectification in the documentation.

(2) Unless otherwise agreed, the warranty period shall be 6 months starting from the acceptance of the client's application. If the client's application is accepted in phases, the warranty period for previously accepted phases shall not, however, expire until 6 months have passed from the acceptance of the client's application as a whole.

(3) The client shall have the right to require that, before the payment of the final instalment, the supplier lodges for the client security accepted by the client regarding the fulfilment of the warranty obligations. The security shall be 15 per cent of the total price of the contract inclusive of value added tax, and it shall remain valid for at least 3 months after the warranty period under the contract. In case of a delay in the fulfilment of warranty obligations, the supplier shall extend the period of validity of the security. The supplier shall be responsible for all security-related costs.

(4) With regard to standard software, the warranty terms of the standard software in question shall be applied to the warranty.

(5) If an error detected in the object of delivery during the warranty period is caused by standard software, the supplier shall rectify the error or have the error rectified at its own expense and within its capabilities. Version changes of standard software

shall not be regarded as errors referred to above. If it is not reasonably possible to rectify an error or have an error rectified, the supplier shall work around the error at its own expense. If creating a workaround is not reasonably possible through generally available means, the parties may agree upon additional work to work around the error, or the client shall be entitled to a price reduction. If the error is so material that, due to the error, the purpose of the contract remains materially unfulfilled, the client shall have the right to cancel the contract, unless the error concerns standard software required by the client.

(6) The warranty becomes invalid to the extent the client modifies the client's application or the specified application environment without agreeing on it in writing with the supplier, or the client's application is used for purposes other than its intended use or in violation of instructions concerning its use, or the error is caused by some other reason attributable to the client.

## 8 Rights

(1) The right of ownership and intellectual property rights to the client's material shall belong to the client or a third party and shall not be transferred to the supplier. The supplier shall have the right to process the client's material solely for purposes pertaining to the fulfilment of the contract. When exercising these rights, the supplier shall ensure that the client's non-disclosable information is not disclosed.

(2) Unless otherwise agreed, copyright and intellectual property rights to the client's application and the associated documentation, the client's material excluded, shall belong to the supplier or a third party.

(3) The client shall have the unrestricted right, without any extra charge, independently or assisted by an external service provider, and without being limited by the copyright, intellectual property rights or business or professional secrets of the supplier or a third party, to:

- i. use the client's application in its own activities, and in other activities agreed upon separately;
- ii. modify and develop the client's application further for its own use;
- iii. make new copies of the client's application for its own use;
- iv. use the material and know-how generated in conjunction with the production of the client's application in connection with other applications;

- v. transfer the client's application to another hardware platform or operating system environment or geographical location; however, taking into account any export restrictions;
- vi. transfer rights to use the client's application to third parties if this is required for the performance or reorganisation of the client's tasks;
- vii. receive the right of use and possession to the machine and source code versions of the client's application.

When exercising these rights, the client shall ensure that the supplier's trade secrets remain confidential in accordance with the Act on the Openness of Government Activities.

(4) Unless otherwise agreed, the provisions under clause 8(4) shall not, however, apply to standard software. The rights of use to standard software shall be determined by application of the licence terms and conditions specified by the manufacturer or copyright holder of the standard software.

(5) The client's above-mentioned rights shall not alter or expand the warranty or any other liabilities of the supplier from the provisions of warranty or acceptance or other obligations or requirements which applied to the client's application in its original application environment.

## 9 Supplier's obligations

(1) The supplier shall be responsible for the client's application and the associated documentation being in compliance with the contract and for the work being carried out with the professional competence required by the task and in line with good technical practice and a high quality level.

(2) If the supplier detects a conflict between the requirements and the specifications made by the supplier, the supplier shall notify the client of this and propose that the requirements be specified further or amended. If the client does not accept the further specification or amendment of the requirements, the supplier shall amend the specifications made by it so that they conform to the requirements.

(3) If so requested by the client, the supplier shall cooperate and negotiate with any other suppliers and consultants used by the client. Unless otherwise agreed, the supplier shall be entitled to charge for such additional work. The supplier shall, however, notify in advance of any additional work resulting from this.

(4) The supplier shall define and design the object of delivery so that the client will be able to migrate, utilising automated systems as specified by the supplier, all of the client's material stored by the application into a format complying with the dataset openness requirement.

(5) The documentation of the object of delivery shall include a data description. Unless otherwise agreed, the supplier shall not be entitled to charge separately for the delivery of the data description.

## **10 Client's obligations**

(1) In addition to the client's tasks agreed in the contract, the client shall provide the supplier with the information which the supplier requires in order to carry out its task and which can be disclosed to the supplier. The client shall be responsible for the information, instructions and orders it has issued to the supplier.

(2) The client shall be responsible for its part for carrying out the tasks agreed upon in the contract within the agreed schedule.

## **11 Maintenance**

(1) The supplier shall provide support and maintenance services for the object of delivery as agreed separately. The supplier undertakes to provide these support and maintenance services for the duration of at least one year, starting from the acceptance of the client's application.

## **12 Storage of source code of standard software**

(1) If the client so requires, the supplier shall seek to contribute to ensuring that the source code of the standard software included in the object of delivery, together with any modifications and additions made to it for the client, is stored in the possession of an impartial provider of a source code storage service (escrow agent) so that the client obtains the source code and the rights to use it in case:

- i. the holder of the rights to the standard software is declared bankrupt or placed into liquidation or
- ii. maintenance is not available for the object of delivery from the supplier, from the right holder of the standard software in question

or from any third party under terms and conditions substantially equivalent to those agreed upon by the supplier and client concerning maintenance.

## 13 Delays

(1) If a contracting party finds that it will be delayed in its delivery or in its performance of an obligation, or it considers such delay likely, the contracting party shall, without delay and in writing, notify the other contracting party of the delay and its impact on the fulfilment of the contract. Where necessary, the contracting parties shall agree upon a new delivery time.

(2) If the delivery is delayed due to a reason for which the supplier is responsible, the supplier shall pay a contractual penalty to the client for every commencing period of seven (7) days by which the supplier exceeds the due date agreed for the delivery or its part under the contract. The penalty for each above-mentioned period shall be 0.5 per cent of the purchase price of the delayed object of delivery, subject to a maximum penalty of 7.5 per cent of the price, however. The amount of damage caused by the delay shall not affect the amount of the penalty. A delay in the delivery of documents and information preventing the use of the object of delivery shall be equated with a delay in the delivery of the product or service.

(3) The supplier shall not be entitled to receive a contractual penalty due to the client's delay.