

General terms and conditions of intervention

Subject of the document

This document constitutes Cerema's general terms and conditions of intervention, when a Cerema service for a Backer does not require contract or a written agreement.

It is referred to in a reference, attached to, or included with the Technical Proposal issued by Cerema in response to a need expressed by a Backer.

As such, it applies unless expressly stated otherwise in the Contract in response to the needs expressed.

Definitions

It is agreed that the following terms beginning with a capital letter have the following respective meanings:

Backer: Organization that is the beneficiary of the intervention

Party(ies): In the singular refers to either the Backer or Cerema, and in the plural, to both, collectively.

Intervention: Production or service provided by Cerema.

Technical proposal: Specifications or estimate explaining the content of the intervention.

Contract: Technical proposal or estimate that has been accepted by the Backer

Prior knowledge: Any technical or scientific information and knowledge of any nature whatsoever existing prior to the signature of the Contract.

Deliverables: All documents (of whatever nature) and systems or devices that Cerema is required to provide to the Backer under the terms of the Contract.

Result(s): All knowledge, scientific, technical or commercial information, software, patents and know-how. Results may or may not be Deliverables.

Joint results: All results obtained jointly by the Parties.

Own Results: All Results obtained by one Party without any contribution from the other Party.

Confidential Information: Information and data in all forms and of any kind, exchanged between the Parties and relating directly or indirectly to the Intervention. Confidential Information is that which is designated as confidential by one of the Parties, by a stamp or key, if said Information is written, and by a special statement at the time of its disclosure, if said Information is oral.

Cerema's responsibility

Values: In its Interventions Cerema develops values that aim to promote collective work, to free initiatives and to encourage fulfilment in work.

Ethics, impartiality: Cerema carries out its interventions with dignity, impartiality, integrity and probity. It demonstrates neutrality, objectivity and respects the principle of secularism. This commitment applies to all Cerema staff and external service providers working on behalf of Cerema. Regular monitoring of potential conflicts of interest and corruption risks is carried out in the management committees.

Professional secrecy: Cerema's staff are bound by the obligation of professional secrecy and the duty of discretion, as far as facts, information, studies and decisions of which they may become aware when carrying out an Intervention are concerned.

Inclusion of sustainable development in projects: As the vector of public policies, Cerema promotes the inclusion of sustainable development in the projects of its Backers by asking him/her questions when defining the Intervention as to the aims and methods of his/her project. Cerema guarantees that its offer is compatible with France's commitments on climate change and the sustainable development objectives of Agenda 2030.

Corporate social responsibility: Cerema runs a collective CSR initiative, including a Climate roadmap, a quality of life at work initiative and theme-based actions according to the issues at stake. As such, Cerema is committed to eco-responsibility. Whenever possible, to carry it the Intervention, it uses videoconferencing, travel by train or public transport, documents distributed as electronic versions, etc.

Cerema implements procedures to control the waste generated by its Intervention.

Staff safety: Cerema conducts a risk analysis prior to its interventions, intended to set up the necessary measures and equipment for collective or individual prevention. This analysis is formalized for non-routine activities, especially outside its premises.

Cerema only intervenes on site if staff safety is ensured, in accordance with the rules in force defined by labour legislation.

In the event of a mission outside France, a special mission order is necessary for the Intervention of Cerema staff, making sure to detail the principles to be observed and the minimum measures to be taken in matters of personal safety. The Backer must take all necessary measures to ensure staff safety.

Third-party liability: Cerema has taken out a civil liability insurance policy that covers the financial consequences of damage or injury caused to others by its activities.

With the exception of special technical reservations, included in or appended to the reports, the Results of the Intervention are the responsibility of Cerema. The follow-up given to these Results falls under the responsibility of the Backer of the Intervention.

Validity of the Technical Proposal

Validity period of the proposal: The validity period of the Technical Proposal is 90 days from the date of its sending to the Backer. After this period and in the absence of a firm order from the Backer, Cerema is not obliged to maintain its offer.

Subcontracting: Cerema can, if necessary, call on a subcontractor. In this case, Cerema informs the Backer when drawing up the Technical Proposal and specifies to the latter which services are subcontracted. In the event of recourse to a subcontractor during the execution of the Contract, an additional clause is drawn up fixing the respective services of Cerema and the subcontractor along with the valuation of each of them.

Modification to the Technical Proposal: Any request by the Backer for modification to a Technical Proposal shall lead to an amendment or a new proposal drawn up by Cerema.

Obligations of the Backer

Provision of the expected documents: The Cerema Technical Proposal identifies the data necessary for the intervention, as understood by Cerema at the time of drawing up the Technical Proposal. The Cerema specifies who, the Backer, Cerema or others, provides them, when and in what formats. The Backer agrees to provide Cerema with all drawings and documents necessary to understand the project and conduct the Intervention and to report any other information not identified by Cerema from drafting the Technical Proposal to the end of the intervention.

Accuracy of the information provided: Cerema cannot be held responsible for the consequences of inaccurate data provided by the Backer. The Backer takes care of all disputes relating to accidental damage resulting from omissions or errors on its part, in particular in the event of inaccurate network plans communicated. Damages to third parties are recorded in an adversarial report drawn up by representatives of the Backer, Cerema and the aggrieved third party.

Authorizations, DICT: Unless otherwise specified, the Backer is responsible for obtaining the necessary authorizations for Cerema staff to enter and operate safely on private property or public property, if these are necessary. Unless otherwise specified, the Backer must send Cerema the temporary occupancy order or the authorization to enter, as well as all documents relating to work project declarations, and to the existence and installation of underground, overhead or underwater structures. Sending these documents must enable Cerema, if it is carrying out the work, to send the "declarations of intention to begin work" (DICT) to the relevant operators at least ten calendar days before the date of carrying out the planned Intervention.

Mobile site signage: Cerema's mobile equipment includes position signage in accordance with the rules set by the interministerial instructions on road signs. In some cases (low speed surveys, central lane congestion, traffic intensity, poor visibility, etc.), accompanying vehicles with approach signs are required. It is the Backer's responsibility to set these up.

Temporary signage: Unless otherwise specified, if temporary signage is required, it is obligatorily and entirely the responsibility of the Backer for whom the Intervention is being carried out to install it.

Installing specific equipment: Unless otherwise specified, the installation of certain specific equipment, equipment for accessing structure, or qualified personnel necessary for to carry out the Intervention is obligatorily and entirely the responsibility of the Backer for whom the Intervention is being carried out.

Intellectual property and valuation of results

Ownership of Prior Knowledge: Prior Knowledge of the Parties remains their respective property.

No communication of Prior Knowledge to another Party shall be construed as a transfer of ownership.

Ownership of Results: The Own Results and know-how obtained during the work carried out under the Contract belong to the Party that generated them alone.

Patents resulting from the Results generated by a single Party are filed at the sole initiative of that Party and only in its name and at its own expense.

The Joint Results resulting from the Project generated by the Parties, whether patentable or not, are co-owned by the Parties in proportion to the actual participation of their staff in obtaining them.

Decisions relating to the corresponding filing of patent applications are made jointly.

If either Party waives the filing of a joint patent application or waives the procedure for the issuance, extension or continuation of a joint patent application or a joint patent, it shall inform the other Party(ies) who can then carry out the necessary procedures at their own expense.

The waiving Party agrees to assign to the other Party(ies) its rights in the patent applications and corresponding patents for the continuation of the procedure.

The Deliverables are the property of the Backer but are part of the Results of the Intervention.

Integrity of Results: Cerema cannot be held responsible for the use made of the Results of the Intervention by the Backer. The Backer undertakes not to reproduce or transmit the Results of the Intervention except in their entirety, unless prior approval for partial dissemination has been obtained from Cerema.

Using the Results of the Intervention: Unless otherwise stipulated as requested by the Backer, Cerema may use the Results of the Intervention for statistical or documentary operations and may systematically disseminate the Results. In addition, the new methodologies developed during the Intervention are Results owned by Cerema that it can use for other missions.

Communicability: Unless otherwise stipulated as requested by the Backer, Cerema reserves the right to communicate and use the Results of the Intervention on its website.

As an exception, for laboratory tests performed using a Cofrac accredited method, Cerema is responsible for the management of all information obtained or generated. In this case, Cerema must indicate the information it intends to make public to the Backer in advance, and, unless otherwise agreed, all information is considered exclusive and must be treated as confidential. The rights and rules of use of the Cofrac logo are defined in the Cofrac document GEN REF 11.

Cerema test reports performed using a Cofrac accredited method may be reproduced only in full by the sponsor.

Open data: Several legal and regulatory provisions reinforce the rights of any person to access administrative documents and the reuse of public information. However, this obligation applies subject to the rights held by third parties over the administrative documents in question. In particular, documents produced under a contract for the performance of services carried out on behalf of one or more specified persons cannot be disclosed.

When the documents produced in execution of a contract are produced on behalf of a client in charge of a public service mission, it is the responsibility of the latter to make public the administrative documents that can be disclosed.

Non-disclosure: Each Party shall transmit to the other Party only such information as it deems necessary for carrying out the Project, subject to the rights of third parties.

Each Party shall bring to the attention of the other Party the information deemed confidential. The Parties agree that this Confidential Information exchanged as part of the Intervention:

- a) shall be used only for the purposes of the Contract;
- b) shall be kept strictly confidential and treated with the same degree of protection as they give to their own Confidential Information;
- c) shall be communicated only to members of their staff who need to know them and shall be used only for the purposes of the Intervention, for a period of three years from the date of being communicated.

Any other communication or use of the Confidential Information implies the prior written consent of the Party that communicated it.

Each Party undertakes to ensure that its personnel referred to in c) above shall comply with the stipulations defined herein.

There is no obligation incumbent on either Party to disclose information to the other Party, other than that necessary to carry out the Intervention.

Each Party may communicate information belonging to the other Party, of which it can prove:

- that it was available publicly before or after being communicated, but in the absence of any fault attributable to it;
- that it was lawfully received from a third party;
- that it was already in its possession before being communicated by the other Party.

The obligation of secrecy is maintained for a period of five (5) years from disclosure of the information

Conditions of execution

Cerema undertakes to carry out the Intervention in accordance with the Contract signed between Cerema and the Backer.

Order date: The Backer's order is registered on the date of return of the Contract (order form and signed Technical Proposal).

Start date of the intervention: If the Intervention is not subject to dates of work decided by the Backer, the start of the Intervention takes place after receipt of the signed Contract, in its period of validity, and subject to obtaining any assistance requested from the Backer and the lifting of any restrictive clauses (data, access authorization, etc.).

Completion time: When Cerema is unable to meet the completion time indicated in the Contract, because of the Backer or because of force majeure, the completion time is extended by at least the time necessary for resumption of the Intervention, or else the contract is terminated (cf. § termination).

By mutual agreement, the duration of each phase of the Intervention can be adjusted according to the detailed production schedules. Adjustments of duration are subject to a written agreement.

Preservation of data and samples: Unless otherwise indicated by the Backer, the data necessary for the intervention are preserved by Cerema for the duration of the Intervention or for the time stated in the Contract. In the event that the Backer wishes to examine any samples or remains of samples left over from tests or measurements, it will inform Cerema of this intent and will state how long the samples or left-over samples should be kept. Such preservation may possibly be made for a fee.

Technical repository: The technical reference used by Cerema is specified in the Technical Proposal. Acceptance of the Technical Proposal by the Backer signifies validation of the repository used. It is the responsibility of the Backer to request the use of an alternative technical repository or any waiver of certain technical provisions in writing. If the technical repository changes during the Intervention, Cerema informs the Backer of the impact of this change on the Results of the Intervention and the technical repository adopted for the end of the Intervention.

Acceptance of the intervention: As of the date of delivery of a Deliverable by Cerema, the Backer has a period of 30 days to proceed with receipt or acceptance of the Deliverable and notify a decision to accept, postpone, accept with reduction or reject. In the absence of notice from the Backer within that time, Cerema's production is considered as being received and accepted by the Sponsor.

Payment period: Invoicing may be planned in settlement of partial or total completion of a Cerema Intervention. Unless otherwise noted in writing by the Backer within 15 days of receipt of the invoice, the invoice shall be deemed accepted. The Backer has 30 days (45 days for a private backer) to make the payment from the date of receipt of the invoice. Failure to pay within the prescribed period gives rise to default interest, the rate of which is equal to the default interest fixed annually by the Minister in charge of finance.

Termination: Termination of the Contract may be requested by either Party by giving 30 days' notice following the sending of a registered letter with acknowledgement of receipt. In the event of non-compliance by either Party with the reciprocal commitments contained in the Contract, the latter may be terminated by right by either Party, for the sole and exclusive fault of the defaulting Party, upon expiry of a period of 30 days following the sending of a registered letter with acknowledgement of receipt giving formal notice. Whatever the reason for the termination, a settlement of termination is drawn up by mutual agreement between the Parties. If failure by Cerema is not the cause of the termination, the amount of the settlement takes into account the production already made by Cerema. In the opposite case, both Parties agree on the amount of the settlement.

Settlement of disputes and claims: The Parties shall endeavour to settle amicably any dispute relating to the interpretation or performance of the Contract. They shall have 90 days to reach an amicable solution from receipt of the first letter from one of the Parties expressing their disagreement with the other Party.

On request, Cerema undertakes to make available a description of its claims handling process.

In the event of persistent disagreement, the Parties shall bring the dispute before the competent court.

The applicable law is French law.