

SETTING UP OF  
TEMPORARY BUSINESS GROUPING (R.T.I.)

TEMPORARY BUSINESS GROUPING GRANTING SPECIAL COLLECTIVE  
MANDATE WITH POWER OF REPRESENTATION

Between: .....(1) .....(hereinafter also “ \_\_\_\_\_ ”)  
– having its registered office in .....  
.....(specify address) – share capital  
Euro \_\_\_\_\_ .= - fully paid up – company listed in the  
Companies Register of \_\_\_\_\_ with number  
\_\_\_\_\_ – Tax and VAT Reg. no. \_\_\_\_\_ – represented by  
.....

and

Between: .....(2) ..... (hereinafter also “ \_\_\_\_\_ ”)  
– having its registered office in .....  
.....(specify address) – share capital Euro \_\_\_\_\_ .= - fully paid up –  
company listed in the Companies Register of \_\_\_\_\_ with  
number \_\_\_\_\_ – Tax and VAT Reg. no. \_\_\_\_\_ –  
represented by .....

and

Between: .....(3) ..... (hereinafter also “ \_\_\_\_\_ ”)  
– having its registered office in .....  
.....(specify address) – share capital Euro \_\_\_\_\_ .= - fully paid up –  
company listed in the Companies Register of \_\_\_\_\_ with  
number \_\_\_\_\_ – Tax and VAT Reg. no. \_\_\_\_\_ –  
represented by .....

(hereinafter collectively called “Grouped Businesses”)

**whereas**

I) The company \_\_\_\_\_ [indicate the data of the awarding company]  
(hereinafter “Company”), with Bid Request no ..... of the ..... [or with the EU  
Contract Notice no..... published .....] has issued a Call for Tenders for the  
contract “....[name the subject of the contract and the place of performance];

II) the (1), (2) and (3) ..... intend to set up up a Temporary  
Business Grouping (hereinafter R.T.I.) with the grant of a special collective  
mandate with powers of representation for the performance of the aforesaid  
contract.

In consideration of the above, which is to be considered as a full and substantial  
part of this deed, it is agreed and established as follows:

**Art. 1 (Set up of the Temporary Business Grouping)**

The aforesaid companies, through their representatives declare with this deed

that they set up a Temporary Business Grouping.

Therefore, the (2) ....., and the (3) ..... (hereinafter called the “Mandating Companies”) confer a special collective mandate with power of representation, which is irrevocable and free of charge [*in accordance with art. 48 paragraphs 12 and 13 of Leg. Dec. no. 50 of April 18, 2016*]<sup>1</sup>, to the (1) ..... (hereinafter called the “Mandate Holder”) which, as represented above, accepts so that it:

- A) signs in the name and on behalf of the Grouped Businesses, with the widest powers and with promise of full ratification and approval as from now, all the deeds relating to the Call for Tenders referred to in the “whereas clauses”; contractual deeds, consequential and necessary for any assignment and performance of the activities covered by the contract awarded; all contractual deeds consequential and/or necessary for the management and performance of the activities covered by the contract assigned, including any transactions, with prices and quotations agreed with the Mandating Companies;
- B) signs and submits all documents, deeds and whatever would be necessary or may be requested during the performance of the activities covered by the contract;
- C) coordinates the relationship between the Grouped Businesses and/or all subcontractors/“subcontraenti” on all questions relating to the management of the contract awarded.

The Mandate Holder ..... as above represented is hereby granted and is entitled to exercise exclusive powers of representation under law, including legal proceedings, in respect of the Mandating Companies for all operations and deeds of any kind connected with the contract, also after the works testing or equivalent operation, up to the relationship termination.

**Art. 2 (Head company)**

For the purposes of art. 89 of Leg. Decree No. 81 of 2008 (where applicable), the “impresa affidataria” shall be the Mandate Holder.

**Art. 3 (Domicile)**

The Grouped Businesses declare to elect their exclusive and only domicile at the offices of the Mandate Holder.

**Art. 4 (Share allocation in the R.T.I. and activities covered by the contract between the Grouped Businesses)**

The Temporary Business Grouping is of horizontal [*or vertical*] [*or mixed*] type. The share allocation in the R.T.I. and the activities covered by the contract shall be allocated among the Grouped Businesses in the following manner<sup>2</sup>:

---

<sup>1</sup> The text in square brackets is applicable only in case of contract awarded according to the provisions referred to in Leg. Dec. no. 50 of 2016.

<sup>2</sup> In case of a contract awarded according to the provisions of Leg. Decree no. 50 of 2016 it would be necessary that:

- 1) the Mandate Holder.....will perform the following activities:....., [*with a share in the business grouping equal to .....*]
- 2) the Mandating Company .....will perform the following activities: ..... [*with a share in the business grouping equal to .....*];
- 3) the Mandating Company..... will perform the following activities [*with share in the business grouping equal to .....*].

The Grouped Businesses undertake to perform the activities covered by the contract according to the percentages corresponding to the shares in the R.T.I. indicated above.

### **Art. 5 (Invoicing)**

#### **ALTERNATIVE “A” (Note: the following invoicing method must be adopted in case of R.T.I. having no VAT registration number in Italy)**

With respect to the performance of the activities covered by the contract the Grouped Businesses will issue to the Company, each according to its own share, the relevant invoices.

[The Company and the Grouped Businesses assume the financial flows traceability obligations provided by art. 3 of Law no. 136 of 2010 and subsequent amendments and additions.

Therefore, the payment of any invoice(s) to the Grouped Businesses will be made by the Company by bank transfer to a dedicated bank current account, subject to contract termination.

To this end the Grouped Businesses must send to the Company, by means of an appropriate declaration and within the terms set out by Law no. 136 of 2010 and subsequent amendments and additions, the identification details of the dedicated current account, personal details and Tax Reg. no. of the persons delegated to make transactions on it. This declaration, drawn up according to “Law 136 – Model 1” attached to this document, shall be sent by registered mail with return receipt to the address mentioned in the contract.

- 
- for contracts of works assigned to a horizontal R.T.I. the Mandate Holder has in a greater majority the economic-financial and technical organisational requirements and in all cases in an amount not below 40%, the remaining percentage could be held collectively by the Mandating Companies but in all cases with a minimum share each of 10%.
  - For contracts of works assigned to a vertical R.T.I. the economic-financial and technical organisational requirements should be held by the Mandate Holder for the main category; in the unbundled categories each mandating company has the requirements for the amount of works relating to the category it intends to assume;
  - in case of contract of services and supplies assigned to a horizontal or vertical RTI, the Mandate Holder must have the requirements and perform the services assigned to the majority extent.

In relation to each transaction, any bank transfer should refer to the Tender Identification Code (C.I.G.).

No payment will be made by the Company to a dedicated current account which is different from the one mentioned by each company of the Grouped Businesses in compliance with this article or to different banks from those indicated by the same, subject to the possibility of changing the number of the dedicated current account and, where applicable, the name of the bank with prior written notice of not less than 60 (sixty days).

Each company of the Grouped Businesses must specify on the invoice:

- the name of the bank in which current account transactions are held;
- the branch or agency holder of the current account;
- No. of dedicated bank current account;
- BBAN code (for national payments);
- IBAN code and BIC code (for international payments)]<sup>3</sup>.

The invoices issued by individual companies of Grouped Businesses shall be forwarded to the Company by the Mandate Holder, exonerating the latter from any liability connected therewith.

In case of amounts charged by the Company, without prejudice to the joint liability of the Grouped Businesses, a single debit note shall be issued by the Company to the Mandate Holder.

The invoices mentioned above will be paid by the Company to the individual companies of the Grouped Businesses issuing the invoice.

The principles mentioned above shall also apply in case of any supplementary invoicing during the testing, where provided, and/or final balance.

**ALTERNATIVE “B” (Note: the following invoicing method must be adopted in case of R.T.I. having VAT registration number in Italy)**

With respect to the performance of activities covered by the contract, invoices shall be issued by the Mandate Holder and forwarded to the Company.

[To this effect the Company and the Mandate Holder, as well as each company of the Grouped Businesses, assume the financial flows traceability obligations provided by art. 3 of Law no. 136 of 2010 and subsequent amendments and additions.

Therefore, without prejudice to the traceability obligations in the relationships between the Grouped Businesses, the payment of the invoice(s) to the Mandate Holder will be made by the Company by bank transfer to a dedicated bank current account, subject to contract termination.

To this end the Mandate Holder shall send to the Company, by means of an appropriate declaration and within terms referred to in law no. 136 of 2010 and subsequent amendments and additions, the identification details of the dedicated current account, the personal details and the Tax Reg. no. of the persons delegated to make transactions on it.

3. The text in square brackets is applicable only in case of contract awarded according to the provisions referred to in Leg. Dec. no. 50 of 2016

This declaration, as drawn up by “Law 136 – Model 1” attached to this document, shall be sent by registered mail with return receipt to the address mentioned in the contract. With regard to each transaction, any bank transfer should refer to the Tender Identification Code (C.I.G.)

No payment will be made by the Company to a dedicated current account which is different from the one mentioned by the Mandate Holder in compliance with this article or to banks different from the one indicated by the Mandate Holder, subject to the possibility of changing the number of the dedicated current account and, where applicable, the name of the bank with prior written notice of not less than 60 (sixty days).

The Mandate Holder must detail on the invoice:

- the name of the bank in which current account transactions are held;
- the branch or agency holder of the current account;
- No. of dedicated bank current account;
- BBAN code (for national payments);
- IBAN code and BIC code (for international payments)]<sup>4</sup>.

The invoice(s) mentioned above shall be paid by the Company to the Mandate Holder which will be bound to pay to the Mandating Companies the amount relating to the services performed, holding harmless the Company from every possible dispute which might arise with regard to the payment due to the individual Mandating Companies.

[In this connection the Mandate Holder will effect payment to the Mandating Companies through a bank transfer at a dedicated current account that each of the Mandating Companies shall notify to the Mandate Holder in compliance with the traceability obligations referred to in Art. 3 of the Law no. 136 of 2010 and subsequent amendments and additions.

To this end the Mandating Companies shall submit, by means of an appropriate declaration and within the terms set out by law no. 136 of 2010 and subsequent amendments and additions, the identification details of the dedicated current account, the personal details and Tax Reg. no. of the persons delegated to make transactions on it. This declaration, as drawn up by “Law 136 – Model 1” attached to this document, shall be sent by registered mail with return receipt to the address mentioned by the Mandate Holder.

No payment shall be made by the Mandate Holder to the Mandating Companies to a dedicated current account different from the one mentioned by the latter or to banks different from those indicated by the Mandating Companies, subject to the possibility of changing the number of the dedicated current account and, where applicable, the name of the bank with prior written notice of not less than 60 (sixty days).

---

4. The text in square brackets is applicable only in case of a contract awarded according to the provisions referred to in Leg. Dec. no. 50 of 2016.

Each Mandating Company must specify on the invoice:

- the name of the bank in which current account transactions are held;
- the branch or agency holder of the current account;
- No. of dedicated bank current account;
- BBAN code (for national payments);
- IBAN code and BIC code (for international payments)]<sup>5</sup>.

The principles mentioned above shall also apply in case of any supplementary invoicing during the testing, where provided, and/or final balance.

In case of amounts charged by the Company, without prejudice to the joint liability of the Grouped Businesses, a single debit note will be issued by the Company to the Mandate Holder.

***NOTE:*** *The choice between alternative “A” and “B” is based on the fiscal situation of the R.T.I., as well as the features and of methods of performance of the tender contract and the type of R.T.I (horizontal, vertical, mixed).*

#### **Art. 6 (Liability of the Grouped Businesses)**

In case of a R.T.I. of horizontal type, participation in this R.T.I. and the subsequent contract will result in the joint and unlimited liability of the Grouped Businesses towards the Company for all obligations deriving from the activities covered by the contract mentioned in the “whereas clauses”.

In case of a R.T.I. of vertical and mixed types, participation in this R.T.I. and the subsequent contract will result in liability towards the Company which is limited to the performance of the respective services, without prejudice to the joint liability of the Mandate Holder towards the Company.

#### **Art. 7 (Revocation of the Mandate)**

The mandate is free of charge and irrevocable; its possible termination for just cause shall not in any case have effect against the Company.

#### **Art. 8 (Substitution of the Mandate Holder)**

The Grouped Businesses agree that, if for any reason, including bankruptcy or any other insolvency proceedings or in the cases provided by the antimafia law, the Mandate Holder is unable or it is impossible for it to perform or complete the services assigned to it in the times and methods provided by the contract, the Company may either continue the contractual relationship with another company of the grouped businesses which is set up as Mandate Holder by a special mandate under the same conditions of these articles of association, provided that said company meets the requirements envisaged in the selection procedure and is accepted by the Company, or withdraw from the contract without paying any indemnity.

<sup>5</sup>. The text in square brackets only in case of a contract awarded according to the provisions referred to in Leg. Dec. no. 50 of 2016.

[The Grouped Businesses agree that in case of bankruptcy, compulsory administrative winding-up, receivership, extraordinary administration, arrangement with creditors or any other insolvency or winding-up proceedings in respect of the Mandate Holder or, if any individual is involved, in case of death, prohibition, disqualification or bankruptcy of the same, or if the general requirements are no longer met during performance of the contract or in the cases provided by the antimafia law, the Company may either continue the contractual relationship with another company of the grouped businesses which is set up as Mandate Holder by a special mandate under the same conditions of these articles of association, provided that said company meets the qualification requirements suitable for the works, services or supplies still to be performed. Where such conditions are not met, the Company shall have the right to to withdraw from the contract.]<sup>6</sup>

#### **Art. 9 (Substitution of the Mandating Company)**

The Grouped Businesses agree that, if for any reason, including bankruptcy or any other insolvency proceedings or in the cases provided by the antimafia

law, one of the Mandating Companies is unable or it is impossible for it to perform or complete the services assigned to it in the times and methods provided by the contract, the Mandate Holder shall be bound to perform or complete directly or through other Mandating Companies the contractual services which have not been performed by the defaulting company and/or in any case unable to perform it, under the same conditions established in the contract concluded by the Mandate Holder with the Company, without prejudice to the Company's right to continue the contractual relationship with the other Grouped Businesses, or to withdraw from the contract without paying any indemnity.

[The Grouped Businesses agree that in case of bankruptcy, compulsory administrative winding-up, receivership, extraordinary administration, arrangement with creditors, or any other insolvency or winding-up proceedings in respect of one of the Mandating Companies or, if any individual is involved, in case of death, prohibition, disqualification or bankruptcy of the same, or if the general requirements are no longer met during performance of the contract or in the cases provided by the antimafia law, the Mandate Holder, where it fails to indicate another company meeting the necessary qualification requirements, shall be bound to perform the contractual activities directly or through the other Mandating Companies, provided that the same meet the qualification requirements suitable for the works, services or supplies still to be performed.]<sup>7</sup>

#### **Art. 10 (Effect)**

Any alteration of this R.T.I. setting up will require the unanimous consent of the Grouped Businesses and the Company's prior approval.

---

<sup>6</sup> The text in square brackets only in case of a contract awarded according to the provisions referred to in Leg. Dec. no. 50 of 2016.

<sup>7</sup> The text in square brackets only in case of a contract awarded according to the provisions referred to in Leg. Dec. no. 50 of 2016.



**Art. 11 (Reasons for termination of the Temporary Business Grouping)**

This R.T.I. will come to an end automatically, without the need for any formality or obligations:

- if, for any reason, the performance of the contract is not assigned to it;
- in the case of contract award:
  - A) with the approval of the activities covered by the contract by the Company according to the terms, conditions and methods specified in the relevant contract, and however not before the end of the warranty period, if any, and by defining all outstanding matters and relationships related to the contract;
  - B) for the occurrence of one of the causes of termination of the contract.

**Art. 12 (Internal regulations between the Grouped Businesses)**

Any regulations or internal agreements between the Grouped Businesses shall not in any case be opposed by the Company in so far as they are intended to regulate exclusively the relationships between the Grouped Businesses.

**Art. 13 (Autonomy of the Grouped Businesses)**

This mandate relationship does not on its own establish a conjunction between the Grouped Businesses, each of which keeps its own autonomy even for management purposes, as well as those related to tax obligations and social security contributions.

**Art. 14 (Costs)**

The costs of this deed shall be divided equally between the Grouped Businesses.

**Art. 15 (Applicable law and competent court)**

This deed will be regulated and interpreted according to the Italian law.

With regard to any dispute which might arise with the Company, the court of jurisdiction will be exclusively the court where the Company has its legal office.

*[The Grouped Businesses declare that for any aspect not expressly covered by this mandate, reference is made to the provisions of art. 48 of Legislative Decree no. 50 of April 18, 2016]<sup>8</sup>.*

All the above is granted with the undertaking to ratify and validate any actions hereunder from the date hereof and without the possibility of raising objections on the basis of the insufficiency of, or defects in, the mandate.

---

<sup>8</sup> The text in square brackets only in case of a contract awarded according to the provisions referred to in Leg. Dec. no. 50 of 2016.

Read, confirmed, signed

For \_\_\_\_\_

\_\_\_\_\_

For \_\_\_\_\_

\_\_\_\_\_

For \_\_\_\_\_

\_\_\_\_\_