

Terms of Use of the MTender System for Clients and the Economic Operators

1. The Operator of the MTender provides the MTender services subject to compliance with the user's terms and conditions set forth below.
2. The General Terms of Use form legally binding agreements between users and the MTender Operator in relation to use of the MTender services.
3. Use of the MTender and registration on the MTender networking electronic procurement platform is not possible without agreeing to comply with all of the user's terms set forth below, and by registering for Access Codes, all users agree to abide by all of the user's terms set forth below.
4. Unless otherwise stated below definitions and interpretations shall be as prescribed in the Law:

Access Codes: User ID and the password that identify the MTender Registered Users of the Clients and the Economic Operators;

Budgetary classification and budgetary line – as defined by the law on public finance;

Client – a public body defined in the Law as the contracting authority or the contracting entity listed in Annex III of the Agreement of Government Procurement of the World Trade Organisation ratified by the Republic of Moldova on [];

Contract register – represents an electronic online repository of information on public contracts of the MTender, containing information of the complete life cycle of the public contract irrespective of their value and providing for public disclosure of public contract information. Information about procurement procedures and public contracts shall be automatically collected by the MTender in accordance to the once-only principle during generation and signing of the Contract Agreements;

Electronic auction - the auction as referred to in the Law, with rounds, time limits or both in a scheduled period of time and the automatic evaluation of bids;

Electronic bid - the tender as referred to in the Law, comprising in the Electronic tendering procedures declarations, including the MTender ESPD Declaration, Technical offer and Financial offer submitted by the Registered User of the Economic Operator in the MTender;

Electronic tendering procedure - procurement procedure for the award of a public contract of goods, services and works as referred to in the Law performed within the MTender electronic procurement system making use of electronic means of communications, electronic documents and online devices;

European Single Procurement Document (the MTender ESPD Declaration) – represents an electronic self-declaration as preliminary evidence in replacement of documents and certificates issued by public authorities or third parties confirming that the relevant economic operator fulfils the selection criteria and does not fall within an exclusion ground as provided by the present law;

Financial offer – as referred to in the Law, including electronic documents with information related to the price, taxes, and other financial and commercial conditions of the Electronic bid submitted in the MTender by the Registered User of the Economic;

Guest User - any interested party that without completing registration on the MTender can have an open online access to public procurement information on the MTender but no access to the MTender electronic tendering procedures;

Help desk – a service of the MTender networking electronic procurement platform available to Clients and the Economic Operators registered on this platform to access services of the MTender;

MTender – multi-platform networking Cloud-based informational and telecommunications system electronic public procurement system, including a web portal, central database unit and authorized networking electronic procurement platforms supporting Electronic tendering procedures;

MTender web portal – a single-window single-sign-on web portal owned and operated by the Ministry of Finance and accessible at the internet address <https://mtender.gov.md/> where public procurement information and public contract register are accessible without a need to register;

MTender networking electronic procurement platform – an electronic procurement platform authorised and certified for networking with the central database unit of the MTender system and providing services supporting electronic tendering procedures for public procurement to Clients and Economic Operators;

Procurement Officer – in the Electronic tendering procedure a specialised member of the Tender Committee trained and authorised to access the MTender to record decisions of the Tender Committee in relation to preparation and conducting electronic tendering procedures and to submit for online publication on the MTender relevant procurement notifications and documents, as appropriate for public procurement procedure;

Procurement record – an electronically generated by the MTender record of electronic public procurement procedure, including detailed information related to the subject matter of the public procurement contract, the tender specifications and any documentation related to the award procedure of such contract. The Procurement record shall be generated and signed solely as electronic documents and published online in the contract register for audit trail; no hard copies are required or shall be retained;

Tender Committee - a working group of specialists as referred to in the Law that when appointed by the Client to conduct Electronic tendering procedures on the MTender may be required to register on the MTender or be represented by the Procurement Officer;

Procurement planning – an estimation made by the Clients of their future needs for goods, services and works that is forecasted to be procured within an established period of time, resulting in preparation of an annual procurement plan of the Client to be conducted in accordance with the Law;

Registered User - representatives of Clients and Economic Operators who upon acceptance of the terms of use of the MTender have identified and authenticated

themselves completing registration on the MTender networking electronic procurement platform and shall have access to the MTender Electronic tendering procedures;

Technical offer – as referred to in the Law, including electronic documents submitted in the MTender by the Registered User of the Economic Operator in response to Technical Requirements specified in the Tender Documents.

5. Electronic public procurements are made through electronic tendering procedures conducted using the MTender System that is accessible via the web portal: <https://mtender.gov.md>.
6. The MTender web portal provides a single-sign-on single access point to the information on procurements made by Clients and shall contain all the necessary information regarding public procurement and shall guarantee to every interested party, including unregistered users, free access to the information and tools referred to electronic public procurement.
7. The MTender is operating a multi-platform model and several MTender networking electronic public procurement platforms shall be available to the Clients and the Economic Operators simultaneously. The Clients and Economic Operators are free to choose any MTender networking electronic procurement platforms as long as these platforms are accredited by the MTender.
8. To limit their risks in case of the system failure, the Clients and the Economic Operators may register, free of charge, on any and each MTender networking electronic procurement platform of their choice. In rare cases of failure or malfunctions of the MTender such as to prevent the electronic tendering procedures from proceeding on any MTender networking electronic procurement platform, the Client may cancel or suspend the procedure by publishing a notice on the MTender web portal and, if applicable, by sending a message to official registered emails of all known participants of the electronic tendering procedure.
9. The MTender provides the Clients with a free of charge access to services of the MTender networking electronic procurement platforms in accordance with terms of use of the MTender.
10. The Clients encountering limitations in the access to the services of the MTender shall immediately notify the relevant help desk of the MTender networking electronic public procurement platforms of their registration.
11. The Electronic Operators encountering limitations in the access to the services of the MTender shall immediately notify the relevant help desk of the MTender networking electronic public procurement platforms of their registration.
12. The Ministry of Finance of the Republic of Moldova shall not be responsible for malfunctions and failures any Client should encounter with conducting the electronic tendering procedure on the MTender or for the impossibility of the Economic Operator to participate in the electronic tendering procedure advertised on the MTender web portal.
13. The Economic Operators register on the MTender to participate in the electronic public procurement, and the Clients register to plan, award, sign and execute electronic public contracts.

14. In order to register with the MTender, the Clients shall access, free of charge, any MTender networking electronic procurement platform and provide identifying information requested by the MTender networking electronic procurement platforms and provide their official business email address for communication purposes. The Clients are entitled to indicate several Registered Users to access the MTender services on their behalf by providing their identifying information. The Registered Users of the Client assume the responsibility and binding obligations on behalf of the Client before the Economic Operators, the Treasury of the Republic of Moldova and other Registered Users of the MTender. Any operation in the MTender carried out under the name of the Registered User of the Client shall be directly attributed to the Client.
15. In order to register with the MTender, Economic Operators shall access any MTender networking electronic procurement platform and provide identifying information, including place of their registration and associated Common Procurement Vocabulary codes, as required by the MTender and provide their official business email address for communication purposes. The Economic Operators may indicate several Registered Users to access the MTender services on their behalf by providing their identifying information. The Registered Users of the Economic Operators and assume the responsibility and binding obligations on behalf of the Economic Operator before the Client, the Treasury of the Republic of Moldova and other Registered Users of the MTender. Any operation in the MTender carried out under the name of the Registered User of the Economic Operator shall be directly attributed to the Economic Operator.
16. Upon successful completion of online registration, Access Codes comprising the User ID and Password will be issued and registered. Users are responsible for maintaining the confidentiality of the password and their account and are fully responsible for all activities that occur under their password or account. All users agree to (a) immediately notify Operator of the MTender of any unauthorized use of your password or account or any other breach of security, and (b) ensure that you logout from your account at the end of each session. The MTender Operator and the MTender networking electronic procurement platforms cannot and will not be liable for any loss or damage arising from your failure to comply with the foregoing.
17. As a Registered User, you agree to:
 - a. keeping login credentials and transaction codes relating to the MTender confidential. Users are responsible for the security of passwords and should avoid any abuse. All the activities carried out through the services, with the use of username and password, are attributed to the Registered User;
 - b. taking all reasonable measures to prevent the loss, disclosure, modification or unauthorised use of your username, password and transaction codes relating to the Service, and undertake to remain the sole holder of these credentials. In case of loss or suspicion of a breach of confidentiality, you should contact the MTender networking electronic procurement platform of your registration as soon as possible. You acknowledge that the MTender networking electronic procurement platform does not keep a copy of your password or transaction codes;

- c. ensuring that all information provided to the MTender networking electronic procurement platforms in relation to the registration and generation and issuance of your user account is true, complete and up to date;
 - d. updating your user account information immediately if any contact information is modified;
 - e. making use of your user account only for the purposes for which it was issued and within the usage limitations as specified in these terms of use and all other applicable laws, agreements and terms and conditions of use;
 - f. notifying promptly the MTender networking electronic procurement platform of any breach of security related to the MTender services, including but not limited to unauthorized use of your password or account. To help ensure the security of your password or account, please sign out from your account at the end of each session.
18. Users may not carry out any activity which is in breach of any clause under the laws of Republic of Moldova.
19. The MTender networking platforms ensure confidentiality, access control and validation of information provided by the Clients and the Economic Operators during registration for identification and authentication purposes as well as the integrity and availability of all registration information that is recorded and processed by the NEPP for the MTender System. Provided the acceptance of the terms of use of the MTender and positive verification of the completeness and correctness of the information provided during registration, Access Codes shall be issued to allow Registered Users to log-in in the system and access MTender services. All Registered Users may edit and update their registration information at any time by accessing the MTender registration forms and following instructions herein provided.
20. The online registration process of the MTender is envisaged to verify the Economic Operator eligibility to participate in public procurement in accordance to the Law. From the moment of primary online registration on the MTender, the Clients and Economic Operators may access and operate all electronic procurement services of the MTender. No supportive documentary evidence shall be required for registration to participate in the electronic tendering procedure, unless specifically permitted by the Law and required by the Client in the Contract Notice or the Tender Documents. For selected procurement methods, the Economic Operators may be invited to register or update their registration information prior to submission of Electronic bids or participation in the electronic auction.
21. In electronic tendering procedures all communications and transmission of electronic documents shall take place through the MTender networking electronic procurement platform to be recorded on the MTender web portal. Instructions for use as well as commands and software instructions for programs used by the MTender shall be made available in Romanian, Russian and English. Additional interfaces in other languages may be provided.
22. Electronic tendering procedures shall be published by the authorized Clients. The Operator of the MTender is not responsible for the information provided in the electronic tendering procedures published on the MTender. In case of any clarifications arising, the users have to contact the respective Clients who advertised the procedures. Users agree

that all information, data, text, software, photographs, graphics, messages or other materials ("Content"), whether publicly posted or privately transmitted, are the sole responsibility of the Registered User from which such Content originated. This means that Registered Users are entirely responsible for all Content uploaded, posted, email or otherwise transmitted via the MTender. The Operator of the MTender does not control the Content posted via the MTender and, as such, does not guarantee the accuracy, integrity or quality of such Content. Under no circumstances will the Operator of the MTender be liable in any way for any Content, including, but not limited to, for any errors or omissions in any Content, or for any loss or damage of any kind incurred as a result of the use of any Content posted, e-mailed or otherwise transmitted via the MTender.

23. The transmission of documents shall be made in an electronic format and only exceptionally by uploading validated electronic copies of the original documents. For purposes of communications, Registered Users of the Clients and the Economic Operators shall use Access Codes obtained during Registration. All the communications, including any type of notification, requests, bids and invitations shall be made through electronic online messages published by the MTender and when required through messages sent to the email addresses provided during registration.
24. Throughout the electronic tendering procedure, the MTender web portal shall inform which step of the electronic tendering procedure is being conducted.
25. Operator of the MTender is committed to protecting the privacy of platform users and visitors. The MTender operates security measures to protect against the loss, misuse and alteration of information under the control of the Operator of the MTender and the MTender networking electronic procurement platforms. Operations and activities carried out in the MTender by all Registered Users are recorded in special log files generated by the system where the day and time of each activity is indicated. The data recorded in the log files generated by the MTender constitute a complete and exclusive evidence between the Clients, the Economic Operators and the relevant enforcement agencies of the Republic of Moldova about the content and the timing of electronic documents exchanged and communications sent, such as, but not limited to, requests to participate and bids submitted, contract notices published as well evaluation decisions completed by the Client. Protection of bid information, confidential information and personal data from unauthorized access against leakage, destruction, blocking or violation to the integrity of data is ensured by the MTender in accordance to minimum security requirements for the MTender Operator and the MTender networking electronic procurement platforms prescribed in the order of the Ministry of Finance.
26. In the electronic tendering procedure, the Contract Notice and the Tender Documents shall be published online on the MTender web portal.
27. The Contract Notice and the Tender Documents shall be submitted for publication on the MTender web portal following electronic submission procedures specified in the terms of use of the MTender. If applicable, the MTender shall publish the Contract Notice upon electronic online confirmation by the Treasury of the Republic of Moldova that relevant information regarding procurement plan, CPV, budget and budgetary identifications and lines are correct. The relevant Contract Notice not confirmed by the Treasury is rejected and shall be resubmitted by the Client.

28. When published, the Contract Notice and the Tender Documents shall be made available to all interested parties, including Guest Users, by simply accessing the MTender web portal and shall remain accessible online, on a free of charge basis, at least for the entire duration of the electronic tendering procedure, until valid public procurement contract is registered in the public contract register, or the procedure has been terminated or annulled. In case of discrepancies in information provided in the Contract Notice and the Tender Documents, the Contract Notice shall prevail. In case of discrepancies in information included in the Contract Notice, the CPV code and budgetary classification shall prevail.
29. To participate in the electronic tendering procedure, the Registered User of the Economic Operator shall submit the Electronic bid to the MTender before expiry of the deadlines for submission stipulated in the Contract Notice, in the form of the electronic document and following instructions provided by the terms of use of the MTender.
30. Electronic bids shall be submitted to the MTender with a content and form as prescribed in the Contract Notice and in the Tender Documents. The Economic Operator may be required to submit the Electronic bid packaged into one or several together or subsequently submitted specific electronic documents or links (the MTender ESPD Declaration, Technical offer and Financial offer).
31. Any bid submitted after the deadline for submission will be recorded by the MTender web portal but will not be opened for evaluation. The bids shall be complete as required by the Tender Documents and instructions of the MTender; incomplete bids will be automatically rejected. The MTender shall inform the Registered User of the Economic Operator that the bid has been successfully uploaded by sending a notification providing the date and time the bid has been recorded on the MTender.
32. Until expiry of the submission deadline the Registered User of the Economic Operator may modify their bid by submitting new electronic bid. All bids submitted by the Economic Operator will be recorded but only most recent electronic documents of the bid will be opened by the MTender for evaluation.
33. Upon expiry of submission deadlines, the MTender shall generate an electronic document with a record of opening of Electronic bids, as appropriate.
34. In electronic tendering procedures with award criteria of lowest price, lowest cost or price and quality ratio where award of contract has been made with electronic reverse auction, the Electronic documents of the Electronic bid shall be unlocked only for the Economic Operator who submitted the winning bid in the electronic reverse auction. Upon completion of the electronic reverse auction, the MTender shall unlock and publish online the Electronic documents of the Electronic bid of the Economic Operator who submitted the winning bid in the electronic reverse auction. In the event that this Economic Operator is not determined to be qualified to perform the Contract or the Technical Offer is determined to be substantially non-responsive to the Tender Documents and the Electronic bid has been rejected by the decision of the Tender Committee, the MTender shall unlock for the evaluation the second ranked bid from the auction and so forth.
35. In electronic tendering procedures with award criteria of lowest price and lowest cost without electronic reverse auction to award the Contract, the MTender shall initially unlock and publish online the Electronic documents of the Electronic bid of the Economic

Operator with the lowest price or the lowest cost provided for in the Tender Form. In the event that the Economic Operator that has submitted the lowest price or the lowest cost is not determined to be qualified to perform the Contract or the Technical Offer is determined to be substantially non-responsive to the Tender Documents and has been rejected by the final decision of the Tender Committee, the MTender shall unlock for the evaluation the second ranked bid and so forth.

36. In electronic tendering procedures with award criteria of price and quality ratio and without the electronic reverse auction to award the Contract, upon expiry of the submission deadlines the MTender shall first unlock and publish online the ESPD Declaration for examination of the Tender Committee, whenever possible supported by automated services of the MTender. In the event that any ESPD declaration is identified as containing mandatory grounds for the exclusion of the Economic Operator, the Economic Operator shall be disqualified, unless clarifications are furnished in due course in accordance to procedure provided in the Tender Documents. When decision of the Client on qualification and disqualification is recorded and notified on the system, the MTender shall simultaneously unlock the Electronic documents of all Electronic bids submitted by qualified Economic Operators for evaluation of Technical and Financial Offers.
37. To facilitate automated evaluation supported by the MTender service, the evaluation process in the electronic tendering procedure is organised in stages. All award criteria which have an associated evaluation formula shall be automatically evaluated by the MTender. Award criteria which cannot be expressed in the evaluation formula shall be evaluated by the Tender Committee. The provided score for the overall valuation of the technical and financial offer shall be equal to 100 points in accordance with weights and award criteria provided in the Contract Notice and in the Tender Documents. The Tender Committee may undertake each stage of the evaluation separately, as appropriate in accordance to the evaluation methodology set up by the Client in the Contract Notice and in the Tender Documents. If applicable, each stage of evaluation is recorded in real time and closing of the evaluation stage is communicated by a notification published online in the MTender web portal.
38. In electronic tendering procedures on the MTender, the electronic auctions may be used with award criteria of lowest price, lowest cost or price and quality ratio.
39. If applicable, the Client shall invite Economic Operators in the Contract Notice to submit their Electronic bids and register to participate in the electronic auction.
40. The MTender shall launch the electronic auction at the scheduled date and time as specified in the Contract Notice, provided at least one Economic Operator submitted the Electronic bid and registered for the auction. In case of any reasons to postpone the launch of the auction, the Client shall amend the Contract Notice and stipulate new dates and time of opening of the auction. When launched, the auction cannot be suspended or terminated.
41. During the electronic auction, the Economic Operator shall be allowed to preview in real time the status of the e-Auction. The MTender shall display the code of the e-Auction, the type of the e-Auction used, the currency of bids, the instruction for participants, the current best bid and the current ranking of the Economic Operators listed under codes

obtained during registration for the auction, and, if applicable, the time left to the end of the round, the possibility of automatic extension along with the number of possible extensions.

42. When the electronic auction closes, the MTender shall generate and publish on the MTender web portal the final ranking for the completed auction in order to notify the Economic Operators about best bid, ranking and detailed information of the Economic Operators who participated in the auction, best bid of each Economic Operator, and if applicable, ranking information per round.
43. In the electronic auction with fixed budget or award criteria of lowest cost and price and other criteria ratio, the initial price for the auction is set at the estimated value of procurement as published in the Contract Notice.
44. In the electronic auction with award criteria of lowest price or lowest cost the award criteria shall have an associated evaluation formula to be automatically evaluated by the MTender.
45. In the electronic auction organised in rounds where the Economic Operators compete based on a number of rounds, each Economic Operator registered for auction can provide a single bid for each round. The initial price for the auction in rounds is set on the basis of the price of the bid as offered by the Economic Operator in the Tender Form. The initial price for the next round is set at the price offered by the Economic Operator in the previous round; in each round of the auction the Economic Operator who submitted the lowest price in the previous round is bidding last.
46. Upon completion of the qualification and scoring by the Tender Committee, the MTender will automatically rank the Economic Operators on the basis of the evaluation and publish ranking on the MTender web portal. After publishing the ranking, the MTender shall generate the evaluation report, containing all the details, minutes and information about the evaluation process and every member of the Tender Committee shall approve the evaluation report. The evaluation report may be subject to a review by the Client. In case the evaluation report is rejected, adequate and detailed reasons shall be provided and recorded on the MTender. In such case re-evaluation by the Tender Committee shall be undertaken or the electronic tendering procedure shall be cancelled.
47. The final evaluation decision including the evaluation report shall be published by the Client on the MTender web portal to notify the Economic Operators about results of the electronic tendering procedure.
48. The notification of the award of the Contract is subject to a right to complain of the unsuccessful Economic Operators who submitted a valid Electronic bid in the open procedure and participated in the electronic auction, if applicable. The Economic Operator who submitted a complaint within the prescribed standstill period of 6 or 10 days as applicable shall publish a notification on the MTender web portal providing a reference number of the submitted complaint. In such case, the electronic tendering procedure shall be suspended for a period of 20 days or until a resolution of the complaint is published on the MTender web portal.
49. Upon expiry of the standstill period, or after resolving complaints if any, the Procurement Officer shall generate the electronic document comprising the Contract Agreement in

accordance to the terms and conditions of contract set up in the Tender Documents for execution of the Contract.

50. In case of cancellation of the electronic procurement procedure, the Client shall publish a notification on the MTender web portal on cancellation of the procedure and the termination of the obligations of the Economic Operators who submitted Electronic bids and provide reason for cancellation in accordance to Article 67 of the Law.
51. Starting from the registration of the Contract, the Contract Register shall automatically record and publish information about management of the Contract, including publication of contract milestones and payment schedules, amendments and extensions of the Contract, if applicable, receivables, performance guarantee, termination or completion of the Contract and all payments processed under the Contract.
52. The Operator of the MTender and the MTender networking electronic procurement platforms reserve the right to modify, add, delete and/or change the content design on the platform at any time as it may in its absolute discretion find to be expedient and without giving any notice. It is the user's responsibility to refer to the terms and/or any change or addition to the same while accessing the MTender.
53. It is Registered Users responsibility to comply with the system requirements: hardware, software, Internet connectivity at user premises to access the MTender services. The Operator of the MTender and the MTender networking electronic procurement platforms are not responsible for non-compliance for the above by user.
54. Clients do not pay any fees for accession and conduction of transactions on the MTender.
55. The Economic Operators may be required to pay transaction fees in accordance with the applicable laws.
56. The Operator of the MTender and the MTender networking electronic procurement platforms do not give, share, sell or transfer any personal information to a third party unless required to do so by law. If you do not want any personal or business information collected, please do not submit it to us; however, without this information we will be unable to process your online transaction. When Registered User provides personal or business information to conduct an online transaction, it is used only for the purpose of conducting the specific online transaction that Registered User has requested.
57. When Registered Users visit the MTender to browse, read pages, or download information, the MTender may automatically collect and store only the following information used solely to make the MTender web portal more useful to visitors, to learn about the number of visitors and the types of technology our visitors use:
 - a. The Internet domain and IP address from which Registered User accessed the MTender web portal;
 - b. The date and time of the access to the system;
 - c. The pages visited; and
 - d. If accessed from another website, the address of that website.
58. Digital certificates shall be used to identify users, if applicable. For certification purposes, users may use their own digital certificates, or the certificates provided by the MTender networking electronic procurement platforms. User certificates shall be validated based on the certificates themselves and the corresponding certification chain.

59. The MTender Operator and the MTender networking electronic procurement platforms shall use backup and protection mechanisms for information associated with Electronic tendering procedures. The MTender networking electronic procurement platforms shall make technologies available that allow technical and compliance audits to be carried out on them. The MTender networking electronic procurement platforms must guarantee physical and logical security mechanisms to protect services and information stored on the systems. All MTender services must be synchronized to the NTP (Network Time Protocol), set using UTC (Coordinated Universal Time).
60. When the Terms of Use no longer apply, all of the legal rights, obligations and liabilities that you and the Operator of the MTender have benefited from, been subject to (or which have accrued overtime whilst the Terms of Use have been in force) or which are expressed to continue indefinitely, shall be unaffected by this cessation, and the provisions of the Laws of Republic of Moldova shall continue to apply to such rights, obligations and liabilities indefinitely.