

Lesson 5

Components of contracts with appraisers

In this lesson you will learn more about:

- the different components of contracts with appraisers
- the different sections of a contract
- different items of remuneration and what they include
- the basic principles for settling remuneration items
- creating payment plans in order to minimise commercial risks for GIZ and avoid building up a large volume of payables.
- significance of terms of reference and general terms and conditions of contract

5. The different components of contracts with appraisers

A contract consists of several components. As well as the different sections, there are also a number of annexes, some of which are binding. Contracts with appraisers are normally made up of the following components, which CoSoft will assist you in preparing and finalising.

P+R Rule

Contract document with all the contract-specific details that have been negotiated, above all remuneration and payment.

Special agreement and terms of reference (for example): these documents describe the exact nature of the service to be provided or the labour/works to be performed.

General terms of contract outlining the general rules that apply to all GIZ service and works/labour contracts in the partner country (e.g. copyrights and GIZ's Code of Conduct).

Other annexes: Other annexes may be agreed, such as billing guidelines and forms, regulations governing the reimbursement of travel expenses, reporting forms, project arrangements, etc. Please clarify, with a local lawyer if necessary, whether the annexes to the contract constitute an integral part of the contract and are legally binding in your country. In the event that they are not, you will need to find alternative solutions or workarounds and document them accordingly.

GIZ offices use the application Cosoft to award, conclude and implement contracts for services with a value of more than EUR 1,000 and for the various forms of agreement involving financing (financing agreements and local subsidies).

Exception: In cases where contract preparation is delegated to the officer responsible for the commission, the form provided in P+R is used as projects do not have CoSoft.

Link: <https://dms.giz.de/dms/livelink.exe/app/nodes/35717236>

The GIZ form 'Appraiser/Consultant Contract for Freelance Experts' is available in English, French and Spanish.

Contrary to P+R, it is of course possible to enter into contracts with a value of less than EUR 1,000 locally in order to ensure that arrangements are documented in writing.

5.1 The contract document

The contract document contains details of the specific arrangements negotiated with each appraiser. It includes the following sections:



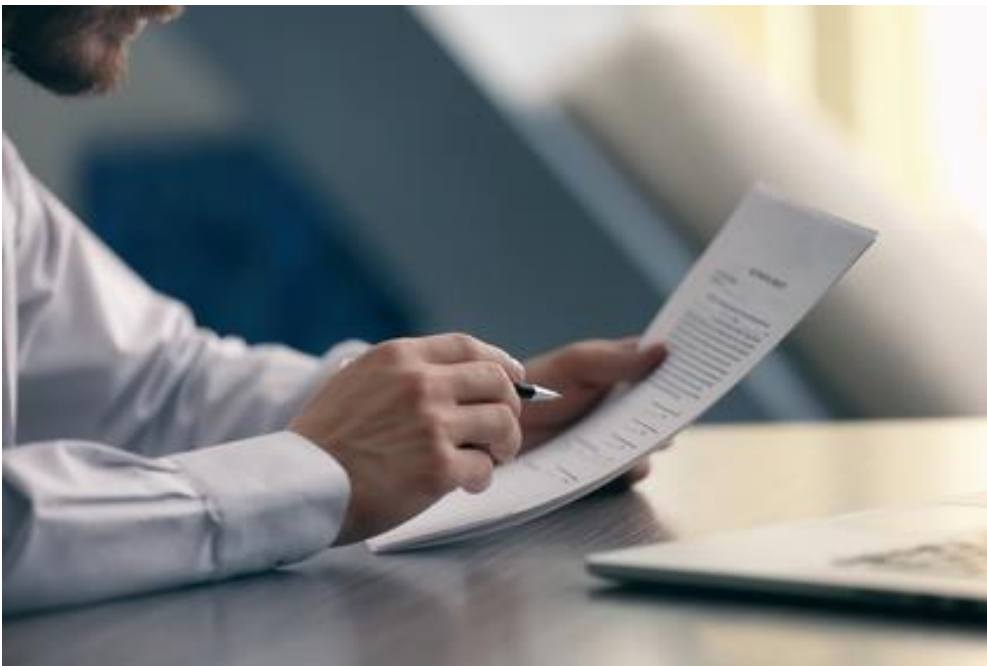
1. Purpose of the contract
2. Terms of reference – insert reference to the special arrangements for further details
3. Period of assignment
4. Reports/appraisals – insert reference to the special arrangements for further details
5. Remuneration
6. Payments
7. Other provisions –stipulate the obligation to observe generally accepted accounting principles and GIZ's right to view relevant documents.
8. General Terms of Contract – GIZ's general terms of contract (AVB) outline the conditions governing all contracts with appraisers. These should therefore always constitute an integral component of such contracts and be included as an annex. This section also sets out the number of contract copies and stipulates that changes must be made in writing.

The officer responsible for the commission will provide you with the details you need for sections 1 to 4. It is up to the GIZ office, however, to verify that this information is plausible and complete.

The GIZ Office negotiates the remuneration agreed in section 5 based on the fee schedule established by the GIZ office (this is dealt with in greater detail in

lesson 4). Prices need to be in line with market conditions. The GIF office is also responsible for reviewing the commercial risks, drawing up the payment plan referred to in section 6 and specifying the invoicing requirements.

5.1.1 Remuneration



Remuneration is made up of a number of different cost items. These are first and foremost the fee paid for the services actually provided, followed by the different **reimbursement items**, i.e. the costs incurred by the appraiser in delivering the services/works which he/she receives back from GIZ.

When preparing a contract, please ensure that it contains the **maximum contract value**. A maximum limit must be specified for all items in a contract. Use wording such as 'Travel expenses will be reimbursed on provision of evidence based on GIZ's regulations governing the reimbursement of travel expenses, in xxx (country) up to the equivalent of EUR 300, rather than 'Travel expenses will be covered as required on provision of evidence', for example.

You will need to take a detailed look at the individual cost items in order to optimise negotiations and make appropriate arrangements. These items are shown below.

- █ **Fees:** usually agreed for working days or months based on the service or works/labour actually provided. This topic is examined in greater detail in lesson 4.
Fees may also be agreed and paid for weekends, provided the appraiser



actually works these days. They can be agreed for travel days too, where possible at reduced rate.

- Per-diem allowance:** GIZ pays a per-diem allowance for days on which appraisers are away from their place of residence on business trips. This allowance covers any additional expenses incurred, such as meals in restaurants. It is paid for the duration of the business trip, including weekends.

The per-diem allowance is a daily lump sum. GIZ offices usually keep a list of the per-diem allowances for their country.

- Overnight accommodation allowance:** This allowance covers the cost of accommodation on business trips, excluding breakfast, which is covered by the per-diem allowance. If you are familiar with hotel prices, you should agree on a lump-sum amount per night. If hotel prices vary widely, you should agree on a lump sum somewhere in the middle. This is more cost-effective for GIZ than reimbursing the full cost of an expensive hotel and makes the subsequent process of settling expenses a lot easier too. You should only agree on a budget and on the reimbursement of hotel costs on provision of evidence (original hotel bill) if you are really unable to gauge hotel costs in an area.

- Materials and equipment (should only be agreed in exceptional circumstances):** In cases where an appraiser needs to procure materials and equipment (e.g. specialist literature for compiling a study), this must be agreed as a reimbursement item on provision of original receipts. The contract award rules for GIZ offices also apply to the procurement of materials and equipment, i.e. competitive tendering must be carried out for procurements with a value of over EUR 1,000, and the procedure must be documented accordingly. Where an appraiser is to procure materials and equipment, include a contract provision that on completion of the works, costs will only be reimbursed if the items procured are handed over to GIZ/the partner organisation along with the corresponding documents (user manuals, guarantees etc.) and with a record of surrender by way of verification.

The obligation to hand over materials and equipment is to be documented in the special agreements

- Travel expenses:** These cover the actual cost of transport, e.g. bus or plane tickets. If you are familiar with ticket prices, you should agree on a lump sum. You can also stipulate that tickets nevertheless be submitted so that you can check the travel dates (as a basis for reimbursing per-diem and overnight accommodation allowances).

Travel expenses also include ancillary **travel expenses**, for which you should agree a (small) lump sum covering standard costs for vaccinations, visa, passport photos, transport to and from the airport, communication costs, taxis, buses and trains, etc.)

- Other costs:** This item covers any reimbursable costs that are not included above. If, for instance, documents need to be photocopied or subsistence expenses need to be paid for a workshop, then these costs can be agreed and listed here. Costs may be settled on provision of evidence. Alternatively, a lump sum may be agreed if you are able to reliably estimate the amount involved, e.g. EUR 10 for each participant on provision of a signed participant list.



Lump sums: You should always try to agree on appropriate lump sums, above all for small amounts and for items whose prices are familiar to you. Lump sums are easier to settle – for the appraiser/ and for the GIZ office – and often provide the best outcome for both sides. Where a higher overnight accommodation allowance is agreed, appraisers are likely to use a hotel that is priced accordingly and have the costs reimbursed by GIZ. If you agree on a lump-sum allowance for a medium-range price instead, the appraiser may well stay in a cheaper hotel and receive the higher lump sum. For GIZ, this is still more cost-effective than reimbursing the higher amount on provision of evidence.



You may also agree a lump sum for the entire contract value or for parts of the contract that are unlikely to change. This is the procedure usually used for contracts for work and labour in particular, where GIZ is interested in the actual outputs rather than the inputs.

Where lump sums are agreed, the internal contract documents (for example detailed break down in price offer) must clearly show how these amounts were calculated.

A lump sum is a fixed price, and cannot be changed at a later date. If the appraiser requires more time to carry out the work than originally planned, the price still does not change. The appraiser assumes this risk. By the same token, however, if the work is completed very efficiently and more quickly than planned, GIZ does not have the right to reduce the lump sum. We pay the entire amount agreed for the work completed.

A lump sum can only be modified if the terms of reference and the scope of services to be provided changes. If we increase the scope of work to be carried out, the remuneration originally agreed must also be increased. If we reduce the scope, then the remuneration must be reduced accordingly.

Lump sums are easier to settle and should be agreed wherever possible. However, this can only be done in cases where we can estimate the prices and quantities accurately enough to specify a reasonable lump sum.

If you agree on a lump sum, then you must include the following sentence in the contract: 'This lump sum covers all costs'. This wording appears by default in the CoSoft standard contract.

In countries where lump sums do not comply with tax law, all items must be settled as vouched expenses. This arrangement must be clarified in advance with a local lawyer.

Summary – Types of remuneration	
On provision of evidence up to (original vouchers)	Example: Ticket (return flight) Economy class from Moscow to Beijing on provision of evidence (presentation of original ticket and travel agency invoice) up to EUR 2,000.
Lump sum	Example: A lump sum of EUR 15,000 will be paid on performance of the services agreed in the terms of reference and submission of the final report pursuant to paragraph xxx of the contract. This lump sum covers all costs.
Lump sum on provision of evidence of completion	Example: Ancillary air travel costs EUR 30 per flight. Evidence of the completed flight must be provided. No evidence needs to be provided of the ticket price, however.

5.1.2 Payments



You should only agree on one final payment for short-term contracts. In such cases, the appraiser submits the final invoice and receives payment once he/she has provided the entire service or works/labour.

An advance payment may be agreed for longer-term contracts, or if the appraiser needs to pay for flights or hotels in advance. This amount should not exceed 40% of the fee plus up to 100% of the travel expenses. A lower amount may of course be set as well. At the end of the contract, the advance payment is offset against the final invoice for services or works/labour.

Example: Calculating an advance payment				
Contract value	EUR	30,000		
Fee	EUR	20,000	→ max. 40% →	EUR 8,000
Travel expenses	EUR	5,000	→ max. 100% →	EUR 5,000
Other costs	EUR	5,000		EUR
Maximum advance payment				EUR 13,000

Advance payments always involve a certain element of risk. The appraiser may not deliver the services at all, or the quality may be so poor that the amount he/she would be entitled to receive would be less than the amount actually received in advance. It is usually very difficult to retrieve the advance payment in such cases. Advance payments should be kept to a minimum in order to reduce risks.

Advance payments should never be paid for contracts that run for less than one month, with the exception of travel expenses, which can be paid in such circumstances. Decisions in relation to a particular country are made by the administrative manager.

Example of a contract with two payments

Mr Miller has a contract for up to EUR 20,000, which runs from 15 January 2017 to 15 March 2018. He will receive an advance payment to pay for his flight and hotel costs. This advance payment will be deducted from the final invoice.



As the contract is not entered into on a lump-sum basis, the final payment is an 'up to' payment. In other words, it may be lower. If the appraiser only invoices EUR 18,750, the entire advance payment will of course be offset and only EUR 10,750 will be paid out.

More than one interim payment may be agreed for longer contract terms. It is important, however, to clearly state the payment conditions. These **interim payments should not be used as additional advance payments**. Instead, it should be agreed that they constitute settlement of some of the services or works/labour delivered by the appraiser to GIZ. In each interim payment, any advance payment should be offset against receivables.

Type of payment	Date	Payment of up to	Prerequisites
Advance payment	15 January 2017	EUR 8,000	Paid after signature of the contract signature and written request for payment
Final payment	15 March 2018	EUR 12,000	Paid on submission of final invoice for services or works/labour provided, minus the advance payment, which has been paid but not yet offset.

Example of a contract with three payments

Mr Smith is to be hired on a **six-month** contract that will run from 15 January to 15 July 2017. He will deliver two workshops, one in March and one in June, and will receive a **contract with a value of up to EUR 40,000**.

Mr Smith does not want to wait until July for payment. He believes that a 40% advance payment is too low, given the length of the contract.

Would it be better for him to receive two contracts, each of which would provide for an advance payment, and then issue a final invoice? Most definitely not.



The following arrangement is therefore made: He will receive an advance payment of EUR 10,000 to pay for the ticket and hotel for the first workshop. Once he has completed this workshop, he can submit an interim invoice for about EUR 20,000. He receives this amount as payment. He submits his final invoice after the second workshop, listing his costs for running the event. Again, the invoice amounts to about EUR 20,000. The advance payment of EUR 10,000, which has not yet been settled, is deducted from this amount, so that he is due payment of just EUR 10,000. The payment plan is structured as follows:

Type of payment	Date	Explanation	Payment of up to	Prerequisites
Advance payment	15 January 2012	+ 10,000 advance payment	EUR 10,000	Paid following signing of contract and written request for payment
Interim payment	15 April 2012	+ 20,000 Settlement of costs for services provided	EUR 20,000	Costs have been settled for the services provided
Final payment	15 July 2012	+ 20,000 Settlement of costs for services provided - 10,000 Offsetting of advance payment	EUR 10,000	Paid on submission of final invoice for delivery of services less the advance payment, which has not yet been settled

As you can see under the heading 'Explanation', the amounts settled (for fees and travel expenses) tally with the contract value. The balance for the advance payment is EUR 0, i.e. it is paid out (+ EUR 10,000) and then offset (- EUR 10,000).

It goes without saying that the overall amount paid may never exceed the contract value. The amounts paid are made up of the advance payment, settlement of costs for services delivered at the contractually agreed prices and offsetting of the advance payment.

When you agree on interim payments, make sure that you agree them based on the services or works/labour already provided and that the appraiser issues interim invoices. Otherwise, the total amount of unsettled advance payments will soon exceed the 40% limit (contract value plus travel expenses) if you agree further advance payments. This would be contrary to GlZ's commercial principles.

5.2 Special arrangements with terms of reference

The special arrangements make up the technical part of the contract. They comprise the terms of reference, the place where services or works/labour are to be provided and the reporting dates. If the appraiser is to procure materials and equipment, the relevant details (such as the contract award procedure and handover of materials and equipment) are to be given here.

Special arrangements could also cover any other (country-specific) rules that may need to be specified. All country-specific requirements governed by contractual law must be laid down in the special agreement.

The terms of reference specify the services or works/labour to be provided by the appraiser/consultant. In cases where the officer responsible for the commission is responsible for preparing this document, the GIZ office should review the contents in terms of plausibility and quality (relevance, clarity) and request further details if required.

The quality of the terms of reference is important. If the services or work/labour provided by an appraiser are poor, clear and precise terms of reference will help you assess performance and (in the worst-case scenario) verify and take appropriate legal action for non-delivery or non-conformity with the agreed arrangements. GIZ can only insist on delivery of the services or works/labour agreed in the terms of reference.

Do not unnecessarily repeat any facts and figures from the individual provisions of the contract in the special agreement. If any of this information changes, remember to change it in all the relevant documents/sections. Failure to do this could result in uncertainty and even lead to differences of opinion between the contractual partners.

5.3 General terms of contract (local)



The contract and the special agreement contain key information on the delivery of services or works/labour. Standard general conditions – GIZ's General Terms of Contract Governing Contracts for supplying services and work – also exist and apply universally to all contracts for services and works/labour. They are not negotiated individually for each appraiser. GIZ uses this document to protect the company against general risks and to safeguard its legitimate interests when entering into contracts. GIZ's general terms of contract constitute an integral component of the contract and must be attached as an annex. Each GIZ office must make sure that the general terms of contract constitute an integral part of the contract under local law and are legally binding. Local standard terms of contract are available in both CoSoft and in P+R. The GIZ office should ask a local lawyer to check whether these

terms comply with the law of the partner country and whether they may need to be modified or supplemented.

CoSoft is the software application that GIZ offices must use to prepare contracts. It will help you

- ensure that contracts are complete and legally sound
- compile a database for contracts, appraisers/consultants and fees
- apply transparent procedures and evaluate your contracts.

