

## **VOLUME 2**

### **SECTION 1:**

## ***CONTRACT AGREEMENT***

## Contract Agreement

FINANCED BY EC CONTRIBUTION AND NATIONAL

CONTRIBUTION

PROJECT: MODERNIZATION OF ISKUR OFFICES

CONTRACT NUMBER: TR0203.01.3

This contract is concluded between :

Central Finance and Contracts Unit,  
Ehlibeyt Mahallesi, 6.Sokak,Ekşioğlu İş Merkezi, No: 16/8, Balgat, 06520,  
ANKARA.

(hereinafter called “the Contracting Authority”) of the one part  
and

.....  
.....  
.....

(hereinafter called “the Contractor”) of the other part.

Whereas the Contracting Authority is desirous that certain works should be executed by the Contractor, viz:

### LOT 2 :

Renovation of 5 buildings with basement and a total floor area of approximately 9 100 sq.m.

The renovation sites are located in; Ankara, İstanbul, Kayseri and Söke. In Söke two buildings will be renovated.

and has accepted a tender by the Contractor for the execution and completion of such works and the remedying of any defects therein.

It is hereby agreed as follows:

1. In this contract works and expressions shall have the meanings assigned to them in the contractual conditions set out below.
2. The following documents shall be deemed to form and be read and construed as part of this contract, in the following order of precedence:

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- a. the contract
- b. the Special Conditions (Part II)
- c. the General Conditions (Part I)
- d. the technical specifications
- e. the design documentation (drawings)
- f. the priced bill of quantities (after arithmetical corrections)/price breakdown
- g. the tender with the appendix
- h. any other document forming part of the contract.

Addenda shall have the order of precedence of the document they are modifying.

3. In consideration of the payments to be made by the Contracting Authority to the Contractor as hereinafter mentioned, the Contractor undertakes to execute and complete the works and remedy defects therein full compliance with the provisions of the contract.
4. The Contracting Authority hereby agrees to pay the Contractor in consideration of the execution and completion of the works and remedying of defects therein the amount of:

Contract price (excluding VAT/other taxes)

Euro ..... Euro.....,or  
(amount in figures) (amount in letters)

such other sum as may become payable under the provisions of the contract at the times and in the manner prescribed by the contract.

VAT shall be paid in compliance with the binding regulations, national law and international agreements concerning the execution of the program.

5. In witness whereof the parties hereto have signed the contract. This contract shall take effect on the date on which it is signed by the last party, namely the Contractor.

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**CONTRACTING AUTHORITY:**

Signed and sealed by

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Date:

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**CONTRACTOR:**

Signed and sealed by

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.....

In the capacity of

.....

Being fully authorised  
by and acting on behalf of

.....  
.....  
.....

Date

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ANKARA.

(hereinafter called “the Contracting Authority”) of the one part

and

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.....  
.....

(hereinafter called “the Contractor”) of the other part.

Whereas the Contracting Authority is desirous that certain works should be executed by the Contractor, viz:

### LOT 1 :

Construction of 16 new offices with basement and a total floor area of approximately 16 600 sq.m.

The sites of the offices are located in :Samsun Diyarbakır, Elazığ, Ağrı, Antalya, Ardahan, Çorum, Iğdır, Muş, Siirt, Niğde, Hatay, Gebze, Kilis, Bingöl and Balıkesir.

and has accepted a tender by the Contractor for the execution and completion of such works and the remedying of any defects therein.

It is hereby agreed as follows:

1. In this contract works and expressions shall have the meanings assigned to them in the contractual conditions set out below.

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2. The following documents shall be deemed to form and be read and construed as part of this contract, in the following order of precedence:
- i. the contract
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  - k. the General Conditions (Part I)
  - l. the technical specifications
  - m. the design documentation (drawings)
  - n. the priced bill of quantities (after arithmetical corrections)/price breakdown
  - o. the tender with the appendix
  - p. any other document forming part of the contract.

Addenda shall have the order of precedence of the document they are modifying.

3. In consideration of the payments to be made by the Contracting Authority to the Contractor as hereinafter mentioned, the Contractor undertakes to execute and complete the works and remedy defects therein full compliance with the provisions of the contract.
4. The Contracting Authority hereby agrees to pay the Contractor in consideration of the execution and completion of the works and remedying of defects therein the amount of:

Contract price (excluding VAT/other taxes)

Euro ..... Euro.....,or  
(amount in figures) (amount in letters)

such other sum as may become payable under the provisions of the contract at the times and in the manner prescribed by the contract.

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**CENTRAL FINANCE AND CONTRACTS UNIT –CFCU**

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Date:

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**CONTRACTOR:**

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In the capacity of

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Being fully authorised  
by and acting on behalf of

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Date

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## VOLUME 2

### SECTION 2: GENERAL CONDITIONS FOR WORKS CONTRACTS FINANCED BY THE EUROPEAN COMMUNITY

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## PRELIMINARY PROVISIONS

### ARTICLE 1: Definitions

- 1.1 The headings and titles in these General Conditions shall not be taken as part thereof or be taken into consideration in the interpretation of the contract.
- 1.2 Where the context so permits, words in the singular shall be deemed to include the plural and vice versa and words in the masculine shall be deemed to include the feminine and vice versa.
- 1.3 Words designating persons or parties shall include firms and companies and any organisation having legal capacity.

### ARTICLE 2: Law and language of the contract

- 2.1 The Special Conditions shall specify the law governing all matters not covered by the contract.
- 2.2 The contract and all written communications between the parties will be drafted in the language of the procedure.

### ARTICLE 3: Order of precedence of contract documents

- 3.1 Save where otherwise provided in the special conditions, the contract is made up of the following documents, in order of precedence:
  - a) the contract
  - b) the Special Conditions (Part II)
  - c) the General Conditions (Part I)
  - d) the technical specifications
  - e) the design documentation (drawings)
  - f) the priced bill of quantities (after arithmetical corrections)/price breakdown
  - g) the tender with the appendix
  - h) any other document forming part of the contract.

Addenda have the order of precedence of the document they are modifying.

- 3.2. The various documents making up the contract shall be deemed to be mutually explanatory; in cases of ambiguity or divergence, they should be read in the order in which they appear above.

## **ARTICLE 4: Communications**

- 4.1** Communications between the Contracting Authority and/or the Supervisor on the one hand, and the Contractor on the other, shall be exclusively in writing. Unless otherwise specified in the Special Conditions, communications between the Contracting Authority and/or the Supervisor on the one hand, and the Contractor on the other hand, shall be sent by post, cable, telex, fax transmission, or delivered by hand, to the addresses designated by the Parties for that purpose.
- 4.2** If the person sending a communication requires acknowledgment of receipt, he shall indicate this in his communication. Whenever there is a deadline for the receipt of a written communication, the sender should ask for an acknowledgement of receipt of his communication. In any event, the sender shall take all necessary measures to ensure receipt of his communication.
- 4.3** Wherever the contract provides for the giving or issue of any notice, consent, approval, certificate or decision, unless otherwise specified such notice, consent, approval, certificate or decision shall be in writing and the words "notify", "certify", "approve" or "decide" shall be construed accordingly. Any such consent, approval certificate or decision shall not unreasonably be withheld or delayed.

## **ARTICLE 5: Supervisor and Supervisor's representative**

- 5.1** The Supervisor shall carry out the duties specified in the contract. Except where expressly stated in the contract, the Supervisor shall not have authority to relieve the Contractor of any of his obligations.
- 5.2** The Supervisor may, from time to time, while retaining ultimate responsibility, delegate to the Supervisor's representative any of the duties and authority vested in the Supervisor and he may at any time revoke such delegation or replace the representative. Any such delegation, revocation or replacement shall be in writing and shall not take effect until a copy thereof has been delivered to the Contractor.
- 5.3** Any communication given by the Supervisor's representative to the Contractor in accordance with the terms of such delegation shall have the same effect as if it had been given by the Supervisor, save that:
- a) a failure on the part of the Supervisor's representative to reject any work, materials or plant shall not prejudice the authority of the Supervisor to reject such work, materials or plant and to give the instructions necessary for the rectification thereof;
  - b) the Supervisor shall be at liberty to reverse or vary the contents of such communication.

- 5.4** Instructions and/or orders issued by the Supervisor shall take the form of administrative orders. Such orders shall be dated, numbered and entered by the Supervisor in a register, and copies thereof delivered by hand, where appropriate, to the Contractor's representative.
- 5.5** The Contractor shall ensure that the Supervisor has free access to the places in which the works covered by the contract are carried out and shall provide the supervisor with any information he might require. The Supervisor may arrange for the supervision and inspection of any item being prepared and manufactured for supply under the contract. To this end, he may apply such tests as he considers necessary from among those provided for in these General Conditions, supplemented and amended where appropriate by the Special Conditions, in order to establish whether the materials and objects are of the requisite quality and quantity. He may require the replacement or repair, as the case may be, of items, which do not conform with the contract, even after their installation. He may also propose a reduction in price, which, if accepted by the Contractor, shall cover the latter for any imperfections, which have been found. The Contractor may not rely on the fact that such supervision and inspection have been effected in order to evade his responsibility in the event of the works being rejected by the Supervisor.
- 5.6** The Contractor shall place at the disposal of the Supervisor, temporarily and free of charge, the patterns and instruments specified in the Special Conditions which are considered necessary for verifying and inspecting the works to be carried out and the items to be provided.
- 5.7** In the performance of his duties, the Supervisor shall not disclose information on the methods of manufacture and operation of the undertakings which he has obtained by reason of his supervision and inspection, except to those authorities that need to know it.

## **ARTICLE 6: Assignment**

- 6.1** An assignment shall be valid only if it is a written agreement by which the Contractor transfers his contract or part thereof to a third party.
- 6.2** The Contractor may not, without the prior written consent of the Contracting Authority, assign the contract or any part thereof, or any benefit or interest thereunder, except in the following cases:
- a) a charge, in favour of the Contractor's bankers, of any monies due or to become due under the contract;  
or
- b) the assignment to the Contractor's insurers of the Contractor's right to obtain relief against any other person liable in cases where the insurers have discharged the Contractor's loss or liability.

- 6.3** For the purpose of Article 6.2, the approval of an assignment by the Contracting Authority shall not relieve the Contractor of his obligations for the part of the contract already performed or the part not assigned.
- 6.4** If the Contractor has assigned his contract without authorisation, the Contracting Authority may, without giving formal notice thereof, apply as of right the sanctions for breach of contract provided for in Articles 60 and 61.
- 6.5** Assignees must satisfy the eligibility criteria applicable for the award of the contract.

## **ARTICLE 7: Subcontracting**

- 7.1** A subcontract shall be valid only if it is a written agreement by which the Contractor entrusts performance of a part of his contract to a third party.
- 7.2** The Contractor shall not subcontract without the prior written authorisation of the Contracting Authority. The elements of the contract to be subcontracted and the identity of the subcontractors shall be notified to the Contracting Authority. With due regard to the provisions of Article 4.3, the Contracting Authority shall notify the Contractor of its decision within 30 days of receiving the notification, stating its reasons if authorisation is withheld.
- 7.3** Subcontractors must satisfy the eligibility criteria applicable for the award of the contract.
- 7.4** The Contracting Authority shall not be bound to the subcontractors.
- 7.5** The Contractor shall be responsible for the acts, defaults and negligence of his subcontractors and their agents or employees, as if they were the acts, defaults or negligence of the Contractor, his agents or employees. The approval by the Contracting Authority following Supervisor's consent of the subcontracting of any part of the contract or of the subcontractor to perform any part of the works shall not relieve the Contractor of any of his obligations under the contract.
- 7.6** If a subcontractor has undertaken any continuing obligation extending for a period exceeding that of the maintenance period under the contract towards the Contractor in respect of the work executed or the goods, materials, plant or services supplied by the subcontractor, the Contractor shall, at any time after the expiration of the maintenance period, transfer immediately to the Contracting Authority, at the Contracting Authority's request and cost, the benefit of such obligation for the unexpired duration thereof.
- 7.7** If the Contractor enters into a subcontract without approval, the Contracting Authority may, without giving formal notice thereof, apply as of right the sanctions for breach of contract provided for in Article 60.

# OBLIGATIONS OF THE CONTRACTING AUTHORITY

## ARTICLE 8: Supply of documents

- 8.1** Save where otherwise provided in the special conditions, within 30 days of the signing of the contract, the Supervisor shall, on behalf of the Contracting Authority, provide the Contractor, free of charge, with a copy of the drawings prepared for the performance of the contract and a copy of the specifications and other contract documents. The Contractor may purchase additional copies of these drawings, specifications and other documents, in so far as they are available. Upon the issue of the maintenance certificate, or upon final acceptance, the Contractor shall return to the Supervisor all drawings, specifications and other contract documents.
- 8.2** Unless it is necessary for the purposes of the contract, the drawings, specifications and other documents provided by the Contracting Authority shall not be used or communicated to a third party by the Contractor without the prior consent of the Supervisor.
- 8.3** The Supervisor shall have authority to issue to the Contractor, on behalf of the Contracting Authority, administrative orders incorporating such supplementary documents and instructions as are necessary for the proper execution of the works and the remedying of any defects therein.
- 8.4** The special conditions must indicate the procedure used, if necessary, by the Contracting Authority and the Supervisor to approve drawings and other documents provided by the Contractor.

## ARTICLE 9: Access to the site

- 9.1** The Contracting Authority shall, in due time and in conformity with the progress of the works, place the site and access thereto at the disposal of the Contractor in accordance with the programme of performance referred to in these General Conditions. The Contractor shall afford other persons concerned every reasonable opportunity to carry out their work, as set out in the Special Conditions or as required by administrative orders.
- 9.2** Land procured for the Contractor by the Contracting Authority shall not be used by the Contractor for purposes other than the performance of the contract.
- 9.3** The Contractor shall keep any premises placed at his disposal in good condition while he is in occupation. He shall, if so required by the Contracting Authority or the Supervisor, restore them to their original state on completion of the contract, taking into account normal wear and tear.

**9.4** The Contractor shall not be entitled to any payment for improvements resulting from work carried out on his own initiative.

## **ARTICLE 10: Assistance with local regulations**

**10.1** The Contractor may request the assistance of the Contracting Authority in obtaining copies of laws, regulations and information on local customs, orders or bye-laws of the country where the works are located which may affect the Contractor in the performance of his obligations under the contract. The Contracting Authority may provide the assistance requested to the Contractor at the Contractor's cost.

**10.2** If necessary, the Contractor shall duly notify the Contracting Authority of details of the works so that the Contracting Authority can obtain the requisite permits or import licences.

**10.3** If necessary, the Contracting Authority will undertake to obtain, in accordance with the Special Conditions, the requisite permits or import licences within a reasonable period, taking account of the performance dates for the contract.

**10.4** Subject to the provisions of the laws and regulations on foreign labour of the states in which the supplies are to be delivered, the Contracting Authority shall make every effort to help the Contractor obtain all the visas and permits required for the personnel whose services the Contractor and the Contracting Authority consider necessary and residence permits for their families.

# OBLIGATIONS OF THE CONTRACTOR

## ARTICLE 11 : General Obligations

**11.1** The Contractor shall, with due care and diligence, and in accordance with the provisions of the contract, design the works to the extent stated in the contract, and execute, complete and remedy any defects in the works. The Contractor shall provide all superintendence, personnel, materials, plant, equipment and all other items, whether of a temporary or permanent nature, required for the design, execution and completion of works, and for remedying any defects, in so far as is specified in, or can be reasonably inferred from, the contract.

**11.1.2** The Contractor shall carry out, and assume responsibility for, the design of the works with the help of experienced designers satisfying the criteria laid down by the Contracting Authority. He shall draw up the requisite technical documents according to the provisions laid down in the special conditions and technical specifications. These documents must be submitted to the Supervisor for approval, in accordance with the Special Conditions, and may be corrected at the Contractor's expense to satisfy the Contracting Authority's contractual requirements and eliminate errors, omissions, ambiguities, inconsistencies and other drafting defects. The Contractor shall train the Contracting Authority's personnel and deliver and update the set of detailed documents and operating and maintenance manuals, in accordance with the Special Conditions.

**11.2** The staff and workmen employed by the Contractor must be sufficient in number, and each must have the qualifications necessary to ensure due progress and satisfactory execution of the works. The Contractor shall immediately replace all persons indicated by the Supervisor, in a letter stating reasons, as hampering the proper execution of the works. The Contractor shall make his own arrangements for the engagement of all staff and labour. He shall comply with all the relevant labour laws applying to his employees, shall duly pay them and afford them all their legal rights.

**11.3** The equipment, which the Contractor has at the site, shall be deemed to be for the purpose of carrying out the works. The Contractor shall not be entitled to remove it without the written consent of the Supervisor unless he shows that the said equipment is no longer required for the performance of the works.

**11.4** The Contractor shall take full responsibility for the adequacy, stability and safety of all operations and methods of construction under the contract.

**11.5** The Contractor shall comply fully with any administrative orders given to him. Where the Contractor considers that the requirements of an administrative order exceed the authority of the Supervisor or the scope of the contract, he shall, on pain of being time-barred, notify the Supervisor of this fact within 10 days of



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receiving the administrative order and inform the Contracting Authority. Execution of the administrative order shall be suspended during this period.

The Contractor shall draw up and submit for the Supervisor's approval a programme of performance of the contract, in accordance with the detailed rules laid down in the Special Conditions.

Where appropriate and within a period not exceeding three weeks, the Contractor must, in response to a reasoned request from the Supervisor, be able to provide a detailed breakdown of his prices.

The Special Conditions shall specify any detailed drawings to be drawn up by the Contractor and submitted for the Supervisor's approval. The same shall apply to documents and items, which are to be submitted to the Supervisor for endorsement or acceptance. These detailed drawings, documents and items may not be reproduced or used for another purpose by the Contracting Authority, nor communicated to third parties, except with the Contractor's agreement and on payment of fair compensation.

- 11.6.** The Contractor shall either give an address for service or give an address close to the works, or appoint an agent residing at that address. He shall notify the Contracting Authority of the address for service or other address. Should he fail to fulfil this obligation within two months of being notified of the approval of the contract, all notifications concerning the contract shall be valid when they are sent to the address given in the Special Conditions.

After final acceptance of the works, the Contractor shall be relieved of this obligation. Should he fail to inform the Contracting Authority of a change of address before final acceptance of the works, all notifications concerning the contract shall be valid when they are sent to the address given in the Special Conditions.

- 11.7** The Contractor shall respect and abide by all laws and regulations in force in the state of the contracting authority and shall ensure that his personnel, their dependants, and his local employees also respect and abide by all such laws and regulations. The Contractor shall indemnify the Contracting Authority against any claims and proceedings arising from any infringement by the Contractor, his employees and their dependants of such laws and regulations.

- 11.8** If the Contractor or any of his subcontractors, agents or servants offers to give or agrees to offer or to give or gives to any person, any bribe, gift, gratuity or commission as an inducement or reward for doing or forbearing to do any act in relation to the contract or any other contract with the Contracting Authority; or for showing favour or disfavour to any person in relation to the contract or any other contract with the Contracting Authority, then the Contracting Authority may, without prejudice to any accrued rights of the Contractor under the contract, terminate the contract in accordance with the relevant provisions of these General Conditions.

**11.9** The Contractor shall treat all documents and information received in connection with the contract as private and confidential. He shall not, save in so far as may be necessary for the purposes of the contract's execution, publish or disclose any particulars of the contract without the prior consent in writing of the Contracting Authority or the Supervisor after consultation with the Contracting Authority. If any disagreement arises as to the necessity for any publication or disclosure for the purpose of the contract, the decision of the Contracting Authority shall be final.

The Special Conditions shall list the documents and items which may be placed at the disposal of the Contractor, at the latter's request, to facilitate his work. The Special Conditions shall specify the date and conditions for the return of these documents and items. The Contractor may purchase, in so far as they are available, additional copies of these drawings, documents and items. The Supervisor may not hand over these drawings, documents and items until the performance guarantee is established.

**11.10** If the Contractor is a joint venture or consortium of two or more persons, all such persons shall be jointly and severally bound to fulfil the terms of the contract according to the law of the state of the Contracting Authority and shall, at the request of the Contracting Authority, designate one of such persons to act as leader with authority to bind the joint venture or consortium. The composition or constitution of the joint venture or consortium shall not be altered without the prior consent in writing of the Contracting Authority.

**11.11** Save where the European Commission requests or agrees otherwise, the Contractor shall take the necessary measures to ensure the visibility of the European Union financing or cofinancing. These measures must comply with the rules laid down and published by the Commission on the visibility of external operations.

## **ARTICLE 12: Superintendence of the works**

**12.1** The Contractor shall superintend the works himself or appoint a representative to do so. Such appointments shall be submitted to the Supervisor for approval. The approval may be withdrawn at any time. Should the Supervisor refuse to approve, or withdraw approval of the appointment, he shall set out the grounds on which his decision is based, and the Contractor shall submit an alternative appointment without delay. The address of the Contractor's representative shall be deemed to be the address for service given by the Contractor.

**12.2** If the Supervisor withdraws his approval of the Contractor's representative, the Contractor shall, as soon as is practicable, after receiving notice of such withdrawal, remove the representative from the works and replace him with another representative approved by the Supervisor.

- 12.3** The Contractor's representative shall have full authority to make any decision necessary for the execution of the works, to receive and carry out administrative orders and to countersign the work register referred to in these General Conditions or the Annexes.
- 12.4** In any event, the Contractor shall be responsible for ensuring that the works are carried out satisfactorily, including ensuring that the specifications and administrative orders are adhered to by his own employees and by his subcontractors and their employees.

## **ARTICLE 13: Performance guarantees**

- 13.1** The Contractor shall, within 30 days of receipt of the notification of the award of contract, furnish the Contracting Authority with a guarantee for the full and proper performance of the contract. The amount of the guarantee shall be specified in the Special Conditions. It shall not exceed 10% of the amount of the contract price, including any amounts stipulated in addenda to the contract.
- 13.2** The performance guarantee shall be held against payment to the Contracting Authority for any loss resulting from the Contractor's failure to perform his contractual obligations fully and properly.
- 13.3** The performance guarantee shall be in the format given in Volume 2 of the tender dossier and may be provided in the form of a bank guarantee, a banker's draft, a certified cheque, a bond provided by an insurance and/or guarantee company or an irrevocable letter of credit made out to the Contracting Authority. If the performance guarantee is to be provided in the form of a bank guarantee, a banker's draft, a certified cheque or a bond, it shall be issued by a bank or guarantee and/or insurance company in accordance with the eligibility criteria applicable for the award of the contract.
- 13.4** The performance guarantee shall be denominated in the currency in which the contract is payable. No payments shall be made in favour of the Contractor prior to the provision of the guarantee. The guarantee shall continue to remain valid until the contract has been fully and properly performed.
- 13.5** If, during the performance of the contract, the natural or legal person providing the guarantee is not able to abide by his commitments, the Contracting Authority shall give formal notice to the Contractor to provide a new guarantee on the same terms as the previous one. Should the Contractor fail to provide a new guarantee, the Contracting Authority may terminate the contract. Before applying these measures, it shall send the Contractor a registered letter with acknowledgement of delivery serving notice for the establishment of the performance guarantee. Such notice shall set a new time limit, which may not be less than 15 days and which shall commence on the date of delivery of the letter.

**13.7** The Contracting Authority shall demand payment from the guarantee of all sums for which the guarantor is liable under the guarantee due to the Contractor's default under the contract, in accordance with the terms of the guarantee and up to the value thereof. The guarantor shall, without delay, pay those sums upon demand from the Contracting Authority and may not raise any objection for any reason whatsoever. Before making any claim under the performance guarantee, the Contracting Authority shall notify the Contractor stating the nature of the default in respect of which the claim is to be made.

**13.8** Unless the Special Conditions provide otherwise, the performance guarantee shall be released within 30 days of the signing of the final statement of account. However, in view of the special features of the contract, the Special Conditions may provide for half the guarantee to be released or refunded on the date of provisional acceptance.

## **ARTICLE 14: Insurance**

**14.1** The Contractor shall take out insurance in both his own and the Contracting Authority's name against any loss or damage for which he is liable under the contract. Such insurance shall, unless the Special Conditions provide otherwise, cover:

- a) the works, together with materials and plant for incorporation therein, to the full replacement cost against all loss or damage from whatever cause arising other than from force majeure or risks attributable under the contract to the Contracting Authority;
- b) an additional sum of 15% of such replacement cost or any other amount specified in the Special Conditions, to cover all the additional direct or indirect costs of making good losses or damage, including professional fees and the cost of demolishing and removing any part of the works and of removing debris of whatever nature;
- (c) the Contractor's equipment and other things brought onto the site by the Contractor, for a sum sufficient to provide their replacement at the site.

**14.2** The Contractor may substitute the insurance provided for in Article 14.1 by a comprehensive insurance policy that covers, inter alia, the elements of Article 14.1(a), (b) and (c). In that case, the Contractor shall notify the insurer of the Contracting Authority's interest.

**14.3** The Contractor shall take out insurance against industrial accidents and civil liabilities arising from the execution of the works to any person employed by the Contractor on the works or to the Contracting Authority and its employees. Such liability shall be unlimited in the case of personal injuries.

**14.4** The Contractor shall take out insurance covering liability with regard to risks and civil liability resulting from an act or omission attributed to him, to his legal

successors or agents. Such insurance shall be for at least the amount stated in the Special Conditions. The Contractor shall ensure that all his subcontractors have taken out similar insurance.

**14.5** All the insurance referred to in this Article shall be taken out within 30 days of the notification of the award of the contract, and shall be subject to approval by the Contracting Authority. Such insurance shall take effect from the

commencement of the works and remain in force until final acceptance of the works. On being asked to do so by the Contracting Authority or the Supervisor, the Contractor shall promptly present the Contracting Authority with the insurance policy and proof that premiums have been duly paid.

**14.6** Notwithstanding the Contractor's insurance obligations under Article 14, the Contractor shall bear sole liability for, and indemnify the Contracting Authority and the Supervisor against, any claims by third parties for damage to property or personal injuries arising from the execution of the works by the Contractor, his subcontractors and employees.

## **ARTICLE 15: Performance programme**

**15.1** If the Special Conditions so require, the Contractor shall submit a programme of performance of the contract for the approval of the Supervisor. The programme shall contain at least the following:

- a) the order in which the Contractor proposes to carry out the works;
- b) the deadlines for submission and approval of the drawings;
- c) a general description of the methods which the Contractor proposes to adopt for carrying out the works; and
- d) such further details and information as the Supervisor may reasonably require.

**15.2** The Special Conditions shall specify the time limit within which the programme of performance must be submitted to the Supervisor for approval. They may set time limits within which the Contractor must submit all or part of the detailed drawings, documents and items. They shall also state the deadline for the Supervisor's approval or acceptance of the programme of performance, detailed drawings, documents and items. The approval of the programme by the Supervisor shall not relieve the Contractor of any of his obligations under the contract.

**15.3** No material alteration to the programme shall be made without the approval of the Supervisor. If, however, the progress of the works does not conform to the programme, the Supervisor may instruct the Contractor to revise the programme and submit the revised programme to him for approval.

## **ARTICLE 16: Detailed breakdown of prices**

- 16.1** Where necessary for the purposes of the contract, the Contractor shall provide a detailed breakdown of his rates and prices within no more than 20 days of the Supervisor's reasoned request.
- 16.2** After the notification of award, the Contractor shall provide the Supervisor, for his information only, with a detailed quarterly cashflow estimate of all payments that may be due to the Contractor under the contract. The Contractor shall subsequently supply revised quarterly cashflow estimates, if so required by the Supervisor. The communication shall not impose any liability whatsoever on the Contracting Authority or the Supervisor.

## **ARTICLE 17: Contractor's drawings**

- 17.1** The Contractor shall submit to the Supervisor for approval:
- a) the drawings, documents, samples and/or models, according to the time limits and procedures laid down in the Special Conditions;
  - b) such drawings as the Supervisor may reasonably require for the performance of the contract.
- 17.2** If the Supervisor fails to notify his decision of approval referred to in Article 17.1 within the deadlines referred to in the contract or the approved programme of performance, such drawings, documents, samples or models shall be deemed to be approved on expiry of the deadlines. If no deadline is specified, they shall be deemed to be approved 30 days after receipt.
- 17.3** Approved drawings, documents, samples and models shall be signed or otherwise identified by the Supervisor and may only be departed from on the Supervisor's instructions. Any of the Contractor's drawings, documents, samples or models which the Supervisor fails to approve shall immediately be modified to meet the requirements of the Supervisor and resubmitted by the Contractor for approval.
- 17.4** The Contractor shall supply additional copies of approved drawings in the form and numbers stated in the contract or in subsequent administrative orders.
- 17.5** The approval of the drawings, documents, samples or models by the Supervisor shall not relieve the Contractor from any of his obligations under the contract.
- 17.6** The Supervisor shall have the right to inspect all drawings, documents, samples or models relating to the contract at the Contractor's premises at all reasonable times.

**17.7** Before provisional acceptance of the works, the Contractor shall supply operating and maintenance manuals together with drawings, which shall be detailed enough to enable the Contracting Authority to operate, maintain, adjust and repair all parts of the works. Unless otherwise stated in the Special Conditions, the manuals and drawings shall be in the language of the contract and in such forms and numbers as stated in the contract. The works shall not be considered complete for the purpose of provisional acceptance until such manuals and drawings have been supplied to the Contracting Authority.

## **ARTICLE 18: Sufficiency of tender prices**

**18.1** Subject to the Special Conditions, the Contractor shall be deemed to have inspected and examined the site and its surroundings and to have satisfied himself as to the nature of the ground and the subsoil before submitting his tender. He shall also be deemed to have taken into account the form and nature of the site, the extent and nature of the work and materials necessary for the completion of the works, the means of communication with and access to the site, the accommodation he may require and in general to have obtained for himself all necessary information as to the risks, contingencies and any other circumstances influencing or affecting his tender.

**18.2** The Contractor shall be deemed to have satisfied himself before submitting his tender as to the correctness and sufficiency of the tender and of the rates and prices stated in the bill of quantities or price schedule, which shall, save where otherwise provided in the Special Conditions, cover all his obligations under the contract.

**18.3** Since the Contractor is deemed to have determined his prices on the basis of his own calculations, operations and estimates, he shall, at no additional charge, carry out any work that is the subject of any item whatsoever in his tender for which he indicates neither a unit price nor a lump sum.

## **ARTICLE 19: Exceptional risks**

**19.1** If, during the execution of the works, the Contractor encounters artificial obstructions or physical conditions which could not reasonably have been foreseen by an experienced Contractor, and if the Contractor is of the opinion that additional costs will be incurred and/or an extension of the period of performance of the contract will be necessary as a result of this, he shall notify the Supervisor in accordance with the articles of the General Conditions concerning the extension of the period of performance and claims for additional payments. The Contractor's notification shall specify the artificial obstructions

and/or physical conditions, giving details of the expected effects thereof, the measures he is taking or intends to take and the extent of the expected delay in, or interference with, the execution of the works.

**19.2** On receipt of notification, the Supervisor may inter alia:

- a) require the Contractor to provide an estimate of the cost of the measures he is taking or intends to take;
- b) approve the measures referred to in Article 19.2(a) with or without modification;
- c) give written instructions as to how the artificial obstructions or physical conditions are to be dealt with;
- d) order that the contract be modified, suspended or terminated.

**19.3** In so far as he considers that some or all of the said artificial obstructions or physical conditions could not reasonably have been foreseen by an experienced Contractor, the Supervisor shall:

- a) take into account any delay suffered by the Contractor as a result of such obstructions or conditions in determining any extension of the period of performance to which the Contractor is entitled under the General Conditions; and/or
- b) calculate, in the event of artificial obstructions or physical conditions other than weather conditions, the additional payments due to the Contractor under the General Conditions.

**19.4** If the Supervisor decides that some or all of the artificial obstructions or physical conditions could reasonably have been foreseen by an experienced Contractor, he shall so inform the Contractor as soon as practicable.

**19.5** Weather conditions shall not entitle the Contractor to claim additional payments under Article 52. Where the Supervisor judges that weather conditions that are normally foreseeable or specified in the Special Conditions make the smooth execution of the works difficult, he may decide to suspend such works for a given period. During the periods of suspension, the Contractor shall, at his own expense, take every precaution necessary to safeguard the works and materials.

## **ARTICLE 20: Safety on site**

**20.1** The Contractor shall have the right to forbid access to the site to any person not involved in the performance of the contract, with the exception of persons authorised by the Supervisor or representatives of the Contracting Authority.

**20.2** The Contractor shall ensure the safety of sites throughout the period of execution and shall be responsible for taking the necessary steps, in the

interests of his employees, agents of the Contracting Authority and third parties, to prevent any loss or accident which may result from carrying out the works.



- 20.3** The Contractor shall, on his own responsibility and at his own expense, do his utmost to ensure that existing structures and installations are protected, preserved and maintained. He shall be responsible for providing and maintaining at his own expense all lighting, protection, fencing and security equipment that proves necessary for the proper performance of the works or that the Supervisor may reasonably require.
- 20.4** If, during the performance of the contract, urgent measures are necessary to obviate any risk of accident or damage or to ensure safety after an accident or damage, the Supervisor shall give formal notice to the Contractor to do what is necessary. If the Contractor is unwilling or unable to undertake the necessary measures, the Supervisor may, to the extent that the Contractor is liable, arrange for such measures to be implemented at the expense of the Contractor.

## **ARTICLE 21: Safeguarding adjacent properties**

- 21.1** On his own responsibility and at his expense, the Contractor shall take all the precautions required by good construction practice and by the prevailing circumstances to safeguard adjacent properties and avoid causing any abnormal disturbance therein.
- 21.2** The Contractor shall indemnify the Contracting Authority against the financial consequences of all claims by neighbouring landowners or residents to the extent that the Contractor is liable and to the extent that the damage to adjacent properties is not the result of a hazard arising from the design or method of construction imposed on the Contractor by the Contracting Authority or the Supervisor.

## **ARTICLE 22: Interference with traffic**

- 22.1** The Contractor shall ensure that the works and installations do not impede traffic on communication links such as roads, railways, waterways and aerodromes, save as permitted under the Special Conditions. He shall, in particular, take account of weight restrictions when selecting routes and vehicles.
- 22.2** Any special measures which the Contractor considers necessary or which are specified in the Special Conditions or which are required by the Contracting Authority in order to protect or strengthen sections of roads, tracks or bridges shall be at the expense of the Contractor, whether or not they are carried out by the Contractor. The Contractor shall inform the Supervisor of any special measures he intends to take before carrying them out. The repair of any damage caused to roads, tracks or bridges by the transport of materials, plant or equipment shall be at the expense of the Contractor.

## **ARTICLE 23: Cables and conduits**

- 23.1** Where, in the course of carrying out the works, the Contractor encounters markers indicating the course of underground cables, conduits and installations, he shall leave such markers in place or, if the execution of the works required their temporary removal, put them back. Such ancillary operations shall require the prior authorisation of the Supervisor.
- 23.2** The Contractor shall be responsible for preserving, removing or putting back, as the case may be, the cables, conduits and installations specified by the Contracting Authority in the contract and shall cover the cost of doing so.
- 23.3** Where the presence of cables, conduits and installations has not been specified in the contract but is revealed by markers and signs, the Contractor shall have a general duty of care and obligations comparable to those above regarding preservation, removal and replacement. In this case, the Contracting Authority shall compensate the Contractor for such expenditure, to the extent that such work is necessary for the execution of the contract.
- 23.4** However, the obligations to remove and replace cables, conduits and installations and the expenditure resulting there from shall not be the responsibility of the Contractor if the Contracting Authority decides to assume them itself. The same shall apply where this obligation and the expenditure resulting there from are borne by a specialist administration or an agent.
- 23.5** Where any work on the site is likely to disrupt or damage a public utility service, the Contractor shall immediately inform the Supervisor in writing, giving a reasonable period of notice so that suitable measures can be taken in time to allow work to continue normally.

## **ARTICLE 24: Setting-out**

- 24.1** The Contractor shall be responsible for:
- a) the accurate setting-out of the works in relation to the original marks, lines and reference levels provided by the Supervisor;
  - b) the accuracy of the positioning, levelling, dimensioning and alignment of all parts of the works; and
  - c) the provision of all necessary instruments, accessories and labour in connection with the foregoing responsibilities.
- 24.2** If, at any time during the execution of the works, any error appears in the positioning, levelling, dimensioning or alignment of any part of the works, the Contractor shall, if the Supervisor so requires, rectify such errors at his own cost and to the satisfaction of the Supervisor, unless the error is based on inaccurate

data supplied by the Supervisor, in which case the Contracting Authority shall be responsible for the cost of rectification.

- 24.3** The checking of any setting-out or of any alignment or levelling by the Supervisor shall in no way relieve the Contractor of his responsibility for the accuracy of these operations. The Contractor shall carefully protect and preserve all markers, sight rails, pegs and other items used in setting out the works.

## **ARTICLE 25: Demolished materials**

- 25.1** Where the contract includes demolition work, materials and articles obtained there from shall, unless the Special Conditions and/or the law of the state of the Contracting Authority provide otherwise and subject to the provisions of the General Conditions on discoveries, be the property of the Contractor.
- 25.2** Should the Special Conditions assign the ownership of materials or all or part of the articles obtained from the demolition work to the Contracting Authority, the Contractor shall take all the necessary precautions to ensure that they are preserved. He shall be liable for any destruction of, or damage to, such materials or articles caused by him or his agents.
- 25.3** Irrespective of the use to which the Contracting Authority intends to put the materials or articles over which it retains ownership, all costs incurred in transporting and storing them and all warehouse charges at the place indicated by the Supervisor shall be borne by the Contractor for any carriage not exceeding 100 metres.
- 25.4** Save where the Special Conditions provide otherwise, the Contractor shall, at his expense, progressively remove rubble and other demolition materials, rubbish and debris from the site.

## **ARTICLE 26: Discoveries**

- 26.1** Discoveries of any interest whatsoever made during excavation or demolition work shall immediately be brought to the attention of the Supervisor. The Supervisor shall decide how such discoveries are to be dealt with, taking due account of the law of the state of the Contracting Authority.
- 26.2** The Contracting Authority reserves the ownership of materials found during excavation and demolition works on land belonging to it, subject to its compensating the Contractor for any special efforts he may have made.
- 26.3** Artefacts, antiquities, natural or numismatic objects, other objects of academic interest, rare objects or objects made of precious metals found during excavation or demolition work shall be the property of the Contracting Authority.

**26.4** In the event of disagreements, the Contracting Authority shall have sole authority to decide as to the qualifications set out in Articles 26.1 and 26.3.

## **ARTICLE 27: Temporary works**

**27.1** The Contractor shall carry out at his expense all the temporary works to enable the works to be carried out. He shall submit to the Supervisor drawings of temporary works, which he intends to use, such as cofferdams, scaffolding, trusses and shuttering. He shall take account of any observations made to him by the Supervisor, while remaining responsible for these drawings.

**27.2** Where the design of particular temporary works is specified in the Special Conditions to be the responsibility of the Contracting Authority, the Supervisor shall provide the Contractor with all drawings necessary in reasonable time to enable the Contractor to undertake the temporary works in accordance with his programme. In such cases, the Contracting Authority shall bear sole responsibility for the safety and suitability of the design. The Contractor, however, shall be responsible for their proper execution.

## **ARTICLE 28: Soil Studies**

**28.1** Subject to the Special Conditions and to the technical specifications, the Contractor shall make available to the Supervisor, the personnel and equipment necessary to carry out any soil survey that the Supervisor may reasonably consider necessary.

**28.2** The Contractor shall be compensated for the actual cost of the manpower and equipment used or made available in such work, if not already provided for in the contract.

## **ARTICLE 29: Overlapping contracts**

**29.1** In accordance with the requirements of the Supervisor, the Contractor shall afford other contractors employed by the Contracting Authority and their workmen, and the workmen of the Contracting Authority and of any other public authorities who may be employed on or near the site for the purposes of works not covered by the contract or of any contract that the Contracting Authority may enter into in connection with, or ancillary to, the works every reasonable opportunity to carry out their work.

**29.2** However, if the Contractor, on the written request of the Supervisor, makes available to any such contractor or public authority, or to the Contracting Authority, any roads or ways for the maintenance of which the Contractor is responsible, or permits the use by any such other persons of the Contractor's temporary works, scaffolding or other site equipment, or provides any other

service of any kind not provided for in the contract, the Contracting Authority shall, in respect of such use or service, pay the Contractor such sums and/or grant such extension of time as the Supervisor considers reasonable.

**29.3** Article 29 does not relieve the Contractor of any of his obligations under the contract, nor does it entitle him to any compensation other than that provided for in Article 29.2.

**29.4** In no circumstances may difficulties arising with regard to one contract entitle the Contractor to modify or delay performance of other contracts. Similarly, the Contracting Authority may not take advantage of such difficulties to suspend payments due under another contract.

## **ARTICLE 30: Patents and licences**

**30.1** Save where otherwise provided in the Special Conditions, the Contractor shall indemnify the Contracting Authority and the Supervisor against any claim resulting from the use as specified in the contract of patents, licences, drawings, designs, models, or brand or trade marks, unless such infringement results from compliance with the design or specification provided by the Contracting Authority and/or the Supervisor.

## COMMENCEMENT OF PERFORMANCE AND DELAYS

### ARTICLE 31: Commencement order

- 31.1 The Contracting Authority shall fix the date on which performance of the contract is to commence and advise the Contractor thereof either in the notice of award of the contract or by administrative order issued by the Supervisor.
- 31.2 Save where the Parties agree otherwise, performance of the contract shall begin no later than 90 days after notification of award of contract. After that date the Contractor shall be entitled not to perform the contract and to obtain its termination or compensation for the damage he has suffered. The Contractor shall forfeit this right unless he exercises it within 30 days of the expiry of the 90-day period.

### ARTICLE 32: Period of execution of tasks

- 32.1 The period of execution of tasks shall commence on the date fixed in accordance with Article 31. It shall be stated in the contract, without prejudice to extensions of the period, which may be granted under Article 33.
- 32.2 If provision is made for separate periods of performance for separate lots, such periods shall not be aggregated in cases where one Contractor is allocated more than one lot.

### ARTICLE 33: Extension of the period of execution of tasks

- 33.1 The Contractor may request an extension to the period of execution of tasks if his performance of the contract is delayed, or expected to be delayed, for any of the following reasons:
- a) exceptional weather conditions in the state of the Contracting Authority;
  - b) artificial obstructions or physical conditions which could not reasonably have been foreseen by an experienced contractor;
  - c) administrative orders affecting the date of completion other than those arising from the Contractor's default;
  - d) failure of the Contracting Authority to fulfil its obligations under the contract;

e) any suspension of the works which is not due to the Contractor's default;

f) force major;

g) any other causes referred to in these General Conditions which are not due to the Contractor's default.

**33.2** Within 15 days of realising that a delay might occur, the Contractor shall notify the Supervisor of his intention to make a request for extension of the period of performance to which he considers himself entitled and, save where otherwise agreed between the Contractor and the Supervisor, within 30 days provide the Supervisor with comprehensive details so that the request can be examined.

**33.3** Within 30 days the Supervisor shall, by written notice to the Contractor after due consultation with the Contracting Authority and, where appropriate, the Contractor, grant such extension of the period of performance as may be justified, either prospectively or retrospectively, or inform the Contractor that he is not entitled to an extension.

## **ARTICLE 34: Delays in execution**

**34.1** If the Contractor fails to complete the works by the deadline(s) specified in the contract, the Contracting Authority shall, without formal notice and without prejudice to any other remedies under the contract, be entitled to liquidated damages for every day or part thereof which elapses between the end of the period of performance or extended period of performance and the actual date of completion, at the rate and up to the maximum amount specified in the Special Conditions. If the works have undergone partial acceptance in accordance with Article 59, the liquidated damages specified in the Special Conditions may be reduced by the proportion of the value of the whole of the works represented by the accepted part.

**34.2** If the Contracting Authority is entitled to the maximum claim under Article 34.1, it may, after giving notice to the Contractor:

a) seize the performance guarantee;

b) terminate the contract, in which case the Contractor will have no right to compensation; and

c) enter into a contract with a third party at the Contractor's cost for the provision of the balance of the works. The Contractor shall not be paid for this part of the contract. The Contractor shall also be liable for the additional costs and damages caused by his failure.

## **ARTICLE 35: Modifications**

**35.1** The Supervisor shall have power to order any modification to any part of the works necessary for the proper completion and/or functioning of the works. Such modifications may consist of additions, omissions, substitutions, changes in quality, quantity, form, character, kind, position, dimension, level or line and changes in the specified sequence, method or timing of execution of the works. No order for a modification may result in the invalidation of the contract. However, the financial effect, if any, of all such modifications shall be valued in accordance with the following Articles.

**35.2** Modifications may only be made by administrative order, subject to the following provisos:

- a) if, for whatever reason, the Supervisor believes it necessary to give an order orally, he shall confirm the order by an administrative order as soon as possible;
- b) if the Contractor confirms in writing an oral order given for the purpose of Article 35.2(a) and the confirmation is not immediately refuted in writing by the Supervisor, an administrative order shall be deemed to have been issued for the execution of the modification;
- c) an administrative order for a modification shall not be required when increasing or decreasing the quantity of works because the estimates in the bill of quantities or price schedule were too high or too low.

**35.3** Save where Article 35.2 provides otherwise, prior to issuing an administrative order for a modification, the Supervisor shall notify the Contractor of the nature and form of that modification. As soon as possible, after receiving such notice, the Contractor shall submit to the Supervisor a proposal containing:

- a) a description of the tasks, if any, to be performed or the measures to be taken and a programme for execution; and
- b) any necessary modifications to the programme of performance or to any of the Contractor's obligations under the contract; and
- c) any adjustment to the contract price in accordance with the rules set out in Article 35.

**35.4** Following the receipt of the Contractor's submission referred to in Article 35.3, the Supervisor shall, after due consultation with the Contracting Authority and, where appropriate, the Contractor, decide as soon as possible whether or not the modification should be carried out. If the Supervisor decides that the modification is to be carried out, he shall issue an administrative order stating that the modification is to be made at the prices and under the conditions given



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in the Contractor's submission referred to in Article 35.3 or as modified by the Supervisor in accordance with Article 35.5.

**35.5** The prices for all modifications ordered by the Supervisor in accordance with Articles 35.2 and 35.4 shall be ascertained by the Supervisor in accordance with the following principles:

- a) where work is of similar character and executed under similar conditions to work priced in the bill of quantities or price schedule, it shall be valued at such rates and prices contained therein;
- b) where work is not of a similar character or is not executed under similar conditions, the rates and prices in the contract shall be used as the basis for valuation in so far as is reasonable, failing which a fair valuation shall be made by the Supervisor;
- c) if the nature or amount of any modification relative to the nature or amount of the whole of the contract or to any part thereof is such that, in the opinion of the Supervisor, any rate or price contained in the contract for any item of work is by reason of such modification rendered unreasonable, then the Supervisor shall fix such rate or price as he thinks reasonable and proper in the circumstances;
- d) where a modification is necessitated by a default or breach of contract by the Contractor, any additional cost attributable to such modification shall be borne by the Contractor.

**35.6** On receipt of the administrative order requesting the modification, the Contractor shall proceed to carry out the modification as if it had been stated in the contract. The works shall not be delayed pending the granting of any extension of time for completion or adjustment to the contract price. Where the order for a modification precedes the adjustment to the contract price, the Contractor shall keep records of the costs of undertaking the modification and of the time expended thereon. Such records shall be open to inspection by the Supervisor at all reasonable times.

**35.7** Unless otherwise provided by the Special Conditions, in the event of an increase or decrease in the total volume of work required by the Contracting Authority or resulting from circumstances which are caused neither by the Contractor's negligence nor by any action on his part, the Contractor may not claim compensation unless that increase or decrease, calculated on the basis of the original prices and without varying the object of the contract, exceeds a percentage of the original contract price specified in the Special Conditions. This percentage may not be more than 15% or less than 10%. In these circumstances, on making a reasoned request submitted to the Contracting Authority, the Contractor shall be entitled to have the contractual period of performance changed.

- 35.8** Where the increase or decrease, calculated in the manner described, exceeds the percentage laid down in the Special Conditions, the Contractor may, when the general statement is drawn up, make a claim for compensation on the grounds of any damage he has suffered as a result of modifications to the original project. He shall also be entitled, on making a reasoned request submitted to the Contracting Authority, to a modification in the contractual period of performance. Where the modification, calculated in the manner described, exceeds 33%, the Contractor is entitled to refuse to carry out any work beyond that value. In that case, he shall inform the Contracting Authority of his decision by registered letter with acknowledgement of delivery within two months of the administrative order specifying that modification. The Supervisor shall, after consulting the Contracting Authority and the Contractor, determine any addition/compensation and extension of period of performance.
- 35.9** Subject to the limits indicated in the Special Conditions, if the contract contains a bill of quantities or breakdown of the overall price giving an itemised list of the scale and prices of the various works, and if modifications required by the Contracting Authority or resulting from circumstances which are caused neither by the Contractor's negligence nor by any action on his part alter the scale of some of the works in such a manner that the quantity shown for any item is increased or decreased by 20% or more, the Contractor shall, on making a reasoned request to the Contracting Authority, be entitled to compensation for any damage he has suffered as a result of modifications to the original project, once all the quantities in the relevant item have been executed for the purposes of the contract.
- 35.10** Contract modifications not covered by an administrative order must be formalised through an addendum to the contract signed by all parties. Changes of address or bank account may simply be notified in writing by the Contractor to the Contracting Authority. All contract modifications have to respect the general principles defined in the *Practical Guide to contracts financed by the general budget of the European Communities in the course of cooperation with third countries*.

## **ARTICLE 36: Suspension**

- 36.1** The Contractor shall, on the order of the Supervisor, suspend the progress of the works or any part thereof for such time or times and in such manner as the Supervisor may consider necessary.
- 36.2** During the period of suspension, the Contractor shall take such protective measures as may be necessary to safeguard the works, plant, equipment and site against any deterioration, loss or damage.
- 36.3** Additional expenses incurred in connection with such protective measures shall be added to the contract price, unless such suspension is:

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- a) dealt with differently in the contract;  
or
- b) necessary owing to some default of the Contractor;  
or
- c) necessary owing to normal weather conditions on site;  
or
- d) necessary for the safety or the proper execution of the works or any part thereof insofar as such necessity does not arise from any act or default by the Supervisor or the Contracting Authority or from any of the exceptional risks referred to in Article 19.

**36.3** The Contractor shall not be entitled to such additions to the contract price unless he notifies the Supervisor, within 30 days of receiving the order to suspend the works, of his intention to make a claim for them.

**36.4** The Supervisor, after consultation with the Contracting Authority and the Contractor, shall determine such extra payment and/or extension of the period of performance to be made to the Contractor in respect of such claim as shall, in the opinion of the Supervisor, be fair and reasonable.

**36.5** If the period of suspension exceeds 180 days (or any shorter period specified in the Special Conditions) and the suspension is not due to the Contractor's default, the Contractor may, by notifying the Supervisor and the Contracting Authority, either request permission to restart or terminate the contract within 30 days.

**36.6** Where the contract's award procedure or performance is vitiated by substantial errors or irregularities or by fraud, the institutions shall suspend performance of the contract. Where such errors, irregularities or fraud are attributable to the Contractor, the Commission may also refuse to make payments or may recover amounts already paid, in proportion to the seriousness of the errors, irregularities or fraud.

The purpose of suspending the contract shall be to verify whether presumed substantial errors and irregularities or fraud have actually occurred. If they are not confirmed, performance of the contract shall resume as soon as possible. A substantial error or irregularity shall be any infringement of a contract or regulatory provision resulting from an act or an omission that causes or might cause a loss to the Community budget.

## MATERIALS AND WORKMANSHIP

### ARTICLE 37: Work register

**37.1** A work register shall, unless otherwise provided by the Special Conditions, be kept on the site by the Supervisor, who shall enter in it at least the following information:

a) the weather conditions, interruptions of work owing to inclement weather, hours of work, number and type of workmen employed on the site, materials supplied, equipment in use, equipment not in working order, tests carried out in situ, samples dispatched, unforeseen circumstances, as well as orders given to the Contractor;

b) detailed statements of all the quantitative and qualitative elements of the work done and the supplies delivered and used, capable of being checked on the site and relevant in calculating payments to be made to the Contractor.

**37.2** The statements shall form an integral part of the work register but may, where appropriate, be recorded in separate documents. The technical rules for drawing up the statements shall be set out in the Special Conditions.

**37.3** The Contractor shall ensure that statements are drawn up, in good time and in accordance with the Special Conditions, in respect of work, services and supplies which cannot be measured or verified subsequently. Failing this, he shall accept the decisions of the Supervisor unless, at his own expense, he provides evidence to the contrary.

**37.4** Entries made in the work register as work progresses shall be signed by the Supervisor and countersigned by the Contractor or his representative. If the Contractor objects, he shall communicate his views to the Supervisor within 15 days of the date on which the entry or the statements objected to are recorded. Should he fail to countersign or to submit his views within the period allowed, the Contractor shall be deemed to agree with the notes shown in the register. The Contractor may examine the work register at any time and may, without removing the document, make or receive a copy of entries which he considers necessary for his own information.

**37.5** The Contractor shall, on request, provide the Supervisor with the information needed to keep the work register in good order.

## **ARTICLE 38: Origin**

- 38.1** Save where otherwise provided for in the Special Conditions, goods and materials must originate in a Member State of the European Union or in one of the beneficiary countries as stated in the invitation to tender. The origin of the goods and materials shall be determined according to the rules laid down in the Community Customs Code or the international agreements to which the country concerned is a signatory.
- 38.2** The Contractor must certify that the goods tendered comply with this requirement, specifying the respective country of origin. He may be required to provide more detailed information in this respect.
- 38.3** The Contractor shall present an official certificate of origin on provisional acceptance. Failure to comply with this obligation shall lead, after formal notice, to termination of the contract.

## **ARTICLE 39: Quality of works and materials**

- 39.1** The works, components and materials shall conform to the specifications, drawings, surveys, models, samples, patterns and other requirements in the contract, which must be held at the disposal of the Contracting Authority or the Supervisor for the purposes of identification throughout the period of performance.
- 39.2** Any preliminary technical acceptance stipulated in the Special Conditions should be the subject of a request sent by the Contractor to the Supervisor. The request shall indicate, as appropriate, the reference to the contract, the lot number and the place where such acceptance is to take place. The components and materials specified in the request must be certified by the Supervisor as meeting the requirements for such acceptance prior to their incorporation in the works.
- 39.3** Even if materials or items to be incorporated in the works or in the manufacture of components have been technically accepted in this way, they may still be rejected if a further examination reveals defects or faults, in which case they must immediately be replaced by the Contractor. The Contractor may be given the opportunity to repair and make good materials and items which have been rejected, but such materials and items will be accepted for incorporation in the works only if they have been repaired and made good to the satisfaction of the Supervisor.

## **ARTICLE 40: Inspection and testing**

- 40.1** The Contractor shall ensure that the components and materials are delivered to the site in time to allow the Supervisor to proceed with acceptance of the components and materials. The Contractor is deemed to have fully appreciated the difficulties which he might encounter in this respect, and he shall not be permitted to advance any grounds for delay in fulfilling the obligations.
- 40.2** The Supervisor shall be entitled, either by himself or through his agent, to inspect, examine, measure and test the components, materials and workmanship, and check the progress of preparation, fabrication or manufacture of anything being prepared, fabricated or manufactured for delivery under the contract, in order to establish whether the components, materials and workmanship are of the requisite quality and quantity. This shall take place at the place of manufacture, fabrication, preparation or on the site or at such other places as may be specified in the Special Conditions.
- 40.3** For the purposes of such tests and inspections, the Contractor shall:
- a) provide the Supervisor, temporarily and free of charge, with such assistance, samples, parts, machines, equipment, tools or materials and labour as are normally required for inspection and testing;
  - b) agree, with the Supervisor, the time and place for tests;
  - c) give the Supervisor access at all reasonable times to the place where the tests are to be carried out.
- 40.4** If the Supervisor is not present on the date agreed for tests, the Contractor may, unless otherwise instructed by the Supervisor, proceed with the tests, which shall be deemed to have been made in the Supervisor's presence. The Contractor shall immediately send duly certified copies of the test results to the Supervisor, who shall, if he has not attended the test, be bound by the test results.
- 40.5** When components and materials have passed the above-mentioned tests, the Supervisor shall notify the Contractor or endorse the Contractor's certificate to that effect.
- 40.6** If the Supervisor and the Contractor disagree on the test results, each shall state his views to the other within 15 days of such disagreement. The Supervisor or the Contractor may require such tests to be repeated on the same terms and conditions or, if either Party so requests, by an expert selected by common consent. All test reports shall be submitted to the Supervisor, who shall communicate the results of these tests without delay to the Contractor.

The results of the retesting shall be conclusive. The cost of the retesting shall be borne by the Party whose views are proved wrong by the retesting.

**40.7** In the performance of their duties, the Supervisor and any person authorised by him shall not disclose to unauthorised persons information concerning the undertaking's construction and operating methods obtained through inspection and testing.

## **ARTICLE 41: Rejection**

**41.1** Components and materials which are not of the specified quality shall be rejected. A special mark may be applied to the rejected components or materials. This shall not be such as to alter them or affect their commercial value. Rejected components and materials shall be removed by the Contractor from the site within a period which the Supervisor shall specify, failing which they shall be removed by the Supervisor as of right at the expense and risk of the Contractor. Any works incorporating rejected components or materials shall be rejected.

**41.2** The Supervisor shall, during the progress of the works and before their acceptance, have the power to order or decide:

- a) the removal from the site, by a deadline specified in the administrative order, of any components or materials which, in the opinion of the Supervisor, are not in accordance with the contract;
- b) the substitution of proper and suitable components or materials; or
- c) the demolition and proper re-execution, or satisfactory repair, notwithstanding any previous test thereof or interim payment therefor, of any works which, in respect of components, materials, workmanship or design for which the Contractor is responsible, is not, in the opinion of the Supervisor, in accordance with the contract.

**41.3** The Supervisor shall, as soon as reasonably practicable, notify the Contractor in writing of his decision, specifying particulars of the alleged defects.

**41.4** The Contractor shall, with all speed and at his own expense, make good the defects so specified. If the Contractor does not comply with such order, the Contracting Authority shall be entitled to employ other persons to carry out the same works, and all expenses consequent thereon or incidental thereto may be deducted by the Contracting Authority from any monies due or which may become due to the Contractor.

**41.5** The provisions of Article 41 shall not affect the right of the Contracting Authority to claim for any delays and shortcomings in performance.

## **ARTICLE 42: Ownership of plant and materials**

- 42.1** All equipment, temporary works, plant and materials provided by the Contractor shall, when brought on the site, be deemed to be exclusively intended for the execution of the works, and the Contractor may not remove the same or any part thereof, except for the purpose of moving it from one part of the site to another, without the consent of the Supervisor. Such consent shall not, however, be required for vehicles engaged in transporting any staff, labour, equipment, temporary works, plant or materials to or from the site.
- 42.2** The Special Conditions may provide that all equipment, temporary works, plant and materials on site owned by the Contractor or by any company in which the Contractor has a controlling interest shall, for the duration of the execution of the works, be:
- a) vested in the Contracting Authority; or
  - b) made subject to a lien in favour of the Contracting Authority; or
  - c) made subject to any other arrangement regarding priority interest or guarantee.
- 42.3** In the event of termination of the contract due to the Contractor's breach of contract, the Contracting Authority shall be entitled to use the equipment, temporary works, plant and materials on site in order to complete the works.
- 42.4** Any agreement for the hire by the Contractor of equipment, temporary works, plant or materials brought onto the site shall contain a provision binding the owner, at the written request of the Contracting Authority within seven days of the date of termination under the General Conditions, and on the Contracting Authority's undertaking to pay all hire charges from that date, to hire such equipment, temporary works, plant or materials to the Contracting Authority on the same terms as they were hired by the Contractor, without prejudice to the Contracting Authority's right to permit their use by any other contractor employed by it to complete the works in accordance with the provisions of the General Conditions concerning termination of contract.
- 42.5** In the event of termination of the contract before completion of the works, the Contractor shall hand over to the Contracting Authority any plant, temporary works, equipment or materials the ownership of which has been vested in the Contracting Authority or made subject to a lien by virtue of Article 42.2. If the Contractor fails to do so, the Contracting Authority may take such action as it deems appropriate to obtain possession of such plant, temporary works, equipment, and materials and to recover the cost of so doing from the Contractor.



# PAYMENTS

## ARTICLE 43: General principles

**43.1** Payments shall be made in EURO or national currency. The Special Conditions shall lay down the administrative or technical conditions governing payments of advances, interim and/or final payments made in accordance with the General Conditions.

**43.2** Payments due by the Contracting Authority shall be made to the bank account mentioned on the financial identification form completed by the Contractor. The same form, annexed to the payment request, must be used to report changes of bank account.

**43.3** Sums due shall be paid within no more than 45 calendar days from the date on which an admissible payment request is registered by the competent department specified in the Special Conditions. The date of payment shall be the date on which the institution's account is debited. The payment request shall not be admissible if one or more essential requirements are not met.

**43.4** The 45-day period may be suspended by notifying the Contractor that the payment request cannot be fulfilled because the sum is not due, because appropriate substantiating documents have not been provided or because there is evidence that the expenditure might not be eligible. In the latter case, an inspection may be carried out on the spot for the purpose of further checks. The Contractor shall provide clarifications, modifications or further information within 30 days of being asked to do so. The payment period shall continue to run from the date on which a properly drawn-up payment request is registered.

**43.5** The Contractor undertakes to repay any amounts paid in excess of the final amount due to the Contracting Authority within 45 days of receiving a request to do so. Should the Contractor fail to make repayment within the deadline set by the Contracting Authority, the Contracting Authority may (unless the Contractor is a government department or public body of a Member State of the Community) increase the amounts due by adding interest:

- at the rediscount rate applied by the central bank of the country of the Contracting Authority if payments are in the currency of that country;

- at the rate applied by the European Central Bank to its main refinancing transactions in EURO where payments are in EURO,

on the first day of the month in which the time-limit expired, plus three and a half percentage points. The default interest shall be incurred over the time which elapses between the date of the payment deadline set by the Contracting Authority (exclusive), and the date on which payment is actually made (inclusive). Any partial payments shall first cover the interest thus

established.

Amounts to be repaid to the Contracting Authority may be offset against amounts of any kind due to the Contractor. This shall not affect the Parties' right to agree on payment in instalments. Bank charges incurred by the repayment of amounts due to the Contracting Authority shall be borne entirely by the Contractor.

## **ARTICLE 44: Pre-financing**

**44.1** If the Special Conditions so provide, the Contractor shall, at his request, be granted pre-financing for operations connected with the execution of the works, in the cases listed hereinafter:

- a) as a lump-sum advance enabling him to meet expenditure resulting from the commencement of the contract;
- b) if he affords proof of the conclusion of a contract for the purchase or order of materials, plant, equipment, machines and tools necessary for the execution of the contract, and of any other substantial prior expenses such as the acquisition of patents or study costs.

**44.2** The Special Conditions shall state the total amount of the pre-financing, which shall not exceed 10% of the original contract price for the lump-sum advance referred to in Article 44.1(a) and 20% of the contract price for all the other pre-financing referred to in Article 44.1(b).

**44.3** No pre-financing shall be granted until:

- a) the conclusion of the contract;
- b) provision to the Contracting Authority by the Contractor of the performance guarantee in accordance with Article 13; and
- c) provision to the Contracting Authority by the Contractor of a separate directly liable guarantee for the full amount of pre-financing provided by one of the institutions referred to in Article 13.3, which shall remain effective until the pre-financing has been completely repaid by the Contractor out of interim payments under the contract.

**44.4** The Contractor shall use pre-financing exclusively for operations connected with the execution of the works. Should the Contractor misuse any portion of the pre-financing, it shall become due and repayable immediately and no further pre-financing will be paid to him.

**44.5** Should the pre-financing guarantee cease to be valid and the Contractor fail to revalidate it, the Contracting Authority may either deduct the amount of the pre-

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financing from future payments due to the Contractor under the contract or apply the provisions of Article 13.6.

- 44.6** If the contract is terminated for any reason whatsoever, the guarantees securing the pre-financing may be invoked immediately in order to repay the balance of the pre-financing still owed by the Contractor, and the guarantor shall not delay payment or raise objection for any reason whatever.
- 44.7** The pre-financing guarantee provided for in Article 44 shall be released as and when advances are repaid.
- 44.8** Further conditions and procedures for granting and repaying pre-financing shall be as laid down in the Special Conditions.

### **ARTICLE 45: Retention monies**

- 45.1** The Special Conditions shall specify the sum to be retained from interim payments to guarantee performance of the Contractor's obligations during the maintenance period, and the detailed rules governing that guarantee; the sums retained may in no circumstances exceed 10% of the contract price.
- 45.2** Subject to the approval of the Contracting Authority, and not later than the date fixed for the commencement of the works, the Contractor may, if he so wishes, replace these retention monies by a retention guarantee issued in accordance with Article 13.3.
- 45.3** The retention monies or the retention guarantee shall be released within 45 days of the date of final acceptance of the works.

### **ARTICLE 46: Price revision**

- 46.1** Unless otherwise stipulated in the Special Conditions, contracts shall be at fixed prices which shall not be revised.

### **ARTICLE 47: Measurement**

- 47.1** The following principles shall apply to the measurement of works contracts:
- a) For lump-sum contracts, the amount due under the contract shall be determined on the basis of the breakdown of the overall contract price, or on the basis of a breakdown expressed as a percentage of the contract price corresponding to completed stages of the works. Where items are accompanied by quantities, these shall be firm quantities for

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which the Contractor has submitted a lump-sum price and shall be paid for irrespective of the quantities of works actually carried out.

- b) For unit-price contracts:
  - i) the amount due under the contract shall be calculated by applying the unit rates to the quantities actually executed for the respective items, in accordance with the contract;
  - ii) the quantities set out in the bill of quantities shall be the estimated quantities of the works, which shall not be taken as the actual and correct quantities of the works to be executed by the Contractor in fulfilment of his obligations under the contract;
  - iii) the Supervisor shall determine by measurement the actual quantities of the works executed by the Contractor, and these shall be paid for in accordance with the provisions of the General Conditions concerning interim payments. Save where otherwise provided in the Special Conditions, no additions may be made to the items in the bill of quantities, save as a result of a variation in accordance with Article 35 or another provision of the contract entitling the Contractor to additional payment;
  - iv) the Supervisor must, when he requires any parts of the works to be measured, give the Contractor reasonable notice to attend or send a qualified agent to represent him. The Contractor or his agent shall assist the Supervisor in making such measurements and shall furnish all particulars required by the Supervisor. Should the Contractor fail to attend or to send an agent, the measurement made or approved by the Supervisor shall be binding on the Contractor;
  - v) the works shall be measured net, notwithstanding any general or local custom, save where otherwise provided for in the contract.

**47.2** The Special Conditions shall stipulate the method and conditions to be used to evaluate the works.

## ARTICLE 48: Interim payments

**48.1** Save where otherwise provided in the Special Conditions, the Contractor shall submit an application for interim payment to the Supervisor at the end of each period referred to in Article 48.7 in a form approved by the Supervisor. The application shall include the following items, as applicable:

- a) the estimated contract value of the permanent works executed up to the end of the period in question;
- b) an amount reflecting any revision of prices pursuant to Article 46;
- c) an amount to be withheld by way of retention monies under Article 45;

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- d) an amount to be deducted for the repayment of pre-financing under Article 44;
- e) any credit and/or debit for the period in question in respect of plant and materials on site intended for, but not yet incorporated in, the permanent works in the amount and under the conditions set out in Article 48.2;
- f) any other sum to which the Contractor may be entitled under the contract.

**48.2** The Contractor shall be entitled to such sums as the Supervisor may consider proper in respect of plant and materials intended for, but not yet incorporated in, the permanent works, provided that:

- a) the plant and materials conform with the specifications for the permanent works and are set out in batches in a way that they may be recognised by the Supervisor;
- b) such plant and materials have been delivered to the site and are properly stored and protected against loss or damage or deterioration to the satisfaction of the Supervisor;
- c) the Contractor's record of requirements, orders, receipts and use of plant and materials under the contract are kept in a form approved by the Supervisor and such records are available for inspection by the Supervisor;
- d) the Contractor submits, with his statement, the estimated value of the plant and materials on site and such documents as may be required by the Supervisor for the purpose of valuation of the plant and materials and providing evidence of ownership and payment therefore; and
- e) where the Special Conditions so provide, ownership of the plant and materials referred to in Article 42 shall be deemed to be vested in the Contracting Authority.

**48.3** Approval by the Supervisor of any interim payment certified by him in respect of plant and materials pursuant to Article 48 shall be without prejudice to the Supervisor's right under the contract to reject any plant or materials which are not in accordance with the provisions of the contract.

**48.4** The Contractor shall be responsible for any loss or damage to, and for the cost of storing and handling, such plant and materials on site. He shall take out any additional insurance necessary to cover the risk of such loss or damage from any cause.

- 48.5** Within 45 days of receiving an application for interim payment, it shall be approved or amended in such a way that it reflects, in the Supervisor's opinion, the amount due to the Contractor under the contract. In cases where there is a difference of opinion as to the value of an item, the Supervisor's view shall prevail. After calculating the amount due to the Contractor the Supervisor shall send the Contracting Authority and the Contractor an interim payment certificate for the amount due to the Contractor and shall inform the Contractor of the works for which payment is being made.
- 48.6** The Supervisor may, by an interim payment certificate, make any corrections or modifications to any previous certificate issued by him and shall have power to modify the valuation in, or withhold the issue of, any interim payment certificate if the works or any part thereof is not being carried out to his satisfaction.

## **ARTICLE 49: Final statement of account**

- 49.1** Not later than 90 days after the issue of the final acceptance certificate, the Contractor shall submit to the Supervisor a draft final statement of account with supporting documents showing in detail the value of the work done in accordance with the contract, together with all further sums which the Contractor considers to be due to him under the contract in order to enable the Supervisor to prepare the final statement of account. The Special Conditions may, however, stipulate, in accordance with Article 49.6, that the draft final statement of account and further proceedings related thereto, be dealt with before the issue of the provisional acceptance certificate.
- 49.2** Within 45 days of receiving the draft final statement of account and of all information reasonably required for its verification, the Supervisor shall prepare the final statement of account, which determines:
- a) the amount which, in his opinion, is finally due under the contract;
  - b) after establishing the amounts previously paid by the Contracting Authority and all sums to which the Contracting Authority is entitled under the contract, the balance, if any, due, from the Contracting Authority to the Contractor, or from the Contractor to the Contracting Authority, as the case may be.
- 49.3** The Supervisor shall issue the Contracting Authority or its duly authorised representative, and the Contractor, with the final statement of account showing the final amount to which the Contractor is entitled under the contract. The Contracting Authority or its duly authorised representative and the Contractor shall sign the final statement of account as an acknowledgement of the full and final value of the work performed under the contract and shall promptly submit a signed copy to the Supervisor. However, the final statement of

account shall not include amounts in dispute, which are the subjects of negotiations, conciliation, arbitration or litigation.

- 49.4** The final statement of account signed by the Contractor shall constitute a written discharge of the Contracting Authority confirming that the total in the final statement of account represents full and final settlement of all monies due to the Contractor under the contract, other than those amounts which are the subject of negotiations, a conciliation or arbitration procedure or litigation. However, such discharge shall become effective only after any payment due to the Contractor under the final statement of account has been made and after the performance guarantee referred to in Article 13 has been returned to the Contractor.
- 49.5** The Contracting Authority shall not be liable to, the Contractor for any matter or thing whatsoever arising out of, or in connection with, the contract or execution of the works, unless the Contractor has included a claim in that respect in his draft final statement of account.

## **ARTICLE 50: Delayed payments**

- 50.1** The Contracting Authority shall pay the Contractor sums due within 45 days of the date on which an admissible payment is registered, in accordance with Article 43 of these General Conditions. This period shall begin to run from the approval of these documents by the competent department referred to in Article 43 of the Special Conditions. These documents shall be approved either expressly or tacitly, in the absence of any written reaction in the 45 days following their receipt accompanied by the requisite documents.
- 50.2** Once the deadline laid down in Article 50.1 has expired, the Contractor may, within two months of late payment, claim late-payment interest:
- at the rediscount rate applied by the issuing institution of the country of the Contracting Authority where payments are in national currency;
  - at the rate applied by the European Central Bank to its main refinancing transactions in EURO, as published in the Official Journal of the European Union, where payments are in EURO,

on the first day of the month in which the deadline expired, plus three and a half percentage points. The late-payment interest shall apply to the time which elapses between the date of the payment deadline (exclusive) and the date on which the Contracting Authority's account is debited (inclusive).

- 50.3** Any default in payment of more than 90 days from the expiry of the period laid down in Article 50.1 shall entitle the Contractor either not to perform the contract or to terminate it, with 30 days' prior notice to the Contracting Authority and the Supervisor.

## **ARTICLE 51: Payments to third parties**

- 51.1** Orders for payments to third parties may be carried out only after an assignment made in accordance with Article 6. The Contracting Authority shall be notified of the assignment.
- 51.2** Notification of beneficiaries of the assignment shall be the sole responsibility of the Contractor.
- 51.3** In the event of a legally binding attachment of the property of the Contractor affecting payments due to him under the contract, and without prejudice to the time limit laid down in the Special Conditions, the Contracting Authority shall have 30 days, starting from the day on which it receives notification of the definitive lifting of the obstacle to payment, to resume payments to the Contractor.

## **ARTICLE 52: Claims for additional payment**

- 52.1** If there are circumstances which he considers entitle him to additional payment under the contract, the Contractor shall:
- a) if he intends to make any claim for additional payment, notify the Supervisor of his intention or make such claim, stating his reasons, within 15 days of the date on which the said circumstances became known to him; and
  - b) as soon as is reasonably practicable after the date of such notification, but no later than 60 days afterwards, unless he agrees otherwise with the Supervisor, submit to the Supervisor full and detailed particulars of his claim. In any event, such particulars shall be submitted no later than the date of submission of the draft final statement of account. The Contractor shall thereafter promptly submit such further elements as the Supervisor may reasonably require to assess the validity of the claim.
- 52.2** When the Supervisor has received the full and detailed elements of the Contractor's claim that he requires, he shall, after duly consulting the Contracting Authority and, where appropriate, the Contractor, determine whether the Contractor is entitled to additional payment and notify the Parties accordingly.
- 52.3** The Supervisor may reject any claim for additional payment, which does not comply with the requirements of Article 52.

## **ARTICLE 53: End date**

The payment obligations of the EC under this Contract shall cease at most 18



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months after the end of the period of execution of the tasks, unless the Contract is terminated in accordance with these General Conditions. In the event of co financing, this date shall be laid down in the Special Conditions.

## ACCEPTANCE AND MAINTENANCE

### ARTICLE 54: Fixing a verification date

- 54.1** Verification of the works by the Supervisor with a view to provisional or final acceptance shall take place in the presence of the Contractor. The absence of the Contractor shall not be a bar to verification, provided that the Contractor has been summoned in due form at least 30 days prior to the date of verification.
- 54.2** Should exceptional circumstances make it impossible to ascertain the state of the works or otherwise proceed with their acceptance during the period fixed for provisional or final acceptance, a statement certifying such impossibility shall be drawn up by the Supervisor, if possible after consulting the Contractor. The verification shall take place and a statement of acceptance or rejection shall be drawn up by the Supervisor within 30 days following the date on which such impossibility ceases to exist. The Contractor shall not invoke these circumstances in order to avoid his obligation to present the works in a state suitable for acceptance.

### ARTICLE 55: Verification operations

- 55.1** The works shall not be accepted until the prescribed verifications and tests have been carried out at the expense of the Contractor. The Contractor shall notify the Supervisor of the date on which such verification and tests may commence.
- 55.2** Works which do not satisfy the terms and conditions of the contract or which, in the absence of such terms and conditions, are not carried out in accordance with trade practices in the state where the works are located shall, if necessary, be demolished and rebuilt by the Contractor or repaired to the satisfaction of the Supervisor. Otherwise, this shall be done as of right after due notice, at the expense of the Contractor, by order of the Supervisor. The Supervisor may also require the Contractor to demolish and reconstruct, or to repair to the Supervisor's satisfaction, works in which unacceptable materials have been used or works carried out in the periods of suspension provided for in Article 36.

### ARTICLE 56: Partial acceptance

- 56.1** The Contracting Authority may make use of the various structures, parts of structures or sections of the works forming part of the contract as and when they are completed. Any taking over of the structures, parts of structures or

sections of the works by the Contracting Authority shall be preceded by their partial provisional acceptance. However, in cases of urgency, works may be taken over prior to acceptance, provided an inventory of outstanding works is drawn up by the Supervisor and agreed to by the Contractor and the Supervisor beforehand. Once the Contracting Authority has taken possession of a structure, a part thereof or section of the works, the Contractor shall no longer be required to make good any damage resulting otherwise than from faulty construction or workmanship.

**56.2** The Supervisor may, at the request of the Contractor and if the nature of the works so permits proceeds with partial provisional acceptance, provided that the structures, parts of structures or sections of the works are completed and suited to the use as described in the contract.

**56.3** In the cases of partial provisional acceptance referred to in Article 56.1 and 56.2, the maintenance period provided for in Article 58 shall, unless the Special Conditions provide otherwise, run from the date of such partial provisional acceptance.

## **ARTICLE 57: Provisional acceptance**

**57.1** The works shall be taken over by the Contracting Authority when they have satisfactorily passed the tests on completion and a certificate of provisional acceptance has been issued or is deemed to have been issued.

**57.2** The Contractor may apply, by notifying the Supervisor, for a certificate of provisional acceptance not earlier than 15 days before the works are, in the Contractor's opinion, complete and ready for provisional acceptance. The Supervisor shall within 30 days of receipt of the Contractor's application either:

- a) issue the certificate of provisional acceptance to the Contractor with a copy to the Contracting Authority stating, where appropriate, his reservations, and, inter alia, the date on which, in his opinion, the works were completed in accordance with the contract and ready for provisional acceptance; or
- b) reject the application, giving his reasons and specifying the action which, in his opinion, is required of the Contractor for the certificate to be issued.

**57.3** If the Supervisor fails either to issue the certificate of provisional acceptance or to reject the Contractor's application within the period of 30 days, he shall be deemed to have issued the certificate on the last day of that period. The certificate of provisional acceptance shall not be deemed to be an admission that the works have been completed in every respect. If the works are divided by the contract into sections, the Contractor shall be entitled to apply for separate certificates for each of the sections.

**57.4** Upon provisional acceptance of the works, the Contractor shall dismantle and remove temporary structures and materials no longer required for use in connection with the performance of the contract. He shall also remove any litter or obstruction and redress any change in the condition of the site as required by the contract.

**57.5** Immediately after provisional acceptance, the Contracting Authority may make use of all the works completed.

## **ARTICLE 58: Maintenance obligations**

**58.1** The Contractor shall be responsible for making good any defect in, or damage to, any part of the works which may appear or occur during the maintenance period and which arises either from:

- a) the use of defective plant or materials or faulty workmanship or design of the Contractor; and/or
- b) any act or omission of the Contractor during the maintenance period;
- c) in the course of an inspection made by, or on behalf of, the Contracting Authority.

**58.2** The Contractor shall at his own cost make good the defect or damage as soon as practicable. The maintenance period for all items replaced or renewed shall recommence from the date on which the replacement or renewal was made to the satisfaction of the Supervisor. If the contract provides for partial acceptance, the maintenance period shall be extended only for the part of the works affected by the replacement or renewal.

**58.3** If any such defect appears or such damage occurs, during the maintenance period, the Contracting Authority or the Supervisor shall notify the Contractor. If the Contractor fails to remedy a defect or damage within the time limit stipulated in the notification, the Contracting Authority may:

- a) carry out the works itself or employ someone else to carry them out at the Contractor's risk and cost, in which case the costs incurred by the Contracting Authority will be deducted from monies due to, or from guarantees held against, the Contractor, or from both; or
- b) terminate the contract.

**58.4** If the defect or damage is such that the Contracting Authority has been deprived substantially of the whole or a part of the benefit of the works, the

Contracting Authority shall, without prejudice to any other remedy, be entitled to recover all sums paid in respect of the parts of the works concerned together with the cost of dismantling such parts and clearing the site.

- 58.5** In emergencies, where the Contractor cannot be reached immediately or, having been reached, is unable to take the measures required, the Contracting Authority or the Supervisor may have the work carried out at the expense of the Contractor. The Contracting Authority or the Supervisor shall as soon as practicable inform the Contractor of the action taken.
- 58.6** Where the Special Conditions stipulate that maintenance work necessitated by normal wear and tear is to be carried out by the Contractor, such work shall be paid for from a provisional sum. Deterioration resulting from the circumstances provided for in Article 19 or from abnormal use shall be excluded from this obligation unless it reveals a fault or defect justifying the request for repair or replacement under Article 58.
- 58.7** The maintenance obligations shall be stipulated in the Special Conditions and technical specifications. If the duration of the maintenance period is not specified, it shall be 365 days. The maintenance period shall commence on the date of provisional acceptance and may recommence, in accordance with Article 58.2.
- 58.8** After provisional acceptance and without prejudice to the maintenance obligations referred to in Article 58, the Contractor shall no longer be responsible for risks which may affect the works and which result from causes not attributable to him. However, the Contractor shall be responsible from the date of provisional acceptance for the soundness of the construction, as laid down in the Special Conditions.

## **ARTICLE 59: Final acceptance**

- 59.1** Upon expiry of the maintenance period or, where there is more than one such period, upon expiry of the last period, and when all defects or damage have been rectified, the Supervisor shall issue the Contractor a final acceptance certificate, with a copy to the Contracting Authority, stating the date on which the Contractor completed his obligations under the contract to the Supervisor's satisfaction. The final acceptance certificate shall be issued by the Supervisor within 30 days of the expiry of the above period or as soon as any works ordered under Article 61 have been completed to the satisfaction of the Supervisor.
- 59.2** The contract shall not be considered to have been performed in full until the final acceptance certificate has been signed or is deemed to have been signed by the Supervisor.
- 59.3** Notwithstanding the issue of the final acceptance certificate, the Contractor and the Contracting Authority shall remain liable for the fulfilment of any obligation incurred under the contract prior to the issue of the final acceptance certificate which remains unperformed at the time that final acceptance certificate is issued. The nature and extent of any such obligation shall be determined by reference to the provisions of the contract.

# BREACH OF CONTRACT AND TERMINATION

## ARTICLE 60: Breach of contract

- 60.1** A Party shall be in a breach of contract if it fails to discharge any of its obligations under the contract. Breaches of contract shall be entered in the work record. Where a breach of contract occurs, the injured Party shall be entitled to damages and/or termination of the contract.
- 60.2** Where a breach of contract is attributable to the Contractor, the Contracting Authority shall also be entitled to the following remedies as of right:
- performance of all or part of the works using directly-employed labour;
  - termination of all or part of the contract with or without compensation payable by the Contractor;
  - conclusion of a contract with a third party replacing the Contractor, after prior termination of the original contract;
  - temporary or permanent exclusion from the award of contracts.
- 60.3** The following procedures must be used for the application of measures taken as of right:

Any decision relating to the application of measures taken as of right shall be adopted by the Contracting Authority and notified to the Contractor by registered letter with acknowledgement of delivery.

In applying any of these measures, the Supervisor shall take all appropriate steps to protect or ensure proper performance of the works.

In the event of the works being executed by directly employed labour or by a contract with a third party replacing the Contractor, the Supervisor shall inspect the works, draw up an inventory of plant and materials and make out a statement of emoluments due to, and amounts owed by, the Contractor under the contract, after summoning the Contractor by registered letter with acknowledgement of delivery.

In the event of the works being executed by directly employed labour, the Supervisor shall be entitled to use the Contractor's equipment to complete the performance of the contract. Where the works are undertaken using directly employed labour, the Contractor shall be authorised to observe the operations, without, however, being able to interfere in the execution of instructions given by the Supervisor. The use of directly employed labour may be discontinued if the Contractor furnishes proof of the necessary means to resume the works and bring them to a satisfactory conclusion.

Additional expenditure resulting from the use of directly employed labour or of a contract with a third party replacing the Contractor shall be borne by the latter.

If the use of directly employed labour or a contract with a third party replacing the Contractor results in a reduction in expenditure, the Contractor may not claim any part of the profit thus derived; it shall be the property of the Contracting Authority.

**60.4** In addition to the above-mentioned measures, damages may be awarded. They may be either:

- a) general damages; or
- b) liquidated damages.

The amount and procedures for these damages shall be laid down in the Special Conditions.

**60.5** Recovery of damages, disbursements or expenses resulting from the application of measures provided for in this Article shall be effected by deduction from the sums due to the Contractor, from the deposit, or by payment under the guarantee.

## **ARTICLE 61: Termination by the Contracting Authority**

**61.1** The Contracting Authority may, after giving the Contractor seven days' notice, terminate the contract in any of the following cases:

- a) the Contractor substantially fails to perform his obligations under this contract;
- b) the Contractor fails to comply within a reasonable time with a notice given by the Supervisor requiring him to make good any neglect or failure to perform his obligations under the contract which seriously affects the proper and timely performance of the works;
- c) the Contractor refuses or neglects to carry out administrative orders given by the Supervisor;
- d) the Contractor assigns the contract or subcontracts without the authorisation of the Contracting Authority;
- e) the Contractor is bankrupt or being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of

proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

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- f) the Contractor has been convicted of an offence concerning professional conduct by a judgment which has the force of res judicata;
- g) the Contractor has been guilty of grave professional misconduct proven by any means which the Contracting Authority can justify;
- h) the Contractor has been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- i) the Contractor, following another procurement procedure or grant award procedure financed by the Community budget, has been declared to be in serious breach of contract for failure to perform its contractual obligations.
- j) any organisational modification occurs involving a change in the legal personality, nature or control of the Contractor, unless such modification is recorded in an addendum to the contract;
- k) any other legal disability hindering performance of the contract occurs;
- l) the Contractor fails to provide the required guarantee or insurance, or if the person providing the earlier guarantee or insurance required under the present contract is not able to abide by his commitments.

**61.2** Termination shall be without prejudice to any other rights or powers of the Contracting Authority and the Contractor under the contract. The Contracting Authority may then complete the works itself or conclude another contract with a third party on behalf of the Contractor. The Contractor's liability for delay in completion shall immediately cease when the Contracting Authority expels him from the site, without prejudice to any such liability that may already have occurred.

**61.3** The Supervisor shall, upon the issue of the notice of termination of the contract, instruct the Contractor to take immediate steps to bring the works to a close in a prompt and orderly manner and to reduce expenditure to a minimum.

**61.4** The Supervisor shall, as soon as is possible after termination, certify the value of the works and all sums due to the Contractor at the date of termination.

**61.5** In the event of termination:

- a) A report on work performed by the Contractor shall be drawn up by the Supervisor as soon as possible after inspection of the works, and inventory taken of temporary structures, materials, plant and equipment. The Contractor shall be summoned to the inspection and the taking of



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the inventory. The Supervisor shall also draw up statements of emoluments still owed by the Contractor to workers employed by him in relation to the contract and of sums owed by the Contractor to the Contracting Authority.

b) The Contracting Authority shall have the option of acquiring in whole or in part temporary structures which have been approved by the Supervisor, plant and materials specifically supplied or manufactured in connection with the execution of works under the contract.

c) The purchase price of the temporary structures, equipment, plant and materials referred to above shall not exceed the unpaid portion of the expenditure incurred by the Contractor, such expenditure being limited to that required for the performance of the contract under normal conditions;

d)The Contracting Authority may purchase, at market prices, the materials and items supplied or ordered by the Contractor and not already paid for by the Contracting Authority on such conditions as the Supervisor considers appropriate.

**61.6** The Contracting Authority shall not be obliged to make any further payments to the Contractor until the works are completed. Once they have been completed, the Contracting Authority shall be entitled to recover from the Contractor the extra costs, if any, of completing the works or shall pay any balance due to the Contractor prior to the termination of the contract.

**61.7** If the Contracting Authority terminates the contract, it shall be entitled to recover from the Contractor any loss it has suffered up to the maximum amount stated in the contract. If no maximum amount is stated, the Contracting Authority shall not be entitled to recover more than the part of the contract price corresponding to the value of that part of the works which cannot, by reason of the Contractor's failure, be put to their intended use.

**61.8** Where termination is not due to an act or omission on his part, the Contractor shall be entitled to claim, in addition to sums owing to him for work already performed, an indemnity for loss suffered.

**61.9** This contract shall be automatically terminated if it has given risen to no payment in the three years following its signing.

## **ARTICLE 62: Termination by the Contractor**

**62.1** The Contractor may, after giving 14 days notice to the Contracting Authority, terminate the contract if the Contracting Authority:

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- a) fails to pay the Contractor the amounts due under any certificate issued by the Supervisor after the expiry of the deadline laid down in Article 50.2; or
- b) consistently fails to meet its obligations after repeated reminders; or
- c) suspends the progress of the works or any part thereof for more than 180 days, for reasons not specified in the contract or not attributable to the Contractor.

**62.2** Termination shall be without prejudice to any other rights or powers under the contract of the Contracting Authority and the Contractor. Upon such termination, the Contractor shall, subject to the law of the state of the Contracting Authority, be entitled to immediately remove his equipment from the site.

**62.3** In the event of such termination, the Contracting Authority shall pay the Contractor for any loss or damage the Contractor may have suffered.

## ARTICLE 63: Force Major

**63.1** Neither Party shall be considered to be in default or in breach of its obligations under the contract if the performance of such obligations is prevented by any event of force major arising after the date of notification of award or the date when the contract becomes effective, whichever is the earlier.

**63.2** For the purposes of this Article, the term "force major" means acts of God, strikes, lock-outs or other industrial disturbances, acts of the public enemy, wars whether declared or not, blockades, insurrection, riots, epidemics, landslides, earthquakes, storms, lightning, floods, washouts, civil disturbances, explosions and any other similar unforeseeable events which are beyond the Parties' control and cannot be overcome by due diligence.

**63.3** Notwithstanding the provisions of the General Conditions relating to delays in performance and termination by the Contracting Authority, the Contractor shall not be liable to forfeiture of his performance guarantee, liquidated damages or termination for default if, and to the extent that, his delay in performance or other failure to perform his obligations under the contract is the result of an event of force major. Nor, notwithstanding the provisions of the General Conditions on delayed payments and termination by the Contractor, shall the

Contracting Authority be liable for the payment of interest on delayed payments, for non-performance or for termination by the Contractor for default if, and to the extent that, the Contracting Authority's delay or other failure to perform its obligations is the result of force major.

- 63.4** If either Party considers that any circumstances of force major have occurred which may affect performance of its obligations, it shall promptly notify the other Party and the Supervisor, giving details of the nature, the probable duration and the likely effect of the circumstances. Unless otherwise directed by the Supervisor in writing, the Contractor shall continue to perform his obligations under the contract as far as is reasonably practicable, and shall employ every reasonable alternative means to perform any obligations that the event of force major does not prevent him from performing. The Contractor shall not employ such alternative means unless directed to do so by the Supervisor.
- 63.5** If the Contractor incurs additional costs in complying with the Supervisor's directions or using alternative means under Article 63.4, the amount thereof shall be certified by the Supervisor.
- 63.6** If circumstances of force major have occurred and continue for a period of 180 days then, notwithstanding any extension of time for completion of the works that the Contractor may by reason thereof have been granted, either Party shall be entitled to serve the other with 30 days' notice to terminate the contract. If, on the expiry of the period of 30 days, the situation of force major still applies, the contract shall be terminated and, by virtue of the law governing the contract, the Parties shall be released from further performance of the contract.

## **ARTICLE 64: Death**

- 64.1** Where the Contractor is a natural person, the contract shall be automatically terminated if that person dies. However, the Contracting Authority shall examine any proposal made by the heirs or beneficiaries if they have notified their wish to continue the contract. The decision of the Contracting Authority shall be notified to those concerned within 30 days of receipt of such proposal.
- 64.2** Where the Contractor consists of a number of natural persons and one or more of them die, a report shall be agreed between the Parties on the progress of the works, and the Contracting Authority shall decide whether to terminate or continue the contract in accordance with the undertaking given by the survivors and by the heirs or beneficiaries, as the case may be.
- 64.3** In the cases provided for in Articles 64.1 and 64.2, persons offering to continue to perform the contract shall notify the Contracting Authority thereof within 15 days of the date of decease. Such persons shall be jointly and severally liable, save where otherwise stated in the Special Conditions, for the proper performance of the contract to the same extent as the defunct Contractor. Continuation of the contract shall be subject to the rules relating to establishment

## DISPUTE SETTELEMENT

### ARTICLE 65: Amicable dispute settlement

- 65.1** The Parties shall make every effort to settle amicably any dispute, which may arise between them. Once a dispute has arisen, the Parties shall notify each other in writing of their positions on the dispute and any solution, which they consider possible. If either Party deems it useful, the Parties shall meet and try and settle the dispute. A Party shall respond to a request for amicable settlement within 30 days of such a request. The maximum period laid down for reaching such a settlement shall be 120 days from the commencement of the procedure. Should the attempt to reach an amicable settlement fail or a Party fail to respond in time to requests for a settlement, either Party shall be free to proceed to the next stage of the dispute-settlement procedure by notifying the other.
- 65.2** If the amicable dispute-settlement procedure fails, the Parties may, in the case of decentralised contracts, agree to try conciliation through the European Commission. If no settlement is reached within 120 days of the start of the conciliation procedure, each Party shall be entitled to move on to the next state of the dispute-settlement procedure.

### ARTICLE 66: Dispute settlement by litigation

If no settlement is reached within 120 days of the start of the amicable dispute-settlement procedure, each Party may seek:

- a) either a ruling from a national court
- b) or an arbitration ruling

in accordance with the Special Conditions of this contract.

## ETHICS CLAUSES

### ARTICLE 67: Ethics clauses

- 67.1** Any attempt by a candidate or tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the committee or the Contracting Authority during the process of examining, clarifying, evaluating and comparing tenders shall lead to the rejection of his candidacy or tender.
- 67.2** Without the Contracting Authority's prior written authorisation, a Contractor and his staff or any other Company with which the Contractor is associated or linked may not, even on an ancillary or subcontracting basis, supply other services, carry out works or supply equipment for the project.
- 67.3** This prohibition also applies to any other programmes or projects that could, owing to the nature of the contract, give rise to a conflict of interest on the part of the Contractor.
- 67.4** When putting forward a candidacy or tender, the candidate or tenderer shall declare that he is affected by no potential conflict of interest and has no particular link with other tenderers or parties involved in the project. Should such a situation arise during performance of the contract, the Contractor must immediately inform the Contracting Authority.
- 67.5** The Contractor must at all times act impartially and as a faithful adviser in accordance with the code of conduct of his profession. He shall refrain from making public statements about the project or services without the Contracting Authority's prior approval. He may not commit the Contracting Authority in any way without its prior written consent.
- 67.6** For the duration of the contract the Contractor and his staff shall respect human rights and undertake not to offend the political, cultural and religious mores of the beneficiary state.
- 67.7** The Contractor may accept no payment connected with the contract other than that provided for therein. The Contractor and his staff must not exercise any activity or receive any advantage inconsistent with their obligations to the Contracting Authority.
- 67.8** The Contractor and his staff shall be obliged to maintain professional secrecy for the entire duration of the contract and after its completion. All reports and documents drawn up or received by the Contractor shall be confidential.
- 67.9** The contract shall govern the Parties' use of all reports and documents drawn up, received or presented by them during the execution of the contract.

- 67.10** The Contractor shall refrain from any relationship likely to compromise his independence or that of his staff. If the Contractor ceases to be independent, the Contracting Authority may, regardless of injury, terminate the contract without further notice and without the Contractor having any claim to compensation.
- 67.11** The Commission reserves the right to suspend or cancel project financing if corrupt practices of any kind are discovered at any stage of the award process and if the Contracting Authority fails to take all appropriate measures to remedy the situation. For the purposes of this provision, "corrupt practices" are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or implementation of a contract already concluded with the Contracting Authority.
- 67.12** Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commissions paid to a company which has every appearance of being a front company.
- 67.13** The Contractor undertakes to supply the Commission on request with all supporting documents relating to the conditions of the contract's execution. The Commission may carry out whatever documentary or on-the-spot checks it deems necessary to find evidence in cases of suspected unusual commercial expenses.

## **ARTICLE 68: Administrative and financial penalties**

- 68.1** Without prejudice to the application of penalties laid down in the contract, a Contractor who has been guilty of making false declarations or has been found to have seriously failed to meet his contractual obligations in an earlier procurement procedure shall be excluded from all contracts and grants financed by the Community budget for a maximum of two years from the time when the infringement is established, as confirmed after an adversarial procedure with the Contractor. The Contractor may present his arguments against this penalty within 30 days of notification of the penalty by registered letter with acknowledgement of receipt or any equivalent means. In the absence of any reaction on the part of the Contractor, or of withdrawal of the penalty by the Commission within 30 days of receipt of the Contractor's arguments against it, the decision imposing the penalty shall become enforceable. That period may be increased to three years in the event of a repeat offence within five years of the first infringement.
- 68.2** If the Contractor is found to have seriously failed to meet its contractual obligations, it shall incur financial penalties representing 10% of the total value

of the contract in question. That rate may be increased to 20% in the event of a repeat offence within five years of the first infringement.

## **ARTICLE 69: Checks and audits by Community bodies**

- 69.1** The Contractor will allow the European Commission, the European Anti-Fraud Office and the European Court of Auditors to verify, by examining the documents or by means of on-the-spot checks, the implementation of the project and conduct a full audit, if necessary, on the basis of supporting documents for the accounts, accounting documents and any other document relevant to the financing of the project. These inspections may take place up to 7 years after the final payment.
- 69.2** Furthermore, the Contractor will allow the European Anti-Fraud Office to carry out checks and verification on the spot in accordance with the procedures set out in the European Community legislation for the protection of the financial interests of the European Communities against fraud and other irregularities.
- 69.3** To this end, the Contractor undertakes to give appropriate access to staff or agents of the European Commission, of the European Anti-Fraud Office and of the European Court of Auditors to the sites and locations at which the Contract is carried out, including its information systems, as well as all documents and databases concerning the technical and financial management of the project and to take all steps to facilitate their work. Access given to agents of the European Commission, European Anti-Fraud Office and the European Court of Auditors shall be on the basis of confidentiality with respect to third parties, without prejudice to the obligations of public law to which they are subject. Documents must be easily accessible and filed so as to facilitate their examination and the Consultant must inform the Contracting Authority of their precise location.
- 69.4** The Contractor guarantees that the rights of the European Commission, of the European Anti-Fraud Office and of the European Court of Auditors to carry out audits, checks and verification will be equally applicable, under the same conditions and according to the same rules as those set out in this Article, to any sub-contractor or any other party benefiting from EC funds.

## VOLUME 2

### SECTION 3: SPECIAL CONDITIONS

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**These conditions amplify and supplement, if necessary, the General Conditions governing the contract. Unless the Special Conditions provide otherwise, those General Conditions remain fully applicable. The numbering of the Articles of the Special Conditions is not consecutive but follows the numbering of the Articles of the General Conditions. Other Special Conditions should be indicated afterwards.**

## Article 2: Law and language of the contract

### 2.1 The following has been supplemented.

Turkish law shall apply in all matters not covered by the provisions of the contract.

### 2.2 The following has been supplemented.

The language used shall be the English language

## Article 4: Communications

### 4.1 The following has been supplemented.

The official addresses for sending information between the parties shall be:

#### a) of the Contracting Authority:

name: Central Finance and Contracts Unit-  
CFCU  
address: Ehlıbeyt Mah. 6 sokak No. 18/8.  
Ekısioglu Is Merkezi, 06520 Balgat  
Ankara, Turkey  
Tel/fax: Tel: +90 312 4723700/ Fax:  
+90 312 4723744  
e-mail: ercan.tortop@cfcu.gov.tr  
contact person: Mr. N. Ercan TORTOP, CFCU  
Director

#### b) of the Supervisor:

name: HİFAB International AB  
address: Atatürk Bulvarı No:133 Kat:2  
Kızılay, Ankara, Turkey  
Tel/fax: +90 312 417 16 65 /  
Fax:+90 312 417 16 67  
e-mail: [dick.lundberg@hifab.se](mailto:dick.lundberg@hifab.se)  
contact person: Dick Lundberg, Construction Expert

#### c) of the Contractor:

name: (to be filled-in in connection with  
signing of Contract)  
address: (to be filled-in in connection with  
signing of Contract)  
Tel/fax: (to be filled-in in connection with  
signing of Contract)  
e-mail: (to be filled-in in connection with  
signing of Contract)  
contact person: (to be filled-in in connection with  
signing of Contract)

## Article 5: Supervisor and Supervisor's representative

### 5.1 The following has been supplemented.

The Contracting Authority has authorised the Supervisor, in addition to actions implied elsewhere in the contract to take the following actions without prior approval of the Contracting Authority:

- Approve Contractor's proposed key staff fulfilling required qualifications
- Issue Administrative Orders provided the orders do not imply increased cost or postponement of completion date.
- Carry out quality control and approve material samples

The Supervisor shall obtain approval of the Contracting Authority before taking action under the following articles:

- Giving consent to a subcontractor for a subcontract for which a different subcontractor is named in the Contract.
  - Approving the Contractors Documents (the design)
  - Matters which will increase the Contract Price
  - Matters leading to an extension of the Time for Completion
  - Instructing a Variation which is expected to increase the contract Price or in any substantial way change the scope, character or quality of the Works.
- Order suspension

Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Supervisor, an emergency occurs affecting the safety of persons or of the Works or of adjoining property, he may, without relieving the Contractor of any of his duties or responsibilities under the contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Supervisor, be necessary to abate or reduce the risk.

The Contractor shall forthwith comply, despite the absence of approval of the Contracting Authority, with any such instructions of the Supervisor.

The Supervisor, with approval of the Contracting Authority, shall determine an addition to the Contract Price, in respect of such instruction.

**5.5 The following has been supplemented:**

In addition to the technical documentation and tests required in the Technical Specifications the Contractor shall provide the Supervisor with all technical documentation on materials and plant, considered necessary by the Supervisor, before delivery to the Site, Further, the Contractor shall carry out such tests on site considered necessary by the Supervisor to verify correctness of the information provided.

**5.6 Delete the sub-article and replace with:**

The Contractor shall place at the disposal of the Supervisor temporarily and free of charge the patterns and instruments necessary to perform inspections, measurements and tests enabling determination of conformity of the executed works and built-in materials with the Technical Specifications and the technical standards referred to, including national and branch standards, and the manufacturer's instructions on the materials used. The Contractor should provide to the supervisor within his site office a 10 m2 office with a table and 3 chairs with a telephone line available for long distance calls and internet connection.

**Article 7: Subcontracting**

**7.2 Delete Article 7.2 and substitute the following:**

The Contractor shall not subcontract any part of the works without the prior consent of the Supervisor and afterwards the written authorization of the Contracting Authority. The elements of the Contract to be subcontracted and the identity of the subcontractors shall be notified to the Contracting Authority by the Supervisor. With due regards to the provisions of Article 4.3 after getting the consent of the Contracting Authority, the Supervisor shall notify the Contractor of its decision within 14 days of receiving the Contractor's request, stating its reasons if authorization is withheld.

**7.5 Insert the words "following Supervisor's consent" after the words "approvals by the Contracting Authority"**

**Article 8: Supply of documents**

**8.4 Delete the sub-article and replace with:**

Drawings and other documents, which the Contractor in accordance with Article 11.1 or under the terms and conditions laid down in the Technical Specification, is obliged to prepare and submitted to the Supervisor for approval, shall be reviewed and/or commented on within 14 days.

Drawings, calculations and other technical documentation shall be submitted in the format required by the Supervisor and in the number stated in the Technical Specification, Timely submission of drawings, calculations and other technical documentation shall be the Contractor's responsibility, The Contractor shall in case of required revisions to- or disapproval of the documentation submitted not be entitled to any claim for additional time or cost provided comments have been received within the above stated time limit. The Supervisor's approval of any drawings, calculations and/or other technical documentation shall not relieve the Contractor of his responsibilities under the Contract

**Article 9: Access to Site**

**9.1 Delete the sub-clause and substitute:**

The Supervisor shall give the Contractor right of access to, and possession of, the Site not later than the Commencement Date.

**Article 10: Assistance with local regulations**

**10.1 The text of Article 10.1 shall be deleted and replaced by the following text:**

The Contractor shall obtain all permits required, including General Building Permits, during the period of performance of the Contract. The Contract price shall include all fees for receiving the necessary permits.

If requested, the Beneficiary will assist the Contractor in obtaining from the relevant authorities permits required for proper execution of the Works. The Beneficiary may provide the assistance requested to the Contractor at the Contractors Cost.

The Contractor shall be solely responsible for timely preparation of applications including required supporting documentation and shall not be entitled to claim additional payment and/or extension of time due to negative response from local authorities to applications for permits/approvals, unless the authorities' refusals are due to negligence on the part of the Contracting Authority. Any charges in connection with permits shall be born by the Contractor.

The Contractor shall within 14 days after signing the Contract submit to

the Supervisor a list of permits required for proper and timely commencement and completion of the Works indicating the permits for which the assistance of the Supervisor will be requested.

## **Article 11: The General Obligations**

### **11.1 The following has been supplemented.**

The Contractor shall include in his tender the cost of design and construction/installation of connections to public utilities for the following installations:

- Power
- Water Supply
- Rainwater drainage
- Sewerage
- Telephone

The Contractor shall be responsible for the design. He shall obtain all necessary information on which the design shall be based and he shall be responsible for obtaining all approvals and permits required by the relevant authorities in due time.

The Contractor and his subcontractors shall possess all required licenses and registrations required by Turkish law to provide construction services.

The Contractor shall give prompt notice to the Supervisor, with a copy to the Contracting Authority of any error, omission, fault or other defect in the design of or specification for the works which he discovers when reviewing the Contract or executing the Works.

### **11.2 The first sentence of Article 11.2 shall be deleted and substituted by:**

The Contractor shall before employing personnel for the key-positions comprising Site manager, Construction manager, Quality Control manager and Supervisors of works secure that the persons intended employed for these positions are qualified in their fields of profession, with required experience and being in possession of relevant licenses, as required by the Turkish Construction Law.

The Contractor must at all times employ workmen, with the necessary qualifications, in sufficient number to ensure satisfactory execution of the Works and compliance with the Performance Programme.

### **11.9 The last paragraph of Article 11.9 shall be deleted and replaced by**

**the following text:**

It shall be the responsibility of the Contractor to identify drawings and documents, in addition to those contained in the Tender Dossier or referred to in the Technical Specifications, required for proper and secure execution of the Works.

The Contractor shall in due time request the Contracting Authority for assistance, if necessary, in obtaining such drawings and documents from the relevant authorities. Such documents shall be treated as confidential and shall be returned to the authority concerned immediately after execution of the works for which the documents were required.

Any damage to private or public property due to the Contractor not having acquired additional information shall be born by the Contractor.

Documents referred to, should be returned to the Contracting Authority before issuing the certificate of provisional acceptance for the building fit for its purpose.

#### **11.12 Commemorative plaques**

Permanent commemorative plaques shall be placed at sites accessible to the general public. In addition to the European Community emblem, such plaques must mention the European Community contribution to the project.

The following text should be used as a guideline to the contents required:

*‘This project has been co- financed by the European Community. Upon completion in (year), the total cost of the project was (national currency)’*

#### **Billboards**

Billboards shall be erected on the sites. Such billboards shall include a space reserved for the indication of the European Community participation. Billboards must be of a size, which is appropriate to the scale of the operation.

The section of the billboards reserved for the European Community must meet the following criteria:

- it shall take up at least 50% of total area of the billboard
- it shall bear the standardized European Community emblem

## **Article 12: Superintendence of the works**

### **12.5 The following new Article shall be added:**

At all times during execution of the works the Contractor shall ensure that activities on site are supervised by staff with appropriate licenses and qualifications.

## **Article 13: Performance guarantees**

### **13.1 The following has been supplemented:**

The amount of the Performance Guarantee shall be 10 % of the Contract Price.

### **13.3 The following has been supplemented:**

Whenever the Supervisor determines an addition to the Contract Price as a result of a change in cost and/or legislation or as a result of a variation amounting to more than 10 percent of the Contract Price, the Contractor, at the Supervisor's written request, shall promptly increase the value of the performance guarantee in Euro by an equal percentage. The performance guarantee of a joint venture shall be in the name of the joint venture.

### **13.8 Delete Article 13.8 and substitute the following:**

The performance guarantee shall be released until a date 30 days after the later of the following two events:

(a) issuance of the final acceptance certificate.,

(b) receipt by the Contracting Authority from the Contractor of a written discharge together with a letter of release issued by Ministry of Labour and Social Security confirming the Contractor has fulfilled all his statutory Social Security obligations arising in connection with the performance of the Contract.

## **Article 14: Insurance**

### **14.2 The following has been supplemented.**

The amount of insurance under a global policy substituting the insurance referred to in Article 14.1 shall be in an amount not less than the Contract Price plus 15%.

### **14.3 The last sentence shall be deleted and substituted by the following text:**



Such liability shall in the case of personal injuries be in accordance with Turkish law and workmen compensation practice, but in no case the insurance against injuries shall be less than EURO 50 000 per accident.

**14.4 The following has been supplemented.**

The amount of Insurance shall be not less than EURO 1 000 000 per accident with the number of occurrences unlimited.

The Insurance shall cover the Contractor and all the Contractor's Sub-contractors. The Contractor shall present to the Supervisor evidence of the insurance required before starting commencement of performance of the Contract on site.

**14.5 The two first sentences shall be deleted and substituted by:**

All the insurances referred to in Article 14 shall be subject to the Contracting Authority's prior approval;  
shall be taken out within 14 days after the Date of Signing of Contract, shall take effect from the Date of Commencement of the Works and shall remain in force until Final Acceptance of the Works.

**14.6 The following has been supplemented.**

The amount of Insurance for design (indicating Lot 1) shall be not less than EURO 250 000 per site with the number of occurrences unlimited. The Insurance shall cover the Contractor and all the Contractor's Sub-contractors. The Contractor shall present to the Supervisor evidence of the insurance required, before the performance of the Contract at site.

## **Article 15: Performance programme**

**15.1 The following has been supplemented.**

The Contractor shall prepare a detailed performance program clearly showing the activities under each section of the work. Sections shall be as defined in the Breakdown of the Overall Price.

**15.2 The following has been supplemented.**

Within 25 days from signing of the Contract, the Contractor shall submit for the Supervisors approval the Detailed Program for Performance of the Contract drawn up in accordance with Article 15.1.

The Supervisor shall, within the time specified in Article 8.4 after receiving such programs, approve accept or comment on the programs.

**15.3 The text of Article 15.3 shall be deleted and replaced by the following text:**

The detailed Performance Program, drawn up in accordance with Article 15.1 and approved in accordance with Article 15.2, shall be deemed to have taken into account prevailing climatic conditions, including periodic adverse weather conditions.

Whenever required by the Supervisor the Contractor shall within 14 days update the Performance Program, based on actual progress. In case of delays in actual progress the Contractor shall, with the updated Performance Program that is approved by the Supervisor, provide information on additional resources to be deployed in order to meet the milestones of Performance Program prepared and approved in accordance with Article 15.1 and 15.2

If the revised programme falls behind the time for completion due to the fault of the Contractor, consent to the programme by the Supervisor shall not be interpreted as an entitlement of time extension to the Contractor.

**Article 16: Detailed breakdown of prices**

**16.1 Please delete the sub item and replace with:**

The Contractor shall, if so requested by the Supervisor, prepare detailed breakdown of prices for:

- additional or varied works for which rates are not included in the priced Breakdown of the Tender Price.
- works to be carried out under Provisional Sum items.
- works to be carried out under unit price items.
- works to be carried out under lump sum price items.

The Contractor shall submit such breakdown of prices within 14 days after receiving the request.

**16.2 The following has been supplemented.**

Within 30 days of Signing the Contract the Contractor shall submit to the Supervisor the detailed cash flow estimate based on the detailed performance program according to signed contract price.

Each month the Contractor shall update the cash flow estimate and submit a detailed estimate of all payments which may be due to the Contractor under the Contract during the next three months.

## Article 17: Contractor's drawings

### 17.1 The following has been supplemented.

The Contractor shall submit to the Supervisor only for Lot 1(Construction Project) for his approval:

- Architectural drawings and specifications
- Excavation plan
- Piling Calculations and drawings (if necessary)
- Structural drawings, specifications and calculations
- Electrical drawings and specifications
- Mechanical drawings and specifications
- Infrastructure drawings and specifications
- Electrical materials
- Mechanical materials
- Construction materials
- Infrastructure materials

Additional design, materials and equipment necessary for the “Fit for purpose” of the Contracting Authority

- b) such drawings and information required by local authorities in connection with applications for and obtaining of required permits.

The Contractor shall bear all costs in connection with above documentation and shall be responsible for timely submission in accordance with Article 8.4,

For Lot 2(Renovation Project), all projects (only 1 set of) related with the renovations of 4 locations shall be given by the Contracting Authority after signature of contracts. Supplementary drawings needed to realize the works shall be prepared by the Contractor and submitted for the approval of Supervisor in accordance to Article 8.4.

### 17.4 The following has been supplemented.

The Contractor shall free of charge supply additional copies of drawings in the number and format reasonably required by the Supervisor.

### 17.5 The following has been supplemented.

The Contracting Agency do not accept any responsibility whatsoever for any errors mistakes, faults or defects in the Contractors design. Any costs connected to rectifying any errors, mistakes, faults or defects shall be covered by the Contractor solely.

### 17.7 The following has been supplemented.

The Contractor shall not later than 14 days before provisional acceptance of the Works or any section of the Works supply such

operation and maintenance manuals and “as-built” drawings in 5 copies in the Turkish language or as otherwise specified in the Technical Specification.

## **Article 18: Sufficiency of Tender prices**

### **18.1 The following has been supplemented.**

The Contractor is deemed to acquire full information about the earthquake proofing valid for the respective construction sites.

### **18.4 The contract shall be exempt from duties and taxes (including VAT) as specified below:**

#### **TAX AND CUSTOMS PROVISIONS**

The following provisions shall apply to public contracts financed by the Community:

- i** Contracts shall not be subject to stamp duty and registration duty as provided for by the law of the Beneficiary country. Persons not resident in the Beneficiary country shall be subject to stamp duty on their registration card at a rate depending on the period for which they remain in the said country.
- ii** Goods, works and services financed by the Community for the State, local administrative units, public bodies or public-interest associations shall be exempt from VAT or similar taxes.
- iii** Natural persons not nationals and not resident in the Beneficiary country carrying out service contracts financed by the Community shall not be subject to income tax or turn over tax in the Beneficiary country during the period of their contract.

Legal persons, in the same way, provided that they don't have their principal establishment in the said country.

- iv** Profit and/or income arising from the execution of supply and works contracts shall be taxable according to the tax system of the Beneficiary country if the natural or legal persons who make such profit and/or obtain such income have their principal establishment in the said country.
- v** Equipment and materials required for the execution of public works, supply or service contracts may be imported temporarily in to the Beneficiary country as provided for by its national legislation, with import duties and taxes suspended. The Beneficiary country shall

authorise the contractor to import temporarily, use and re-export such equipment.

- vi Goods which are the subject of a public supply contract shall be imported into the Beneficiary country free of import duties and taxes.

## **Article 21: Safe guarding adjacent properties**

### **21.2 The following has to be supplemented:**

The damages given to adjacent sites or properties shall be paid by the Contractor if it is because of Contractors fault.

## **Article 22: Interference with Traffic**

### **22.1 The following has been supplemented:**

Where special permits regarding temporary interference with traffic are required, it shall be the responsibility of the Contractor to obtain such permits in due time.

The Supervisor will in accordance with Article 10 assist the Contractor in obtaining such permits.

The Contractor shall plan the execution of the Works with due regard to avoidance of inconveniences to the public, to the extent reasonably possible. Where unavoidable, the Contractor shall in due time inform the Supervisor of the extent of interference with traffic and inconveniences

All expenses in connection with permits, temporary traffic arrangements, preliminary works including fencing, signboards, traffic signals etc. and provision of interim works to secure uninterrupted access to buildings and properties affected by the construction activities shall be at the cost of the Contractor, who shall also indemnify and hold the Contracting Authority harmless against any claims and expenses resulting from the Contractor's disregard of by-laws and circulars or the Contractor's otherwise unnecessary/unauthorized interference with traffic.

## **Article 23: Cables and conduits**

### **23.1 The text shall be deleted and replaced by the following;**

It shall be the Contractor's responsibility, in due time and not later than 14 days before actual execution on site, to acquire from the relevant authorities up-to-date information on underground utility installations in the areas which may be affected by the execution of works under the Contract. The Contractor shall not later than 7 days before execution of construction works on site, provide the relevant authority with information on planned construction works in areas of concern for the relevant authorities.

Where, in the course of carrying out the Works, the Contractor encounters benchmarks indicating the course of underground cables, conduits or other installations, he shall keep benchmarks in position or replace them. Should execution of the Works necessitate temporary removal of such benchmarks the Contractor shall inform the Supervisor and the authority concerned and obtain authorisation to temporary removal of the benchmarks.

### **23.2 The following has been supplemented.**

When the works involve excavations crossing existing lines of installations or other construction activities which may cause risk of damage to existing installations the Contractor shall give notice to the Supervisor hereof not later than 7 days before the planned date for execution of the activity on site.

If supervision or opportunity for supervision from the responsible authority is required the Supervisor will inform the Contractor hereof in due time. The Contractor shall be responsible for giving a not less than 3 days notice to the authority concerned about the time for execution of the potentially risky operation and if required adjust his work planning to facilitate supervision on site by the concerned authority.

Additional cost incurred due to failure to comply herewith shall be born by the Contractor.

### **23.3 The following has been supplemented:**

Where uncertainties in location of underground networks due to inconsistencies in existing documentation or when installations not specified on drawings are unexpectedly encountered during execution of the works, the Contractor shall immediately inform the Supervisor hereof and if so directed by the Project Manger, the Contractor shall

carry out exploratory excavations before proceeding with activities in the location with unregistered underground installations.

Cost of damages, which can reasonably be regarded as the result of the Contractor's negligence of timely reporting to Supervisor shall be born by the Contractor.

**23.5 The following has been supplemented:**

No major operation involving risks of damages to installations shall be carried out without the Contractor has provided the Supervisor with detailed information on existing documentation, preparatory investigations and planned safety precaution. The Contractor shall provide the information depicted above not later than 3 days prior to execution of such work

**Article 25: Demolished Materials**

**25.1 The following has been supplemented:**

The excavated materials (except historical materials, ruins, precious stones, mines, metals) are the property of the Contractor. The way of handling the materials produced from dismantling and demolition works will each time be determined by the Contracting Authority and communicated to the Contractor by the Supervisor.

If in the city of renovation there is a definite dump site for the excavated materials defined by the municipality, contractor shall discharge them to this site. Payment receipt of dump site fee shall be approved by the Supervisor and attached to the related Interim Payment before submission to Supervisor.

If in the city of renovation there is not a definite dump site defined by the municipality or there is a defined dump site but no receipt is given by the municipality and no fee is demanded by them; than the Supervisor shall give a record to the Contractor that discharged material from the renovation work is discharged to a safe place that does not give harm to environment and that record is given as there is no defined dump site in the city limits/there is a definite dump site in the city limits but no receipt is given by the municipality. This record shall be attached to the related Interim Payment Report before submission to Supervisor.

**25.3 Substitute:**

“...not exceeding 100 meters” with;  
‘...within 10 kilometers”

**25.4 The following has been supplemented:**

Removal of rubble, demolition materials, rubbish and debris from the site shall be done by the Contractor at his expense.

**Article 28: Soil studies**

**28.1 The following has been supplemented:**

The Contractor shall, as part of the Works, conduct all necessary soil tests. The Contractor assumes full risk and responsibility for all sub-soil, ground water and geological conditions.

The Contractor shall bear all costs of rectifying any sub-soil conditions to be considered as unexpected.

**28.2 The following has been supplemented:**

The cost of necessary soil tests should be provided for in the Contract price.

**Article 30: Patents and licences**

**30.1 The following has been supplemented:**

In addition, the Contractor shall indemnify the Contracting Authority against any claim resulting from use of copyright.

**Article 31: Commencement order**

**31.1 Delete the sub-clause and substitute:**

The Commencement order shall be given by the Supervisor. The Commencement date shall not be later than 7 calendar days; following the signing of contract between Contractor and Contracting Authority.

**Article 32: Period of execution of tasks**

**32.1 Delete the sub-clause and substitute:**

The period of performance shall start at the Commencement Date and the Works shall be completed within the number of days stated in the Appendix to Tender for each Lot.



## **Article 33: Extension of the period of execution of tasks**

### **33.1 Add the followings:**

h) Not giving permission to enter each site 7 calendar days after applicant of the contractor to begin to work to the related site.

## **Article 34: Delays in performance**

### **34.1 The following has been supplemented.**

In case the Contractor fails to comply with Article 32 the Contractor shall pay damages to the Contracting Authority.

(a) Liquidated damages for the works is 0,05% per calendar day, of the Contract Price for whole works, which shall be paid for every day which shall elapse between the last day of the performance period and the date of actual completion stated in the Provisional Acceptance Certificate.

(b) The maximum amount of all accumulated liquidated damages shall not exceed 15% of the Contract Price. In case the maximum amount is reached provisions under Article 34.2 of General Conditions shall be applied.

## **Article 35: Modifications**

### **35.7 The following has been supplemented.**

The percentage shall be 15%.

In these circumstances, on making a reasoned request submitted to the Supervisor, and after the decision of the Supervisor with the approval of the the Contracting Authority, the Contractor may be entitled to have the contractual period of performance changed.

### **35.9 The following has been supplemented:**

Where items are accompanied by quantities, these shall be firm quantities for which the Contractor has submitted a lump-sum price and shall be paid for irrespective of the quantities of works actually carried out.

## **Article 36: Suspension**

### **36.5 The text shall be replaced by the following:**

If the suspension period, ordered in accordance with Article 36.1, exceeds 120 days the Contractor may by notice to the Supervisor request permission to proceed. If the Supervisor does not give such permission within 30 days after being requested to do so, the Contractor shall be entitled to give notice of termination in accordance with the provisions of Article 62.

## **Article 37: Work Register**

### **37.1 The following has been supplemented.**

The Work Register will be kept on site by the Contractor in accordance with the Turkish Construction Law.

Normal working hours are from 8:00 to 17:00, 45 hours a week according to provisions of Labour Law no. 4857.

## **Article 39: Quality of works and materials**

### **39.2 “Technical Specification” shall replace “Special Conditions” in the first sentence.**

#### **The following has been supplemented:**

The preliminary technical acceptance is necessary and the conditions governing its implementation are explained below.

All materials, Plant and workmanship shall be:

- (a) of the respective kinds described in the Contract and in accordance with the Supervisor’s instructions, and
- (b) subjected from time to time to such tests as the Supervisor may require at the place of manufacture, fabrication or preparation, or on the Site or at such other place(s).

The Contractor shall provide such assistance, labour, electricity, fuels, stores, apparatus and instruments as are normally required for examining, measuring and testing materials or Plant and shall supply samples of materials, before incorporation in the Works, for testing as

may be selected and required by the Supervisor.

All samples and tests shall be carried out by an independent laboratory. The related expenses of sampling, tests etc. shall be paid by the Contractor at his own cost.

## **Article 40: Inspection and testing**

**40.2** “Technical Specification” Shall replace “Special Conditions” in the last sentence

## **Article 42: Ownership of plant and materials**

**42.2 Delete the sub-clause and replace with:**

All equipment, temporary works, Plant and materials on Site owned by the Contractor shall for the duration of the performance of the Contract, be made subject to a lien in favor to the Contracting Authority.

## **Article 43: General principles**

**43.1 Delete the sub-clause and replace with:**

*For Foreign Contractors:*  
Payment shall be made in Euro.

*For Domestic Contractors:*  
Payments shall be made in TL. as an equivalent to the Euro value of the contract, calculated at the exchange rate of the bank from which payments are made.  
Payments shall be authorised and made by **Central Finance and Contracts Unit, Ehlıbeyt Mahallesi, 6. Sokak, Ekşiođlu İş Merkezi, No: 18/8, Balgat, 06520, ANKARA.**

The Contractor shall make all payment requests in writing to the Supervisor. Payment certificates shall be reviewed and approved by the Supervisor and submitted to the Contracting Authority for payment. All payments shall be authorised and made by the Contracting Authority, **Central Finance and Contracts Unit, Ehlıbeyt Mahallesi, 6. Sokak, Ekşiođlu İş Merkezi, No: 18/8, Balgat, 06520, ANKARA.**

The Contractor must inform the Commission of the European Communities, at Head of Section E, Uđur Mumcu Cad., No:88, 4<sup>th</sup> Floor, Gaziosmanpaşa, 06700, ANKARA, Fax: +90 312 446 91 76 Turkey thereof by sending a copy of the correspondence.

**43.2 The following has been supplemented.**

The Contractor shall together with the performance guarantee provide information on the Contractor's EURO bank account number:

[ *to be filled-in in connection with signing of Contract*]

**43.3 The following has been supplemented.**

The 45-day period for payment shall start from the date when the Contracting Authority registers receipt of Contractor's invoice submitted with progress registration approved by the Supervisor in accordance with Article 48.5. In case the Supervisor fails to approve or correct the progress registration within 14 days the payment to the Contractor shall be due 60 days after the Contractor has submitted his application for payment to the Supervisor.

## **Article 44: Pre-financing**

**44.1 The following has been supplemented.**

The Pre-financing shall be made as a lump sum.

**44.2 The following has been supplemented.**

The amount of the pre-financing shall be 10% of the Contract Price. The Contractor shall be entitled to invoice Advance only after having provided the Contracting Authority with a guarantee in accordance with Article 44.3 (c). In addition Article 44.3 (a) and (b) are to be fulfilled. The Contractor shall receive payment of the Advance not later than 45 days after submission of invoice.

**44.8 The following has been supplemented.**

The pre-financing shall be repaid through percentage deductions in payment certificates.

(a) deductions shall commence in the payment certificate in which the accumulated value of works executed and certified for payment exceeds 25: % of the Contract Price; and

(b) deductions shall be made at the rate of 20 % of the value of works executed and certified for payment under each payment certificate, until the pre-financing payment has been repaid. Repayment shall finish whenever the total of Payment Certificates reaches the 60% of total Contract Price.

If the pre-financing payment has not been repaid prior to:  
the issue of the Certificate of Provisional Acceptance for  
the Works;

termination by the Contracting Authority, Article 61;  
termination by the Contractor Article 62;  
termination following prolonged suspension, Article 36;  
termination by mutual agreement, Article 46, or  
termination due to Exceptional Risks, Article 19.

the balance shall immediately become due and payable by the Contractor to the Contracting Authority.

## **Article 45: Retention monies**

### **45.1 The following has been supplemented.**

The Contracting Authority shall retain money from each interim payment in total the amount of 10% of the Contract Price.

- (a) retention shall commence in the first payment, advance payment excluded.
- (b) retention shall be in the form of a deduction of 10% of the value of works executed and certified for payment under each payment certificate,

**45.2** The Contracting Authority shall not accept retention substituted by any form of retention guarantee.

## **Article 46: Price revision**

### **46.1 The following has been supplemented.**

Prices and rates in the Breakdown of Overall Price and Bill of Quantity are fixed for the duration of the Contract and shall not be subject to any revisions.

## **Article 47: Measurement**

### **47.1a) the following has been supplemented**

The detailed method of measurement for LOT 1 is as follows:

#### LOT 1:

Each one of the Items in the “Breakdown of Tender Price” in Section 4, Article 4.1.1, has been broken down into a number of sub-categories of works and each sub-category of works has been broken down into sub-tasks. The lists of Detailed Breakdown of the Works section 4.1.2 show the value of each sub-category expressed as a fixed percentage of the item price.

The lists of Detailed Breakdown of the Works shall be the basis for the interim certificate. The progress shall be measured as the percentage of completion of each sub-category.

The Contractor shall, in accordance with Article 48.1 of the Special Conditions, at the end of each month prepare a monthly interim certificate showing the progress made against each sub-category and submit it to the Supervisor.

The lists of detailed breakdown of the Works shall be used as supporting documentation to interim certificate.

The Supervisor will within two weeks of receipt make modifications, if necessary, in the supporting documentation and return it the Contractor for final submission of interim certificate.

### **47.1b) The Article has been deleted and replaced with the following.**

The detailed method of measurement for LOT 2 is as follows:

#### LOT 2

The quantities set out in the Bill of Quantities are the firm quantities for which the Contractor has submitted a lump-sum price and shall be paid for irrespective of the quantities of works actually carried out.

The Supervisor shall determine by measurement the actual quantities of works executed by the Contractor, and these should be paid for in

accordance with the provisions of the General Conditions concerning interim payments.

Actual work carried out, exceeding the quantities in the Contract, will not be paid.

Actual work which goes below the quantities in the Contract, shall be paid in accordance with the quantities stated in the Contract

The Contractor shall, in accordance with Article 48.1 of the Special Conditions, at the end of each month prepare a monthly interim certificate showing actual quantities of works carried out.

The provisional sums in the bill of quantities must be used in whole at the discretion of the Supervisor.

Each item in the bill of quantities for which payment is to be made in a lump sum, and for which no payment schedule is provided, must be paid after the work covered by the lump sum has been completed to the satisfaction of the Supervisor.

## **Article 48: Interim payments**

### **48.1 Please add the end of this item:**

(g) The value of any modifications executed up to the end of the month in question, less the amount certified in the previous interim Payment Certificate.

### **48.2 The following has been supplemented.**

Only the value of permanent works shall be included in the interim payment certificate.

The minimum value of an Interim Payment Certificate shall be not less than the amount stated in the Appendix to Tender.

### **48.5 The text of Article 48.5 shall be deleted and replaced by the following:**

The Supervisor shall within 14 days of receipt of the Contractors application for Interim Payment Certificate approve or correct the Contractor's application and issue an Interim Payment Certificate stating the amount the Contractor shall be paid.

Upon issue of the Interim Payment Certificate the Contractor shall prepare and send to the Contracting Authority an invoice in the amount stated in the Interim Payment Certificate.

The Supervisor will provide the Contractor with the format for the Invoices.

**48.7** The Contractor shall at the end of each month submit an application for interim payment to the Supervisor. The application shall be supported by a detailed progress registration.

## **Article 49: Final statement of account**

**49.1** Delete sub-clause 49.1 of the General Conditions and substitute the followings:

No later than 6 months after the issue of the last provisional acceptance certificate, the Contractor shall submit to the Supervisor a draft final statement of account with supporting documents showing in detail the value of the work done in accordance with the contract, together with all further sums which the Contractor considers to be due to him under the contract in order to enable the Supervisor to prepare the final statement of account.

## **Article 56: Partial acceptance**

No partial Acceptance shall be made for uncompleted unique construction/ renovation site. If a construction/renovation site is completed, including all components to make it fit for its purpose, the partial acceptance could be applied one by one or in groups, according to demand of Contractor and by the consent of the Contracting Authority.

## **Article 57: Provisional Acceptance**

**57.6** The operating and maintenance manuals and as-built drawings as well as warranty certificates of mechanical, electrical etc. equipment shall be submitted by the contractor to the Supervisor before the certificate of Provisional Acceptance is issued by the Supervisor.

## **Article 58: Maintenance obligations**

**58.6** The first sentence shall be deleted and replaced by:

If any unplanned remedy or maintenance works should be required due to normal wear and tear during the maintenance period it shall be deemed to be due to defective work,

**58.7** The following has been supplemented.

The Maintenance Period shall be 365 days from the date of issue of Provisional Acceptance Certificate.



**58.8 The following has been supplemented.**

The Contractor shall be responsible in accordance with Turkish law.

**Article 60: Breach of Contract**

**60.4a) Delete the sub-article and substitute:**

Any general damages arising within this contract will be settled according to procedures described in Article 65 and 66 of the Special Conditions.

**b) Delete the sub-article and substitute:**

In case where one party terminates the contract due to a breach by the other party, injured party is entitled to the liquated damages in amount of up to 15% of the total value of the contract.

This does not preclude the rights of injured party to additional general damages.

**Article 62: Termination by the Contractor**

**62.3 The following has been supplemented.**

The Contractor shall provide all documentation, which may reasonably be requested as supporting evidence of loss and damages incurred in connection with termination under Article 62.

Additional payment to the Contractor for loss and damages in connection with termination under Article 62 shall be limited to 15 % of the Contract Price.

**Article 65: Amicable dispute settlement**

**65.2 Delete the sub-article and replace:**

If the amicable dispute settlement procedure fails, the parties may agree to try consolation through the European Commission. In this case, the most diligent party shall by registered mail solicit from the EC Representation to Turkey to set up a consolation meeting. Both parties will be invited by the EC Representation by normal mail to attend to the consolation meeting taking place no latter than 21 days after the

solicitation was received. Number of members of dispute settlement committee shall be 3 people that are going to be nominated by EC Representation.

The maximum period laid down for reaching such a settlement shall be 120 days from the commencement of the procedure. Should the attempt to reach an amicable settlement fail or a party fail to respond in time to request for settlement, either party shall be free to proceed to the next stage of the dispute settlement procedure by notifying the other.

## **Article 66: Dispute settlement by litigation**

**The following has been supplemented.**

Any dispute between the Parties that may arise during the performance of this contract and that it has not been possible to settle otherwise between the Parties shall be submitted to courts of Ankara in accordance with the Natural Law of Contracting Authority.

## VOLUME 2

### SECTION 4: SPECIMEN PERFORMANCE GUARANTEE

Invitation to tender No [.....]

We, the undersigned, [*name, company name, address*], hereby declare that we will guarantee, as principal debtor, to to Central Finance and Contracts Unit- CFCU Ehlıbeyt Mah. 6 sokak No. 16/8.

Ekısioglu Is Merkezi, 06520 Balgat

Ankara, Turkey

on behalf of [*Contractor's name and address*], the payment of [*amount of the performance guarantee*], representing the performance guarantee mentioned in Article 13 of the General Conditions without dispute, on receipt of a first written request from the beneficiary.

We further agree that no change or addition to or other modification to the terms of the contract or of the works to be performed thereunder or of any of the contract documents which may be made between you and the Contractor shall in any way release us from any liability under this guarantee. We hereby waive notice of any such change, addition or modification.

The guarantee will enter into force and take effect from the [*indicate the date of entry into force of the contract*] and shall be valid until the date of issue of the final statement of account.

We note that you will release the guarantee and notify us of the fact at the latest within thirty days of the date of issue of this certificate.

Any dispute concerning this guarantee shall be governed by [*enter the law applicable*] and fall within the competence of [*indicate which jurisdiction applies*].

Done at ....., ..../..

Name and first name: ..... On behalf of: .....

Signature: .....

[*stamp of the body providing the guarantee*]

## VOLUME 2

### SECTION 5: **SPECIMEN PREFINANCING PAYMENT GUARANTEE**

Invitation to tender No [.....]

We the undersigned, [*name, company name, address*], hereby declare that we will guarantee, as principal debtor, to Central Finance and Contracts Unit- CFCU Ehlibeyt Mah. 6 sokak No. 16/8.

Ekşioğlu İş Merkezi, 06520 Balgat  
Ankara, Turkey

on behalf of [*Contractor's name and address*], the payment of [*indicate the amount*], corresponding to the guarantee mentioned in Article 44 of the Special Conditions without dispute, on receipt of a first written request from the beneficiary.

We further agree that no change or addition to or other modification of the terms of the contract or of the works to be performed hereunder or of any of the contract documents which may be made between you and the Contractor shall in any way release us from any liability under this guarantee. We hereby waive notice of any such change, addition or modification.

The guarantee will enter into force and take effect from the [*indicate the date of payment of the pre-financing*] and shall be valid until full repayment of the same amount by the Contractor.

We note that you will release the guarantee and notify us of the fact at the latest within thirty days of this date.

Any dispute concerning this guarantee shall be governed by [enter the law applicable] and fall within the competence of [indicate which jurisdiction applies].

Done at ....., ..../..

Name and first name: ..... On behalf of: .....

Signature: .....

[*stamp of the body providing the guarantee*]

## VOLUME 2

### SECTION 6: SPECIMEN RETENTION GUARANTEE

Invitation to tender No [.....]

We, the undersigned, [*name, company name, address*], hereby declare that we will guarantee, as principal debtor, to Central Finance and Contracts Unit- CFCU Ehlibeyt Mah. 6 sokak No. 16/8, Ekşioğlu İş Merkezi, 06520 Balgat, Ankara, Turkey on behalf of [*Contractor's name and address*], the payment of [*indicate the amount*], corresponding to the guarantee mentioned in Article 45 of the Special Conditions without dispute, on receipt of a first written request from the beneficiary.

We further agree that no change or addition to or other modification of the terms of the contract or of the works to be performed hereunder or of any of the contract documents which may be made between you and the Contractor shall in any way release us from any liability under this guarantee. We hereby waive notice of any such change, addition or modification.

The guarantee will enter into force and take effect from the [*indicate the date of payment of the sums retained under the contract*] and shall be valid until the date of issue of the certificate of final acceptance.

We note that you will release the guarantee and notify us of the fact at the latest within thirty days of the date of issue of this certificate.

Any dispute concerning this guarantee shall be governed by [enter the law applicable] and fall within the competence of [indicate which jurisdiction applies].

Done at ....., ..../../..

Name and first name: ..... On behalf of: .....

Signature: .....

[*stamp of the body providing the guarantee*]