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# General Conditions for Supply Contracts V4.3

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Department of  
Contracts

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## GLOSSARY

**Administrative Order:** Any instruction or order issued by the Project Manager/Leader/Engineer to the Contractor in writing regarding the execution of the contract.

**Beneficiary Country:** The Maltese Islands.

**Blacklisted Person:** Any person, whether legal or natural, with whom a Contracting Authority and anybody governed by public law shall be prohibited from carrying out any procurement whether directly or as a sub-contractor or as a member of a consortium and, or joint venture.

**Breakdown of the Overall Price:** A heading-by-heading list of the rates and costs making up the price for a lump-sum or global sum contract.

**Budget Breakdown:** In a fee-based contract, the schedule which breaks down the contract value, stating out the fee rates and the provision for incidental expenses.

**Cash Flow Forecast:** The Contractor's estimate of the cash flows arising directly from the execution of a fee-based contract.

**Central Government Authority:** The Department of Contracts.

**Commission:** The European Commission.

**Conflict of Interest:** Any event influencing the capacity of a candidate, tenderer or supplier to give an objective and impartial professional opinion, or preventing him, at any moment, from giving priority to the interests of the Central Government Authority and the Contracting Authority. Any consideration relating to possible contracts in the future or conflict with other commitments, past or present, of a candidate, tenderer or supplier, or any conflict with his own interests. These restrictions also apply to sub-contractors and employees of the candidate, tenderer or supplier.

**Contract Value:** The total value of the contract to be paid by the Contracting Authority in terms of the agreed terms and conditions.

**Contract:** The signed agreement entered into by the parties for the performance of the services/supplies/works, including all attachments thereto and all documents incorporated therein.

**Contracting Authority:** The final beneficiary of the contract.

**Contractor:** The successful tenderer, once all parties have signed the contract.

**Day:** Calendar day.

**EC:** The European Commission.

**ESPD:** The European Single Procurement Document. The ESPD allows economic operators to self-declare that they:

- do not fall within a ground for exclusion or blacklisting (or, if they do, they can demonstrate that they have taken self-cleansing measures);
- meet the relevant selection criteria; and
- (where applicable) fulfil the objective rules and criteria for reduction of candidates.

**EU:** The European Union.

**Engineer's Representative:** Any natural or legal person, designated by the Engineer as such under the contract, and empowered to represent the Engineer in the performance of his functions, and in exercising such rights and/or powers as have been delegated to him. In this case, references to the Engineer will include his representative.

**Equipment:** Machinery, apparatus, components and any other articles intended for use in the project.

**Evaluation Committee:** A committee made up of an odd number of voting members (at least three) appointed by the Central Government Authority/Contracting Authority as the case may be, and

possessing the technical, linguistic and administrative capacities necessary to give an informed opinion on tenders.

**Fee-Based Contract:** A contract under which the services are provided on the basis of fixed fee rates for each day/hour worked by experts/service provider.

**Final Acceptance Certificate:** Certificate(s) issued by the Engineer to the Contractor at the end of the period stating that the Contractor has completed his obligations to provide, commission, test and to undertake any of the stipulated obligations vis a vis the supplies concerned.

**Final Beneficiary:** The Department/Entity or other government body on whose behalf the Department of Contracts has issued this tender.

**Framework Agreement:** An agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

**Foreign Currency:** Any currency permissible under the applicable provisions and regulations other than the Euro, which has been indicated in the tender.

**General Conditions:** The general contractual provisions setting out the administrative, financial, legal and technical clauses governing the execution of contracts.

**General Damages:** The sum not stated beforehand in the contract, which is awarded by a court or an arbitration tribunal, or agreed between the parties, as compensation payable to an injured party for a breach of the contract by the other party.

**Global Price Contract:** A contract under which the services are performed for an all-inclusive fixed price.

**In Writing:** This includes any hand-written, typed or printed communication, including fax transmissions and electronic mail (e-mail).

**Label:** Any document, certificate or attestation confirming that the works, products, services, processes or procedures in question meet certain requirements.

**Liquidated Damages:** The sum stated in the contract as compensation payable by the Contractor to the Contracting Authority for failure to complete the contract or part thereof within the periods under the contract, or as payable by either party to the other for any specific breach identified in the contract.

**Modification:** An instruction given by the Project Manager/Leader/Engineer which modifies the works/supplies/services.

**Month:** Calendar month.

**National Currency:** The currency of the country of the Contracting Authority, which is the Euro.

**Period:** A period begins the day after the act or event chosen as its starting point. Where the last day of a period is not a working day, the period expires at the end of the next working day.

**Project Manager:** The legal or natural person responsible for monitoring the execution of the contract on behalf of the Contracting Authority, where the latter is not the Central Government Authority.

**Project:** The project in relation to which the services are to be provided under the contract.

**Provisional Sum:** A sum included in the contract and so designated for the execution of works or the supply of goods, materials, plant or services, or for contingencies, which sum may be used in whole or in part, or not at all, as instructed by the Engineer.

**Public Service:** Government Ministries and Departments.

**Services:** Activities to be performed by the Contractor under the contract such as technical assistance, studies, training and designs.

**Site:** The places provided by the Contracting Authority where the works/services are to be carried out or where the supplies are to be commissioned and other places stated in the contract as forming part of the site.

**Special Conditions:** The Special Conditions laid down by the Contracting Authority are an integral part of the tender document, amplifying and supplementing the general conditions. These clauses are specific to the contract and the terms of reference (for a service contract) or technical specifications (for a supply or works contract).

**Supervisor/Engineer:** The legal or natural person responsible for administering the contract on behalf of the Contracting Authority.

**Technical Specifications:**

(a) in the case of public works contracts, the totality of the technical prescriptions contained in the procurement documents, defining the characteristics required of a material, product or supply, so that it fulfils the use for which it is intended by the Contracting Authority; those characteristics include levels of environmental and climate performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions and production processes and methods at any stage of the life cycle of the works; those characteristics also include rules relating to design and costing, the test, inspection and acceptance of conditions for works and methods or techniques of construction and all other technical conditions which the Contracting Authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;

(b) in the case of supply contracts, the specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods at any stage of the life cycle of the supply and conformity assessment procedures.

**Tender Document/s:** The procurement documents compiled by the Contracting Authority and containing all the documents needed to prepare and submit a tender.

**Tender Price:** The sum stated by the tenderer in his tender for carrying out the contract.

**Terms of Reference:** The document drawn up by the Contracting Authority giving the definition of its requirements and/or the objectives in respect of the provision of services, specifying, where relevant, the methods and resources to be used by the Contractor and/or the results to be achieved by it.

**Time Limits:** Those periods in the contract which shall begin to run from the day following the act or event which serves as the starting point for those periods. Should the last day of the period fall upon

a non-working day, the period shall expire at the end of the first working day following the last day of the period.

***Written communications:*** Certificates, notices, orders and instructions issued in writing under the contract.

**TABLE OF CONTENTS**

<b>A. PRELIMINARY PROVISIONS.....</b>	<b>10</b>
Article 1: Definitions .....	10
Article 2: Law and Language of the Contract .....	10
Article 3: Order of Precedence of Contract Documents .....	10
Article 4: Communications .....	10
Article 5: Assignment .....	11
Article 6: Subcontracting .....	11
<b>B. OBLIGATIONS OF THE CONTRACTING AUTHORITY .....</b>	<b>13</b>
Article 7: Supply of Documents.....	13
Article 8: Assistance with Local Regulations .....	13
<b>C. OBLIGATIONS OF THE CONTRACTOR .....</b>	<b>14</b>
Article 9: General Obligations .....	14
Article 10: Origin .....	15
Article 11: Performance Guarantee .....	15
Article 12: Insurance .....	16
Article 13: Performance Programme .....	16
Article 14: Contractor's Drawings .....	17
Article 15: Sufficiency of Tender Prices.....	18
Article 16: Tax and Customs Arrangements .....	19
Article 17: Patents and Licences .....	19
<b>D. COMMENCEMENT OF EXECUTION AND DELAYS.....</b>	<b>20</b>
Article 18: Commencement Order .....	20
Article 19: Period of Execution of Tasks .....	20
Article 20: Extension of period of execution .....	20
Article 21: Delays in Execution .....	21
Article 22: Modification to the Contract.....	21
Article 23: Suspension .....	23
<b>E. MATERIALS AND WORKMANSHIP .....</b>	<b>24</b>
Article 24: Quality of Supplies.....	24
Article 25: Inspection and Testing.....	25
<b>F. PAYMENTS .....</b>	<b>27</b>
Article 26: General Principles .....	27
Article 27: Payment to Third Parties .....	28
Article 28: Delayed Payments.....	28
<b>G. ACCEPTANCE AND MAINTENANCE .....</b>	<b>30</b>
Article 29: Delivery .....	30
Article 30: Verification Operations .....	30
Article 31: Provisional Acceptance .....	31
Article 32: Warranty Obligations .....	32
Article 33: After-sales Service.....	33
Article 34: Final Acceptance .....	33

<b>H. BREACH OF CONTRACT AND TERMINATION .....</b>	<b>34</b>
Article 35: Breach of Contract.....	34
Article 36: Termination by the Central Government Authority .....	34
Article 37: Termination by the Contractor .....	36
Article 38: Force Majeure.....	36
Article 39: Death .....	37
 <b>I. DISPUTE SETTLEMENT .....</b>	 <b>38</b>
Article 40: Amicable Dispute Settlement .....	38
Article 41: Dispute Settlement by Litigation .....	38
 <b>J. ETHICS CLAUSES .....</b>	 <b>39</b>
Article 42: Ethics Clauses .....	39
Article 43: Administrative and Financial Penalties.....	40
Article 44: Checks and Audits.....	40

**A. 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.
- 1.4 Instances not regulated by this contract are regulated by Maltese Law.
- 1.5 The parties to the contract are to ensure that the implementation and the execution of this contract is to be carried out in compliance with the Public Procurement Regulations 2016 (S.L. 601.03).
- 1.6 For the purposes of contracts subject to Regulation 9(1)(a) and/or Regulation 9(1)(c) of S.L. 601.03 and/or contracts administered by Contracting Authorities listed under Schedule 3, the term 'approval from the Central Government Authority' shall be substituted by the term 'approval by the Permanent Secretary responsible for that Contracting Authority'.

**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 English language.

**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 Agreement;
  - b) the Special Conditions with the Technical Annex;
  - c) the Contractor's Tender, including annexes;
  - d) the Financial Bid ;
  - e) the General Conditions; and
  - f) [the minutes of the information meeting/site visit];

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, the Central Government Authority and/or the Project Manager on the one hand, and the Contractor on the other, shall be exclusively in writing, in the English language. Unless otherwise specified in the Special Conditions, communications between the Contracting Authority, the Central Government Authority and/or the Project Manager

on the one hand, and the Contractor on the other hand, shall be sent by post or electronic mail or delivered by hand, to the addresses designated by the parties for that purpose.

- 4.2 If the person sending a communication requires acknowledgement 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 issuing 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: Assignment**

- 5.1 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.
- 5.2 The Contractor may not, without the prior written consent of the Central Government Authority, assign the contract or any part thereof, or any benefit or interest there under, 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.
- 5.3 For the purpose of Article 5.2, the approval of an assignment by the Central Government Authority shall not relieve the Contractor of his obligations for the part of the contract already performed or the part not assigned.
- 5.4 If the Contractor has assigned his contract without authorisation, the Central Government Authority may, without giving formal notice thereof, apply as of right, the sanctions for breach of contract provided for in Article 35.
- 5.5 Assignees must satisfy the eligibility criteria applicable for the award of the contract.

#### **Article 6: Subcontracting**

- 6.1 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.
- 6.2 The Contractor shall not subcontract without the prior written authorisation of the Contracting Authority. The Contracting Authority shall seek the written approval of the Central Government Authority before sanctioning subcontracting.

The elements of the contract to be subcontracted and the identity of the subcontractors shall be notified to the Contracting Authority. The Contracting Authority shall notify the Contractor of its decision within 30 days of receiving the notification, stating its reasons if authorisation is withheld.

- 6.3 Subcontractors must satisfy the eligibility criteria applicable for the award of the contract.
- 6.4 The Central Government Authority and the Contracting Authority recognise no contractual link between themselves and the subcontractors.
- 6.5 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 of the subcontracting of any part of the contract or of the subcontractor shall not relieve the Contractor of any of his obligations under the contract.
- 6.6 Before granting the prior approval mentioned under Article 6.2, the Contracting Authority shall ensure that the subcontractor does not fall under any of the exclusion criteria and is not blacklisted in terms of Part VI of the Public Procurement Regulations.
- 6.7 In the execution of this contract, a subcontractor must ensure that he complies with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Schedule 13 of the Public Procurement Regulations.
- 6.8 If a subcontractor has undertaken any continuing obligation extending for a period exceeding that of the warranty period under the contract towards the Contractor in respect of the supplies provided by the subcontractor, the Contractor must, at any time after the expiration of the warranty 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.
- 6.9 If the Contractor enters into a subcontract without approval, the Contracting Authority may, with the approval of the Central Government Authority and without giving formal notice thereof, apply as of right, the sanctions for breach of contract provided for in Article 35.

**B. OBLIGATIONS OF THE CONTRACTING AUTHORITY****Article 7: Supply of Documents**

- 7.1 If necessary, within 30 days of the signing of the contract, the Project Manager shall, where necessary, 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 warranty certificate, or upon final acceptance, the Contractor shall return to the Project Manager all drawings, specifications and other contract documents.
- 7.2 Unless it is necessary for the purposes of the contract, the drawings, specifications and other documents provided by the Project Manager shall not be used or communicated to a third party by the Contractor without the prior consent of the Project Manager.
- 7.3 The Project Manager shall have authority to issue to the Contractor administrative orders incorporating such supplementary documents and instructions as are necessary for the proper execution of the contract and the remedying of any defects therein.
- 7.4 The Special Conditions must indicate the procedure used, if necessary, by the Contracting Authority and the Project Manager to approve drawings and other documents provided by the Contractor.

**Article 8: Assistance with Local Regulations<sup>1</sup>**

- 8.1 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 supplies are to be delivered 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.
- 8.2 If necessary, the Contractor shall duly notify the Contracting Authority of details of the supplies so that the Contracting Authority can obtain the requisite permits or import licences.
- 8.3 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.
- 8.4 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.

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<sup>1</sup> One is to keep in mind the Obligation to declare direct imports and exports from the EU

**C. OBLIGATIONS OF THE CONTRACTOR****Article 9: General Obligations**

- 9.1 The Contractor shall perform the contract with due care and diligence, including, where specified, the design, manufacture, delivery to site, erecting, testing and commissioning of the supplies and carrying out of any other work including the remedying of any defects in the supplies. The Contractor shall also provide all necessary equipment, supervision, labour and facilities required for the performance of the contract.
- 9.2 The Contractor shall comply with administrative orders given by the Project Manager. Where the Contractor considers that the requirement of an administrative order goes beyond the scope of the contract, he shall, notify the Project Manager thereof, giving his reasons, within 30 days of receipt of the order. Execution of the administrative order shall not be suspended because of this notice. Where the administrative order relates to the modification of the contract, the prior approval of the Director, unless otherwise authorised by the Public Procurement Regulations, is to be obtained.
- 9.3 The Contractor shall respect and abide by all laws and regulations in force in the state of the Contracting Authority including but not limited to obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Schedule 13 of the Public Procurement Regulations. The contractor 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 Central Government Authority and 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. Without prejudice to the above, the Contractor shall be bound to conform and comply with Chapter 452 of The Laws of Malta (Employment and Industrial Relations Act, 2002 – Act No. XXII of 2002) and to all regulations/legal notices that form part of this Act.
- 9.4 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 Project Manager. If any disagreement arises as to the necessity for any publication or disclosure for the purpose of the contract, the decision of the Central Government Authority shall be final. The Contracting Authority can however, for supply contracts with a value which is equal to or exceeds one million Euro (€1,000,000), disclose any part of this contract subject to the applicable national rules on access to documents and data protection.
- 9.5 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 of the Joint Venture or Consortium shall not be altered without the prior consent in writing of the Central Government Authority.
- 9.6 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 co-financing. These measures must comply with the rules laid down and published by the Commission on the visibility of external operations.

- 9.7 Where a member of staff, particularly key experts must be replaced, the Key Expert/s being proposed shall be substituted without delay (within 2 working days from notification). The alternative Key Expert proposed shall:

**i. for CfTs carrying BPQR award criteria:** fulfil or exceed the qualifications of the one proposed at tender submission stage

**ii. for CfTs carrying Price/Cost award criteria:** fulfill or exceed the minimum qualifications requested in the relevant Procurement Documents.

Where the Contractor is unable to provide a replacement with equivalent qualifications and/or experience, the Contracting Authority may decide to terminate the contract, if the proper performance of it is jeopardized.

- 9.8 Additional costs incurred by the replacement of staff are the responsibility of the Contractor. Where the personnel including expert is not replaced immediately and it is some time before the new personnel takes up its functions, the Contracting Authority may ask the Contractor to assign to the project a temporary replacement pending the arrival of the new personnel, or to take other measures to compensate for the temporary absence of the missing personnel. Whatever the case may be, the Contracting Authority makes no payment for the period of the replacement's absence.

#### Article 10: Origin

- 10.1 Save where otherwise provided for in the Special Conditions, supplies may originate from any country. The origin of the goods 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.
- 10.2 The Contractor must certify that the goods tendered comply with this requirement, specifying their respective countries of origin. He may be required to provide more detailed information in this respect.
- 10.3 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 11: Performance Guarantee

- 11.1 The Contractor shall, within 15 calendar days of receipt of the contract, sign and date the contract and return it together with a copy of the Performance Guarantee. The copy of the Performance Guarantee forwarded to the Central Government Authority is to be endorsed by the Contracting Authority prior to submission. The Contractor is therefore obliged to forward the original Performance Guarantee to the Contracting Authority. The amount of the guarantee shall be 4% where the amount of the total contract value is between €10,000 and €500,000 exclusive of VAT, and 10% where the amount of the total contract value is €500,000 or above.

In the case that the value of the contract does not exceed €10,000, no Performance Guarantee is required.

Where the contract is a Framework Agreement Contract (Framework Agreement signed between one (1) or more Contracting Authorities and one (1) Economic Operator) spanning over more than one year for ongoing procurement, the Special Conditions may allow for the performance guarantee to cover the yearly/annual total contract value.

Economic Operators have the possibility to provide the Contracting Authority with a Single Bond covering the Performance Guarantees for all the contracts with the same Contracting Authority.

If an additional contract is awarded to a given contractor, which results in an Economic Operator's current cumulative contracts value to go beyond the contract value range currently covered by the Single Bond, the Contractor is to be requested to;

- a) either submit a separate Performance Guarantee for the additional contract; or else
- b) submit a new Single Bond to cover the new total contracts value; or
- c) submit an amendment to the original Single Bond specifying the new amount.

If an Economic Operator chooses to make use of the Single Bond, he must submit a letter from the respective Contracting Authority specifying that the amount of the Single Bond covers the new Contract, otherwise the new Contract Agreement would not be signed.

- 11.2 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.
- 11.3 The Performance Guarantee shall be in the format given in the link provided for download through the procurement document and unless stipulated otherwise in the Special Conditions, may be provided in the form of a bank guarantee, a banker's draft, a certified cheque, a bond provided by an insurance company or an irrevocable letter of credit. 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 insurance and/or bonding company in accordance with the eligibility criteria applicable for the award of the contract.
- 11.4 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.

During the performance of the contract, if the natural or legal person providing the guarantee is not able to abide by his commitments or fails to extend the guarantee within the timeframe indicated by the Contracting Authority, the latter reserves the right to:

- a) **withdraw the whole amount of the guarantee until it is renewed**
- b) Where the option established under paragraph (a) cannot be executed, the Contracting Authority may suspend the payments due to the Contractor till the guarantee is in place or after obtaining the approval of the Central Government Authority terminate the contract. Before so doing, the Contracting Authority shall send a registered letter with acknowledgement of receipt, informing him of its intention.
- 11.5 During the performance of the contract, if the natural or legal person providing the guarantee is not able to abide by his commitments, the guarantee shall cease to be valid.
- 11.6 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.

- 11.7 Except for such part as may be specified in the Special Conditions in respect of after-sales service, the Performance Guarantee shall be released within 30 days of the issue of the provisional acceptance certificate.

## **Article 12: Insurance**

- 12.1 An insurance policy is required to cover the carriage of supplies; the conditions of this insurance policy may be specified in Article 12 of the Special Conditions, which may also specify other types of insurance to be taken out by the Contractor.
- 12.2 Notwithstanding the Contractor's insurance obligations under Article 12.1, the Contractor shall bear sole liability for, and indemnify the Central Government Authority, the Contracting Authority and the Project Manager against, any claims by third parties for damage to property or personal injuries arising from the execution of the contract by the Contractor, his subcontractors and their employees.
- 12.3 Further to what is being stipulated in Articles 12.1 to 12.2 above, the onus of any insurance requirements shall lie solely on the Contractor during implementation of the contract. Therefore, it will be up to the contractor to undertake the necessary insurance policies (including his own employees liabilities, third parties as well as those of the Contracting Authority) accordingly. If and so far as the Contractor fails to effect and keep in force any of the insurance policies referred to in the Special and General Conditions of the Contract, then the Contracting Authority may effect and keep in force such insurance policies on his/her behalf and pay any premium as may be necessary for that purpose. The expenses to cover such policies will be deducted from the contract amount due to the Contractor, without the need of his consent.

## **Article 13: Performance Programme**

- 13.1 If the Special Conditions so require, the Contractor shall submit a programme of performance of the contract for the approval of the Project Manager. The programme shall contain at least the following:
- a) the order in which the Contractor proposes to perform the contract including design, manufacture, delivery to place of receipt, installation, testing and commissioning;
  - b) the deadlines for submission and approval of the drawings;
  - c) a general description of the methods which the Contractor proposes to adopt for executing the contract; and
  - d) such further details and information as the Project Manager may reasonably require.
- 13.2 The Special Conditions shall specify the time limit within which the programme of performance must be submitted to the Project Manager 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 Project Manager's approval or acceptance of the programme of performance, detailed drawings, documents and items. The approval of the programme by the Project Manager shall not relieve the Contractor of any of his obligations under the contract.
- 13.3 No material alteration to the programme shall be made without the approval of the Project Manager. If, however, the progress of the performance of the contract does not conform to the programme, the Project Manager may instruct the Contractor to revise the programme and submit the revised programme to him for approval.

**Article 14: Contractor's Drawings/Diagrams**

- 14.1 If the Special Conditions so provide, the Contractor shall submit to the Project Manager 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 Project Manager may reasonably require for the performance of the contract.
- 14.2 If the Project Manager fails to notify his decision of approval referred to in Article 14.1 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.
- 14.3 Approved drawings, documents, samples and models shall be signed or otherwise identified by the Project Manager and may only be departed from on the Project Manager's instructions. Any of the Contractor's drawings, documents, samples or models which the Project Manager fails to approve shall immediately be modified to meet the requirements of the Project Manager and resubmitted by the Contractor for approval.
- 14.4 The Contractor shall supply additional copies of approved drawings in the form and numbers stated in the contract or in subsequent administrative orders.
- 14.5 The approval of the drawings, documents, samples or models by the Project Manager shall not relieve the Contractor from any of his obligations under the contract.
- 14.6 The Project Manager 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.
- 14.7 Before provisional acceptance of the supplies, the Contractor shall supply operation and maintenance manuals together with drawings, which shall be in such detail as will enable the Project Manager to operate, maintain, adjust and repair all parts of the supplies. 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 supplies shall not be considered completed for the purpose of provisional acceptance until such manuals and drawings have been supplied to the Contracting Authority.

**Article 15: Sufficiency of Tender Prices**

- 15.1 Subject to any provisions which may be laid down in the Special Conditions, the Contractor shall be deemed to have satisfied himself before submitting his tender as to the correctness and sufficiency of the tender and to have taken account of all that is required for the full and proper performance of the contract and to have included in his rates and prices all costs related to the supplies, in particular:
- a) the costs of transport;
  - b) the costs of handling, packing, loading, unloading, transit, delivery, unpacking, checking, insurance and other administrative costs in connection with the supplies. The packaging shall be the property of the Contracting Authority unless otherwise provided in the Special Conditions;
  - c) the cost of documents relating to the supplies where such documents are required by the Contracting Authority;

- d) performance and supervision of on-site assembly and/or commissioning of the delivered supplies;
- e) furnishing of tools required for assembly and/or maintenance of the delivered supplies;
- f) furnishing of detailed operation and maintenance manuals for each unit of the delivered supplies, as specified in the contract;
- g) supervision or maintenance and/or repair of the supplies, for a period of time stated in the contract, with the stipulation that this service shall not release the Contractor from any warranty obligations under the contract;
- h) training of the Contracting Authority's personnel, at the Contractor's factory and/or elsewhere as specified in the contract.

15.2 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 in his tender for which he indicates neither a unit price nor a lump sum. Moreover, in such circumstances, if a unit is priced as zero (0) or no unit price is indicated, during Contract Implementation, the Contractor shall not be allowed to propose a Modification Request with the scope of introducing a value/amount to such items.

#### **Article 16: Tax and Customs Arrangements**

- 16.1 For supplies manufactured locally, all internal fiscal charges applicable to their manufacture shall be included in the price.
- 16.2 For supplies to be imported into the country of the Contracting Authority, all duties and taxes applicable to their importation, including VAT shall be included in the invoiced price.
- 16.3 Whatever the origin of the supplies, the contract shall be exempt from stamp and registration duties.

#### **Article 17: Patents and Licences**

- 17.1 Save where otherwise provided in the Special Conditions, the Contractor shall indemnify the Central Government Authority, the Contracting Authority and the Project Manager against any claim resulting from the use as specified in the contract of patents, licences, drawings, models, or brand or trademarks, unless such infringement results from compliance with the design or specification provided by the Contracting Authority and/or the Project Manager.

### **D. COMMENCEMENT OF EXECUTION AND DELAYS**

#### **Article 18: Commencement Order**

- 18.1 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 Project Manager.
- 18.2 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 19: Period of Execution of Tasks**

- 19.1 The period of execution of tasks shall commence on the date fixed in accordance with Article 18 and shall be as stated in the contract, without prejudice to extensions of the period which may be granted under Article 20.

- 19.2 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 20: Extension of period of execution**

- 20.1 The Contractor may request an extension to the period of execution if his performance of the contract is delayed, or expected to be delayed, for any of the following reasons:
- a) extra or additional supplies ordered by the Contracting Authority;
  - b) exceptional weather conditions in the country of the Contracting Authority which may affect installation or erection of the supplies;
  - c) physical obstructions or conditions which may affect delivery of the supplies, which could not reasonably have been foreseen by a competent Contractor;
  - d) administrative orders affecting the date of completion other than those arising from the Contractor's default;
  - e) failure of the Contracting Authority to fulfil its obligations under the contract;
  - f) any suspension of the delivery and/or installation of the supplies which is not due to the Contractor's default;
  - g) force majeure;
  - h) any other causes referred to in these General Conditions which are not due to the Contractor's default.
- 20.2 Within 15 days of realising that a delay might occur, the Contractor shall notify the Project Manager 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 Project Manager, within 30 days provide the Project Manager with comprehensive details so that the request can be examined.
- 20.3 Within 30 days the Project Manager shall, by written notice to the Contractor after due consultation with the Contracting Authority and, where appropriate, the Contractor, and after having obtained written approval from the Central Government Authority, grant such extension of the period of performance as may be justified, or inform the Contractor that he is not entitled to an extension.

#### **Article 21: Delays in Execution**

- 21.1 If the Contractor fails under his own responsibility to deliver any or all of the goods or perform the services within the time limit(s) specified in the contract, the Contracting Authority shall, without formal notice and without prejudice to its other remedies under the contract, be entitled, for every day which shall elapse between the expiry of the contractual period and the actual date of completion, to liquidated damages equal to 5/1000 of the value of the undelivered supplies to a maximum of 15% of the total value of the contract.
- 21.2 If the non-delivery of any of the goods prevents the normal use of the supplies as a whole, the damages provided for in Article 21.1 shall be calculated on the basis of the total contract value.
- 21.3 If the Contracting Authority has become entitled to claim at least 15% of the contract value it may, after giving written notice to the Contractor after having obtained the prior approval of the Central Government Authority:
- 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 for the provision of the balance of the supplies. 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.

21.4 Besides the penalties for delay envisaged in these conditions and without prejudice to all his other liabilities arising out of the contract, the Contractor shall also become liable to a penalty if the rate of progress of implementation throughout the contract period is not satisfactory. The Contractor shall be considered to be in default if he fails to carry out every month at least 70% of the estimated monthly average progress. For the purpose of assessing such average progress the value of the contract shall be divided by the number of months stipulated in the contract period. Within each month the Contractor should complete the necessary supplies whose value is equivalent to the average progress obtained as above. However, in the case of contracts having a completion period of six (6) or more months, no penalty shall be imposed in respect of the first month from the date of allocation of the contract. Should the Contractor's progress fall below the minimum percentage progress, he will become liable to a penalty equivalent to 2% of the value of the contract in respect of every month during which progress is below standard. If the Contractor completes the whole contract within the stipulated period, the Government may consider the refund of any penalties the Contractor may have incurred for slow monthly progress.

#### **Article 22: Modification to the Contract**

- 22.1 Subject to the limits set in the Special Conditions, the Contracting Authority reserves the right, with the approval of the Central Government Authority, to vary the quantities.  
The unit prices used in the tender shall be applicable to the quantities procured under the modification.
- 22.2 The Project Manager shall have the power to order any modification to the contract, with the prior approval of the Central Government Authority, to any part of the supplies necessary for the proper completion and/or functioning of the supplies. Such modification must be justified in terms of Part VIII of the Public Procurement Regulations. Such modifications may include additions, omissions, substitutions, changes in quality, quantity, form, character, kind, as well as drawings, designs or specifications where the supplies are to be specifically manufactured for the Contracting Authority, method of shipment or packing, place of delivery, and in the specified sequence, method or timing of execution of the supplies. No order for a modification may result in the invalidation of the contract, but the financial effect of any such modification shall be valued in accordance with Article 22.8.
- 22.3 No modification to the contract shall be made except by administrative order, subject to the following provisos:
  - a) if, for whatever reason, the Project Manager 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 22.3(a) and the confirmation is not contradicted in writing forthwith by the Project Manager, an administrative order shall be deemed to have been issued for the modification to the contract;
  - c) an administrative order for a modification shall not be required when increasing or decreasing the quantity of any work because the estimates in the bill of quantities or budget breakdown were too high or too low.

- 22.4 Save where Article 22.2 provides otherwise, prior to issuing an administrative order for a modification, subject to what is stated in the Public Procurement Regulations, the Project Manager shall notify the Contractor of the nature and form of that modification. As soon as possible, however not later than five (5) days, after receiving such notice, the Contractor shall submit to the Project Manager a proposal containing:
- a) a description of the tasks, if any, to be performed or the measures to be taken and a performance programme;
  - b) any necessary modifications to the performance programme or to any of the Contractor's obligations including modifications to the price under the contract;
  - c) any adjustment to the contract price in accordance with the rules set out in Article 22.
- 22.5 Following the receipt of the Contractor's submission referred to in Article 22.4, the Project Manager shall, after due consultation with the Central Government Authority and, where appropriate, the Contractor, decide as soon as possible whether or not the modification should be carried out. If the Project Manager decides that the modification is to be carried out, he shall issue an administrative order stating that the modification shall be made at the prices and under the conditions given in the Contractor's submission referred to in Article 22.4 or as modified by the Project Manager in accordance with Article 22.8.
- 22.6 Unless otherwise allowed in the Public Procurement Regulations the Contractor and the contracting authority cannot proceed with the modification unless the prior approval or permission of the director is obtained.
- 22.7 Any modification carried out against the expressed refusal of the Director shall be deemed to be founded on unlawful consideration and the Contractor shall have no right for compensation with respect to that modification unless he shows that he was unaware of the refusal of the Director.
- 22.8 The prices for all modifications ordered by the Project Manager in accordance with Articles 22.3 and 22.5 shall be ascertained by the Project Manager, in accordance with the following principles:
- a) where the task is of similar character and executed under similar conditions to an item priced in the bill of quantities or budget breakdown, it shall be valued at such rates and prices contained therein;
  - b) where the task is not of 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 Project Manager;
  - 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 Project Manager, any rate or price contained in the contract for any item of work is by reason of such modification rendered unreasonable, then the Project Manager 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.
- 22.9 On receipt of the administrative order requesting the modification, the Contractor shall proceed to carry out the modification and be bound by that order in so doing as if such modification were stated in the contract. The modification in question shall form an integral part of this contract. The supplies 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 Project Manager at all reasonable times.

- 22.10 Contractual modifications not covered by an administrative order must be formalised through an addendum to the contract signed by all parties. Any contractual modifications must respect the general principles defined in the Public Procurement Regulations.
- 22.11 Subject to what is stated in the Public Procurement Regulations, the repetition of supplies shall be capped at a percentage that is to be specified in the Special Conditions. If such capping is not identified in the Special Conditions it shall be automatically capped at 30% of the contract value. The prerogative to order such repetition of supplies shall vest in the Contracting Authority and if not used the Contractor shall have no claim against Government.
- 22.12 Subject to what is stated in the Public Procurement Regulations the additional supplies (i.e. new supplies not included in the original tender) shall be capped at a percentage that is to be specified in the Special Conditions. If such capping is not identified in the Special Conditions it shall be automatically capped at 50% of the contract value. The prerogative to order such additional supplies shall vest in the Contracting Authority and if not used the Contractor shall have no claim against Government.
- 22.13 Unless otherwise provided by the Special Conditions, in the event of a decrease in the total volume of supplies 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 the 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 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.

### Article 23: Suspension

- 23.1 The Project Manager may, by administrative order and with the prior approval of the Central Government Authority, at any time, instruct the Contractor to suspend:
- a) the manufacture of the supplies; or
  - b) the delivery of supplies to the place of acceptance at the time specified for delivery in the performance programme or, if no time specified, at the time appropriate for it to be delivered; or
  - c) the installation of the supplies which have been delivered to the place of acceptance.
- 23.2 The Contractor shall, during suspension, protect and secure the supplies affected at the Contractor's warehouse or elsewhere, against any deterioration, loss or damage to the extent possible and as instructed by the Project Manager, even if supplies have been delivered to the place of acceptance, in accordance with the contract, but their installation has been suspended by the Project Manager.
- 23.3 Additional expenses incurred in connection with such protective measure shall be added to the contract price. The Contractor shall not be paid any additional expenses if the suspension is:
- a) dealt with differently in the contract; or
  - b) necessary by reason of abnormal climatic conditions at the place of acceptance; or
  - c) necessary owing to some default of the Contractor; or
  - d) necessary for the safety or the proper execution of the contract or any part thereof insofar as such necessity does not arise from any act or default by the Project Manager or the Contracting Authority.
- 23.4 The Contractor shall not be entitled to such additions to the contract price unless he notifies the

Project Manager, within 30 days of receiving the order to suspend progress of delivery, of his intention to make a claim for them.

- 23.5 The Project Manager, after consultation with the Contracting Authority and the Contractor and with the approval of the Central Government Authority, 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 Project Manager, be fair and reasonable.
- 23.6 If the period of suspension exceeds 180 days, and the suspension is not due to the Contractor's default, the Contractor may, by notice to the Project Manager, request to proceed with the supplies within 30 days, or terminate the contract.
- 23.7 Where the award procedure or performance of the contract is vitiated by substantial errors or irregularities or by fraud, the Contracting Authority shall, with the approval of Central Government Authority, suspend performance of the contract. Where such errors, irregularities or fraud are attributable to the Contractor, the Contracting Authority may also refuse to make payments or may recover monies 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.

## **E. MATERIALS AND WORKMANSHIP**

### **Article 24: Quality of Supplies**

- 24.1 The supplies must in all respects satisfy the technical specifications laid down in the contract and conform in all respects to the drawings, surveys, models, samples, patterns and other requirements in the contract, which must be held at the disposal of the Contracting Authority or the Project Manager for the purposes of identification throughout the period of performance.
- 24.2 Any preliminary technical acceptance stipulated in the Special Conditions should be the subject of a request sent by the Contractor to the Project Manager. The request shall specify the materials, items and samples submitted for such acceptance according to the contract and indicate the lot number and the place where acceptance is to take place, as appropriate. The materials, items and samples specified in the request must be certified by the Project Manager as meeting the requirements for such acceptance prior to their incorporation in the supplies.
- 24.3 Even if materials or items to be incorporated in the supplies or in the manufacture of components to be supplied 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 supplies only if they have been repaired and made good to the satisfaction of the Project Manager.

**Article 25: Inspection and Testing**

- 25.1 The Contractor shall ensure that the supplies are delivered to the place of acceptance in time to allow the Project Manager to proceed with acceptance of the supplies. 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.
- 25.2 The Project Manager shall be entitled, from time to time, 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 at the place of acceptance or at such other places as may be specified in the Special Conditions.
- 25.3 For the purposes of such tests and inspections, the Contractor shall:
- a) provide the Project Manager, temporarily and free of charge, with such assistance, test samples or parts, machines, equipment, tools, labour, materials, drawings and production data as are normally required for inspection and testing;
  - b) agree, with the Project Manager, the time and place for tests;
  - c) give the Project Manager access at all reasonable times to the place where the tests are to be carried out.
- 25.4 If the Project Manager is not present on the date agreed for tests, the Contractor may, unless otherwise instructed by the Project Manager, proceed with the tests, which shall be deemed to have been made in the Project Manager's presence. The Contractor shall immediately send duly certified copies of the test results to the Project Manager, who shall, if he has not attended the test, be bound by the test results.
- 25.5 When components and materials have passed the above-mentioned tests, the Project Manager shall notify the Contractor or endorse the Contractor's certificate to that effect.
- 25.6 If the Project Manager and the Contractor disagree on the test results, each shall state his views to the other within 15 days of such disagreement. The Project Manager 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 Project Manager, who shall communicate the results of these tests without delay to the Contractor. The results of retesting shall be conclusive. The cost of retesting shall be borne by the party whose views are proved wrong by the retesting.
- 25.7 In the performance of their duties, the Project Manager and any person authorised by him shall not disclose to unauthorised persons information concerning the undertaking's methods of manufacture and operation obtained through inspection and testing.

## **E. PAYMENTS**

### **Article 26: General Principles**

- 26.1 Payments shall be made in Euro. The Special Conditions shall lay down the administrative or technical conditions governing payments of pre-financing, interim and/or final payments made in accordance with the General Conditions.
- 26.2 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. In the case of acquisitions from suppliers who are not registered with the VAT Authority in Malta, VAT shall be accounted for and paid by the Contracting Authority directly to the tax Authorities in Malta.
- 26.3 When the Contractor is carrying out either health services or economic activities of an industrial and commercial nature, the Contracting Authority shall pay sums due within no more than 60 calendar days from the date on which an admissible payment request is registered by the competent department specified in the Special Conditions. For all other instances a 30-day period is to apply. 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.
- 26.4 The 60 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.
- 26.5 Unless the Special Conditions stipulate otherwise, for EU Funded contracts with a contract value exceeding €100,000 (net of VAT) and/or whose implementation is longer than four (4) weeks the payments shall be made as follows:
- a) 60% of the contract value after the signing of the contract, against provision of the Pre-financing Guarantee as a security guaranteeing repayment in full of this pre-financing;
  - b) the remaining balance of the contract price following provisional acceptance of the supplies.
- 26.6 Where only part of the supplies has been delivered, the percentage payment due following partial provisional acceptance shall be calculated on the value of the supplies which have actually been accepted and the security shall be released accordingly.
- 26.7 For supplies not covered by a warranty period, the payments listed above shall be aggregated. The conditions to which the payments of pre-financing, interim and/or final payments are subject, shall be as stated in the Special Conditions.
- 26.8 The payment obligations of the EC under this Contract shall cease at most 18 months after the end of the period of execution of the tasks, unless the Contract is terminated in accordance with these General Conditions.
- 26.9 Unless otherwise stipulated in the Special Conditions, contracts shall be at fixed prices, which shall not be revised.

- 26.10 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 meaning simple interest for late payment at a rate which is equal to the sum of the reference rate and at least eight percent (8%); on the first day of the month in which the time-limit expired. 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 27: Payment to Third Parties**

- 27.1 Orders for payments to third parties may be carried out only after an assignment made in accordance with Article 5. The Contracting Authority shall be notified of the assignment.
- 27.2 Notification of beneficiaries of the assignment shall be the sole responsibility of the Contractor.
- 27.3 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 28: Delayed Payments**

- 28.1 When the Contractor is carrying out either health services or economic activities of an industrial and commercial nature, the Contracting Authority shall pay the Contractor sums due within 60 days of the date on which an admissible payment is registered. For all other instances a 30 day period is to apply unless specified in the Special Conditions. This period shall begin to run from the approval of these documents by the competent department referred to in Article 26.1 of the Special Conditions. These documents shall be approved either expressly or tacitly, in the absence of any written reaction in the 30 days following their receipt accompanied by the requisite documents.

The time limits established in this article shall not start to run if any of the bank guarantees contemplated in this contract have either not been submitted by the Contractor, or if they have been submitted these have expired and have not been renewed.

- 28.2 Once the deadline laid down in Article 28.1 has expired, the Contractor may, within two (2) months of late payment, claim late-payment interest meaning simple interest for late payment at a rate which is equal to the sum of the reference rate and at least eight percent (8%); on the first day of the month in which the deadline expired.
- 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).

- 28.3 Any default in payment of more than 90 days from the expiry of the period laid down in Article 28.1 shall entitle the Contractor either not to perform the contract or to terminate it, with 30 days' prior notice to the Contracting Authority, the Central Government Authority and the Project Manager.

## **G. ACCEPTANCE AND MAINTENANCE**

### **Article 29: Delivery**

- 29.1 The Contractor shall deliver the supplies in accordance with the conditions of the contract. The supplies shall be at the risk of the Contractor until their provisional acceptance.
- 29.2 The Contractor shall provide such packaging of supplies as is required to prevent their damage or deterioration in transit to their destination as indicated in the contract. The packaging shall be sufficient to withstand, without limitation, rough handling, exposure to extreme temperatures, salt and precipitation during transit and open storage. Package size and weight shall take into consideration, where appropriate, the remoteness of the final destination of the supplies, and the possible absence of heavy handling facilities at all points in transit.
- 29.3 The packaging, marking and documentation inside and outside the packages shall comply with such requirements as shall be expressly provided for in the Special Conditions, subject to any modifications subsequently ordered by the Project Manager.
- 29.4 No supplies shall be shipped or delivered to the place of acceptance until the Contractor has received a delivery order from the Project Manager. The Contractor shall be responsible for the delivery at the place of acceptance of all supplies and supplier's equipment required for the purpose of the contract. If the Project Manager 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.
- 29.5 Each delivery must be accompanied by a statement drawn up by the Contractor. This statement shall be as specified in the Special Conditions.
- 29.6 Each package shall be clearly marked in accordance with the Special Conditions.
- 29.7 Delivery shall be deemed to have been made when there is written evidence available to both parties that delivery of the supplies has taken place in accordance with the terms of the contract, and the invoice(s) and all such other documentation specified in the Special Conditions, have been submitted to the Contracting Authority. Where the supplies are delivered to an establishment of the Contracting Authority, the latter shall bear the responsibility of bailee, in accordance with the requirements of the law applicable to the contract, during the time which elapses between delivery for storage and acceptance.

### **Article 30: Verification Operations**

- 30.1 The supplies shall not be accepted until the prescribed verifications and tests have been carried out at the expense of the Contractor. The inspections and tests may be conducted before shipment, at the point of delivery and/or at the final destination of the goods.

- 30.2 The Project Manager shall, during the progress of the delivery of the supplies and before the supplies are taken over, have the power to order or decide:
- a) the removal from the place of acceptance, within such time or times as may be specified in the order, of any supplies which, in the opinion of the Project Manager, are not in accordance with the contract;
  - b) their replacement with proper and suitable supplies;
  - c) the removal and proper re-installation, notwithstanding any previous test thereof or interim payment thereof, of any installation which in respect of materials, workmanship or design for which the Contractor is responsible, is not, in the opinion of the Project Manager, in accordance with the contract;
  - d) that any work done or goods supplied or materials used by the Contractor is or are not in accordance with the contract, or that the supplies or any portion thereof do not fulfil the requirements of the contract.
- 30.3 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 orders and all expenses consequent thereon or incidental thereto shall be deducted by the Contracting Authority from any monies due or which may become due to the Contractor.
- 30.4 Supplies which are not of the required quality shall be rejected. A special mark may be applied to the rejected supplies. This shall not be such as to alter them or affect their commercial value. Rejected supplies shall be removed by the Contractor from the place of acceptance, if the Project Manager so requires, within a period which the Project Manager shall specify, failing which they shall be removed as of right, at the expense and risk of the Contractor. Any deliveries incorporating rejected materials shall be rejected.
- 30.5 The provisions of Article 30 shall not affect the right of the Contracting Authority to claim under Article 21, nor shall it in any way release the Contractor from any warranty or other obligations under the contract.

#### **Article 31: Provisional Acceptance**

- 31.1 The supplies shall be taken over by the Contracting Authority when they have been delivered in accordance with the contract, have satisfactorily passed the required tests, or have been commissioned as the case may be, and a certificate of provisional acceptance has been issued or is deemed to have been issued.
- 31.2 The Contractor may apply, by notice to the Project Manager, for a certificate of provisional acceptance when supplies are ready for provisional acceptance. The Project Manager 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 Central Government Authority stating, where appropriate, his reservations, and, *inter alia*, the date on which, in his opinion, the supplies 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.
- 31.3 Should exceptional circumstances make it impossible to proceed with the acceptance of the supplies during the period fixed for provisional or final acceptance, a statement certifying such impossibility shall be drawn up by the Project Manager after consultation, where possible, with the Contractor. The certificate of acceptance or rejection shall be drawn up within 30 days following the date on which such impossibility ceases to exist. The Contractor shall not invoke these circumstances in order to avoid the obligation of presenting the supplies in a state suitable for acceptance.

- 31.4 If the Project Manager fails either to issue the certificate of provisional acceptance or to reject the supplies within the period of 30 days, he shall be deemed to have issued the certificate on the last day of that period, except where the certificate of provisional acceptance is deemed to constitute a certificate of final acceptance. In this case, Article 34.2 below does not apply. If the supplies are divided by the contract into lots, the Contractor shall be entitled to apply for a separate certificate for each lot.
- 31.5 In case of partial delivery, the Contracting Authority reserves the right to give partial provisional acceptance.
- 31.6 Upon provisional acceptance of the supplies, 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 place of acceptance as required by the contract.

### **Article 32: Warranty Obligations**

- 32.1 The Contractor shall warrant that the supplies are new, unused, of the most recent models and incorporate all recent improvements in design and materials, unless otherwise provided in the contract. The Contractor shall further warrant that all supplies shall have no defect arising from design, materials or workmanship, except insofar as the design or materials are required by the specifications, or from any act or omission, that may develop under use of the supplies in the conditions obtaining in the country of the Contracting Authority. This warranty shall remain valid as specified in the Special Conditions.
- 32.2 The Contractor shall be responsible for making good any defect in, or damage to, any part of the supplies which may appear or occur during the warranty period and which:
- a) results from the use of defective materials, faulty workmanship or design of the Contractor; or
  - b) results from any act or omission of the Contractor during the warranty period; or
  - c) appears in the course of an inspection made by, or on behalf of, the Contracting Authority.
- 32.3 The Contractor shall at his own cost make good the defect or damage as soon as practicable. The warranty period for all items replaced or repaired shall recommence from the date on which the replacement or repair was made to the satisfaction of the Project Manager. If the contract provides for partial acceptance, the warranty period shall be extended only for the part of the supplies affected by the replacement or repair.
- 32.4 If any such defect appears or such damage occurs during the warranty period, the Contracting Authority or the Project Manager 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, with the approval of the Central Government Authority:
- a) remedy the defect or the damage itself, or employ someone else to carry out the work at the Contractor's risk and cost, in which case the costs incurred by the Contracting Authority shall be deducted from monies due to or guarantees held against the Contractor or from both; or
  - b) terminate the contract.
- 32.5 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 Project Manager may have the work carried out at the expense of the Contractor. The Contracting Authority or the Project Manager shall as soon as practicable inform the Contractor of the action taken.

- 32.6 The maintenance obligations shall be stipulated in the Special Conditions and technical specifications. If the duration of the warranty period is not specified, it shall be 365 days. The warranty period shall commence on the date of provisional acceptance and may recommence in accordance with Article 32.3.

### **Article 33: After-sales Service**

- 33.1 An after-sales service, if required by the contract, shall be provided in accordance with the details stipulated in the Special Conditions. The Contractor shall undertake to carry out or have carried out the maintenance and repair of supplies and to provide a rapid supply of spare parts. The Special Conditions may specify that the Contractor must provide any or all of the following materials, notifications and documents pertaining to spare parts manufactured or distributed by the Contractor:
- a) such spare parts as the Contracting Authority may choose to purchase from the Contractor, it being understood that this choice shall not release the Contractor from any warranty obligations under the contract;
  - b) in the event of termination of production of the spare parts, advance notification to the Contracting Authority to allow it to procure the parts required and, following such termination, provision at no cost to the Contracting Authority of the blueprints, drawings and specifications of the spare parts, if and when requested.

### **Article 34: Final Acceptance**

- 34.1 Upon expiry of the warranty period or, where there is more than one such period, upon expiry of the latest period, and when all defects or damage have been rectified, the Project Manager shall issue the Contractor a final acceptance certificate, with a copy to the Central Government Authority, stating the date on which the Contractor completed his obligations under the contract to the Project Manager's satisfaction. The final acceptance certificate shall be issued by the Project Manager within 30 days of the expiry of the warranty period or as soon as any repairs ordered under Article 32 have been completed to the satisfaction of the Project Manager.
- 34.2 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 Project Manager.
- 34.3 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.

## **H. BREACH OF CONTRACT AND TERMINATION**

### **Article 35: Breach of Contract**

- 35.1 A party shall be in a breach of contract if it fails to discharge any of its obligations under the contract.
- 35.2 Without prejudice to Article 21, where a breach of contract occurs, the injured party shall be entitled to the following remedies:
- a) damages; and/or
  - b) termination of the contract.
- 35.3 The amount and procedures for the damages shall be laid down in the Special Conditions.
- 35.4 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 36: Termination by the Central Government Authority**

- 36.1 The Contracting Authority, after getting approval from the Central Government Authority may, after giving the Contractor seven (7) days' notice, terminate the contract in any of the following cases:
- a) the Contractor fails to effect delivery in whole or in part, within one month from the expiration of the period stipulated in the contract without the previous permission of the Contracting Authority;
  - b) the Contractor fails to comply within a reasonable time with a notice given by the Project Manager 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 project;
  - c) the Contractor refuses or neglects to carry out administrative orders given by the Project Manager;
  - 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;
  - 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;
- m) the Contractor fails to submit any bank guarantee as requested by this contract;
- n) the contract has been subject to a substantial modification, which would have required a new procurement procedure pursuant to the Public Procurement Regulations;
- o) the Contractor has, at the time of contract award, been in one of the situations referred to in regulation 192 of the Public Procurement Regulations and should therefore have been excluded from the procurement procedure;
- p) the contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC that has been declared by the Court of Justice of the European Union in a procedure pursuant to Article 258 TFEU.

- 36.2 Termination shall be without prejudice to any other rights or powers of the Central Government Authority, the Contracting Authority and the Contractor under the contract. The Contracting Authority may, with the approval of the Central Government Authority, thereafter, conclude any other contract with a third party on behalf of the Contractor. The Contractor's liability for delay in completion shall immediately cease upon termination without prejudice to any liability there under that may already have occurred.
- 36.3 Where termination has been carried out on the basis of Article 36.1, the Contracting Authority has to compensate the Contractor for all his expenses and work and to pay him any, according to circumstances, but not exceeding the profits which the Contractor would have made by the contract.
- 36.4 The Project Manager shall, upon the issue of the notice of termination of the contract, instruct the Contractor to take immediate steps to bring the execution of the supplies to a close in a prompt and orderly manner and to reduce expenditure to a minimum.
- 36.5 In the event of termination, the Project Manager shall, as soon as possible and in the presence of the Contractor or his representatives or having duly summoned them, draw up a report on the supplies delivered and the work performed and take an inventory of the materials supplied and unused. A statement shall also be drawn up of monies due to the Contractor and of monies owed by the Contractor to the Contracting Authority as at the date of termination of the contract.
- 36.6 The Contracting Authority shall not be obliged to make any further payments to the Contractor until the supplies are completed, whereupon the Contracting Authority shall be entitled to recover from the Contractor the extra costs, if any, of providing the supplies or shall pay any balance due to the Contractor prior to the termination of the contract.
- 36.7 If the Central Government Authority, on behalf of the Contracting Authority terminates the contract, the Contracting Authority (unless otherwise provided in these conditions) shall be entitled to recover from the Contractor any loss it has suffered under the contractual conditions set out in Article 2 of the Special Conditions.
- 36.8 The Contracting Authority, following the prior approval of the Central Government Authority, may, by giving 30 day written notice, require partial termination of any part of the supplies on the occurrence, in relation to that part, of a default by the Contractor, where the default is either not capable of remedy or if capable of remedy, the Contractor has failed to carry out such remedial action.

- 36.9 Where partial termination has been carried out on the basis of Article 36.8, the Contracting Authority shall have the right to recover any damages it may have suffered in order to satisfactorily conclude the part of the supplies that have been terminated.
- 36.10 This contract shall be automatically terminated if it has given risen to no payment in the three (3) years following its signing.

**Article 37: Termination by the Contractor**

- 37.1 The Contractor may, after giving 14 days notice to the Central Government Authority, terminate the contract if the Contracting Authority:
- a) fails to pay the Contractor the amounts due under any certificate issued by the Project Manager after the expiry of the deadline stated in the Special Conditions;
  - b) consistently fails to meet its obligations after repeated reminders; or
  - c) suspends the delivery of the supplies, or any part thereof, for more than 180 days, for reasons not specified in the contract or not attributable to the Contractor.
- 37.2 Termination shall be without prejudice to any other rights or powers under the contract of the Central Government Authority, the Contracting Authority and the Contractor.
- 37.3 In the event of such termination, the Contracting Authority shall pay the Contractor for any loss or damage the Contractor may have suffered.

**Article 38: Force Majeure**

- 38.1 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 majeure arising after the date of notification of award or the date when the contract becomes effective, whichever is the earlier.
- 38.2 For the purposes of this Article, the term "force majeure" 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.
- 38.3 Notwithstanding the provisions of Articles 21 and 36, the Contractor shall not be liable to forfeiture of his Performance Guarantee, 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 majeure. Nor, notwithstanding the provisions of Articles 28 and 37, 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 majeure.
- 38.4 If either party considers that any circumstances of force majeure have occurred which may affect performance of its obligations, it shall promptly notify the other party and the Project Manager, giving details of the nature, the probable duration and the likely effect of the circumstances. Unless otherwise directed by the Project Manager 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 majeure does not prevent him from performing. The Contractor shall not employ such alternative means

unless directed to do so by the Project Manager. Provided that the Project Manager shall still be obliged to follow the rules established under the Public Procurement Regulations, related to modifications where this is applicable.

- 38.5 If the Contractor incurs additional costs in complying with the Project Manager's directions or using alternative means under Article 38.4, the amount thereof shall be certified by the Project Manager.
- 38.6 If circumstances of force majeure have occurred and continue for a period of 180 days, then, notwithstanding any extension of time for completion of the contract 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 majeure 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 39: Death**

- 39.1 Where the Contractor is a natural person, the contract shall be automatically terminated if that person dies. However, the Central Government 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 Central Government Authority shall be notified to those concerned within 30 days of receipt of such proposal.
- 39.2 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 contract, and the Central Government 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.
- 39.3 In the cases provided for in Articles 39.1 and 39.2, persons offering to continue to perform the contract shall notify the Central Government Authority thereof within 15 days of the date of decease.
- 39.4 Such persons shall be jointly and severally liable for the proper performance of the contract to the same extent as the original Contractor. Continuation of the contract shall be subject to the rules relating to establishment of the guarantee provided for in Article 11.

**L DISPUTE SETTLEMENT****Article 40: Amicable Dispute Settlement**

- 40.1 The parties shall make every effort to settle amicably any dispute which may arise between them. Once a dispute has arisen, the parties i.e. the Contracting Authority and the Contractor, 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 may refer the matter to the Director of Contracts who can act as a mediator between the parties. 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.

**Article 41: 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, or
- b) an arbitration ruling, in the case where the parties i.e. the Contracting Authority and the Contractor, by agreement decide to refer the matter to arbitration.

## **J. ETHICS CLAUSES**

### **Article 42: Ethics Clauses**

- 42.1 Any attempt by a candidate or tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the committee, the Central Government Authority or the Contracting Authority during the process of examining, clarifying, evaluating and comparing tenders shall lead to the rejection of his candidacy or tender.
- 42.2 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.
- 42.3 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.
- 42.4 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 and the Central Government Authority.
- 42.5 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.
- 42.6 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.
- 42.7 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.
- 42.8 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.
- 42.9 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.
- 42.10 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 with the approval of the Central Government Authority may, regardless of injury, terminate the contract without further notice and without the Contractor having any claim to compensation.
- 42.11 The Commission/Ministry of Finance 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.

- 42.12 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.
- 42.13 The Contractor undertakes to supply the Contracting Authority on request with all supporting documents relating to the conditions of the contract's execution. The Central Government Authority and the Contracting Authority may carry out whatever documentary or on-the-spot checks it deems necessary to find evidence in cases of suspected unusual commercial expenses.

#### **Article 43: Administrative and Financial Penalties**

- 43.1 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 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 Director of Contracts (Central Government Authority) 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 (3) years in the event of a repeat offence within five (5) years of the first infringement.
- 43.2 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 (5) years of the first infringement.

#### **Article 44: Checks and Audits**

- 44.1 The Contractor will allow all auditing bodies, which may from time to time be identified by the Central Government Authority 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 seven (7) years after the final payment.
- 44.2 Furthermore, the Contractor will allow the auditing bodies to carry out checks and verification on-the-spot in accordance with the procedures set out in respective legislation.
- 44.3 To this end, the Contractor undertakes to give appropriate access to staff or agents of the auditing bodies 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 auditing bodies 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 Central Government Authority of their precise location.

- 44.4 The Contractor guarantees that the rights of the auditing bodies 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 subcontractor or any other party.
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