

## GENERAL CONDITIONS OF CONTRACTS

### PRELIMINARY PROVISIONS

#### Article 1) Definitions

(1) The definitions of the terms used throughout this General Conditions are laid down as follows:

**Administrative order:** Any instruction or order issued in writing by the Contracting Authority to the Contractor regarding the execution of the contract.

**Contractor:** Any party selected at the end of the procedure for the award of the contract.

**Contract:** An agreement, between two or more persons or entities, regarding the provision of services, supplies and/or works in line with the terms and conditions specified under this Contract, General Conditions and other annexes.

**Contracting Authority:** Procuring authority, institution and its official representatives subject to this Contract

**Month/Day:** Calendar month/day

**Liquidated damages:** An amount of compensation, which have been agreed beforehand by the parties and recorded in the contract, to be paid to the injured party for a breach of the contract by the other party.

**General damages:** An amount of compensation, which have not been agreed beforehand by the parties and awarded by a court or arbitration tribunal, or agreed between the parties, to be paid to the injured party for a breach of the contract by the other party.

**Activity:** All works and services subject to the procurement transactions for supply contracts, service contracts and works contracts.

**Terms of Reference (Technical Specifications):** The document drawn up by the Contracting Authority and included in the annexes of the Contract, setting out its requirements and/or objectives in respect of the provision of goods, services and works, specifying, where relevant, the methods and resources to be used and/or results to be achieved.

(2) In case the end date of the Contract is a holiday, the following work day shall be deemed as the end date.

(3) 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.

(4) Words designating persons or parties shall include firms and companies and any organisation having legal capacity.

#### Article 2) Communications

(1) If the sender party requires evidence of receipt, it shall state such requirement in its communication and shall demand such evidence of receipt whenever there is a deadline for the receipt of the communication. In any event, the sender shall take all the necessary measures to ensure timely receipt of its communication.

(2) Wherever the contract provides for the giving or issue of any notice, consent, approval, certificate or decision, unless otherwise specified such notice, consent, approval, certificate or decision shall be in writing. Any such consent, approval, certificate or decision shall not unreasonably be withheld or delayed.

(3) Any oral instructions or orders shall be confirmed in writing.

### **Article 3) Assignment and Subcontracting**

The Contractor can under no circumstances assign and/or subcontract the provision of goods, services and works specified in this Contract to a third party. Any assignment or subcontracting by the Contractor shall be deemed as a breach of the Contract.

## **OBLIGATIONS OF THE CONTRACTING AUTHORITY**

### **Article 4) Supply of Information**

(1) The Contracting Authority shall supply the Contractor promptly with any information and/or documentation at its disposal which may be relevant to the performance of the contract. Such documents shall be returned to the Contracting Authority at the end of the period of implementation of the tasks.

(2) The Contracting Authority shall co-operate with the Contractor to provide information that the latter may reasonably request in order to perform the contract.

(3) The Contracting Authority is authorized to demand the provision of any necessary document for the lawful, efficient and transparent implementation of the Contract and is also obliged to take necessary actions regarding these demands.

(4) The Contracting Authority shall inform the Contractor of the name and contact information of its official representative within the 7 days following the signing of the Contract by both parties.

## **OBLIGATIONS OF THE CONTRACTOR**

### **Article 5) General Obligations**

(1) The Contractor shall provide the goods, services and works subject to this Contract, as specified in the Contract, its annexes. The Contractor hereby accepts to bear sole responsibility for investigations and sanctions ultimately imposed in case of the breach of the Contract and its annexes.

(2) The Contractor shall supply, without delay, any information and documents to the Contracting Authority. These documents shall be returned to the Contractor at the end of the contract term. Upon the request of the Contracting Authority, a copy of these documents shall be provided.

(3) The Contractor shall respect and abide by all laws and regulations in force and shall ensure that its staff, their dependants, and its local employees also respect and abide by all such laws and regulations. The Contractor shall indemnify the Contracting Authority against any claims and proceedings arising from any infringement by the Contractor, its employees and their dependants of such laws and regulations.

- (4) The Contractor shall execute the contract with due care, efficiency and diligence in accordance with the best professional practice.
- (5) For works contracts, if during the execution of the works the Contractor encounters artificial obstructions or physical conditions which could not reasonably have been foreseen by an experienced Contractor, and if the Contractor is of the opinion that additional costs will be incurred and/or an extension of the period of implementation of tasks will be necessary as a result of this, it shall give notice to the Contracting Authority in accordance with related articles specified in General Conditions. Depending on the severity of such artificial obstructions and/or physical conditions, both parties shall agree to take necessary measures without delay, amend the Contract accordingly or terminate the Contract.
- (6) The Contractor is deemed to have conducted all kinds of standard research and determined its bid for this Contract based on its own calculations, operations and estimates.
- (7) The Contractor shall give appropriate access to the Contracting Authority to the sites and locations at which the contract is carried out, including its information systems, as well as all related documents and databases and to take all necessary safety measures.
- (8) The Contractor shall comply with any administrative orders given by the Contracting Authority. Where the Contractor considers that the requirements of an administrative order go beyond the authority of the Contracting Authority or of the scope of the contract, the Contractor shall give notice, with reasons, to the Contracting Authority within the 10-day period after receipt thereof. Execution of the administrative order shall not be suspended because of this notice.
- (9) If the Contractor acts on behalf of or is a joint venture or consortium of two or more persons, all such persons shall be jointly and severally bound in respect of the obligations under the contract. The person designated by the consortium to act on its behalf for the purposes of this contract shall have the authority to bind the consortium.
- (10) Any alteration of the composition or the constitution of the joint venture or consortium without the prior written consent of the Contracting Authority shall be considered as a breach of the Contract.
- (11) When the Contract involves a design component, the Contractor shall bear the responsibility for the design and drawings to be prepared by experienced experts, in compliance with the criteria set by the Contracting Authority. All documents related to the design work shall be prepared as specified in Special Conditions and annexes at the Contractor's expense and submitted to the Contracting Authority for approval. Upon the request of the Contracting Authority, the Contractor shall correct and repair any faults and defects at its own expense.
- (12) For supply contracts, The Contractor shall provide necessary training for the staff of the Contracting Authority. The Contractor shall supply operation and maintenance manuals, which shall be in detail and be duly updated.
- (13) The Contractor shall itself superintend the activities and works subject to this Contract or shall appoint a representative to do so. Such appointment shall be submitted to the Contracting Authority for approval within 30 days of the signature of the Contract. The Contracting Authority shall approve or refuse the appointment within 10 days. The approval may at any time be withdrawn on reasonable grounds.
- (14) For works contracts, in case specified by the Special Conditions, the Contractor shall provide the Contracting Authority with a programme of implementation of tasks, within 30

days of the signature of the Contract. This programme includes at least the following information:

- a) the order and time limits within which the Contractor proposes to carry out the works;
- b) the time limits within which submission and approval of the drawings are required;
- c) a general description of the method, which the Contractor proposes to carry out the works;
- d) such further details and information as the Contracting Authority may reasonably require.

(15) No material alteration to the programme shall be made without the approval of the Contracting Authority. If, however, the progress of the works does not conform to the programme, the Contracting Authority may instruct the Contractor to submit a revised programme.

(16) For works contracts, the Contractor shall submit all drawings, documents, samples, models and other documents and objects necessary for the proper execution of the Contract to the Contracting Authority within the time limits specified in Special Conditions and annexes for approval. If the Contracting Authority fails to notify its decision or remarks or wish for a meeting within these 30 days, all submitted documents shall be deemed approved.

(17) For works contracts, the Contractor shall supply operation and maintenance manuals together with drawings to the Contracting Authority before the end date of the Contract, which shall be in such detail as will enable the Contracting Authority to operate, maintain, adjust and repair all parts of the facilities.

(18) For works contracts, any artefacts, antiquities and natural, numismatic, or other objects which are of scientific interest, and also rare objects or objects made of precious metals found during excavation or demolition work shall be handed over to the Contracting Authority to be submitted to relevant authorities regarding the laws and regulations.

(19) The Contractor shall provide any information and evidence relating to the provision of goods, services and works subject to this Contract to the Contracting Authority. The Contracting Authority is authorized to carry out documentary or on-the-spot checks it deems necessary to find evidence in case of suspected unusual commercial expenses. The Contractor shall allow and enable the Contracting Authority to inspect or audit the records and accounts relating to the Contract.

(20) All equipment, temporary works, plant and materials provided by the Contractor shall, when brought on the site, be deemed to be exclusively intended for the execution of the works and the Contractor shall not remove the same or any part thereof, without the consent of the Contracting Authority.

## **Article 6) Code of Conduct**

(1) The Contractor shall at all-time act impartially and as a faithful adviser in accordance with the code of conduct of its profession as well as with appropriate discretion. It shall refrain from making any public statements concerning the Contract and from any behaviour that may cause a conflict for the Contracting Authority. Any violation of this rule may result in the termination of the Contract.

- (2) Save where otherwise specified in the Special Conditions, payments to the Contractor shall be made conditional to the progress and submission of necessary documents and/or following the delivery of the goods & supplies, services and works.
- (3) Save where the written consent of the Contracting Authority is provided beforehand, the Contractor shall not accept directly or indirectly any royalty fee, reward or commission concerning the materials and processes used during the implementation of the Contract, that are protected by patent rights and copyrights.
- (4) The Contractor and its staff shall comply with the professional confidentiality conditions both during the execution and after the end of the Contract. The Contractor and its staff shall not use the results of the research, tests and studies conducted in relation to the Contract, as well as any information provided by the Contracting Authority for such research, tests and studies, in any way that may cause harm or damage to the Contracting Authority.
- (5) The execution of the contract shall not give rise to unusual commercial expenses. Any violation to this rule shall result in the termination of the Contract. Unusual commercial expenses are commissions not mentioned in the contract or not stemming from a properly concluded contract referring to the 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 commission paid to a company which has every appearance of being a front company.
- (6) The Contractor hereby deems all documents and information provided in relation to the Contract as confidential. The Contractor shall not disclose any such document or information save where the written consent of the Contracting Authority is provided.

#### **Article 7) Conflict of Interest**

- (1) The Contractor shall take all necessary measures to prevent or end any situation that could compromise the impartial and objective performance of the contract. Any conflict of interests which may arise during performance of the contract shall be notified to the Contracting Authority without delay.
- (2) The Contracting Authority reserves the right to verify that such measures are adequate and may require additional measures, including the replacement of staff, to be taken if necessary. In case of such a conflict of interest, the Contracting Authority, reserving its rights compensation for possible damages, can terminate the Contract immediately.
- (3) Civil servants and other staff of the public administration, regardless of their administrative situation and title, shall not be recruited as experts unless the prior approval has been granted by the Contracting Authority.

#### **Article 8) Administrative and Financial Sanctions**

- (1) Without prejudice to the application of other remedies laid down in the contract, the contract shall be terminated immediately, when the Contractor is found guilty of grave professional misconduct, has committed irregularities or has been found in serious breach of its contractual obligations. In such cases, the Contracting Authority may bring the matter to the court to seek compensation for possible damages.
- (2) Save for the force majeure circumstances, The Contractor shall be subject to financial penalties representing 10% of the total Contract price in case of a major failure of performing its duties and obligations related to this Contract.

(3) If the Contractor fails to deliver the goods or perform the services within the period of implementation of the tasks specified in the Contract, the Contracting Authority shall issue a formal notice valid for 10 days and impose a financial sanction equal to the 1% of the total Contract price for every day, which shall elapse between the end of the implementation period and the actual date of completion. If by the end of the 10-days formal notice, the Contractor cannot deliver the goods or perform the services as required, the Contracting Authority shall terminate the Contract and seize the performance guarantee without any further notice and without prejudice to its other remedies under the Contract.

#### **Article 9) Liabilities and Compensation**

(1) The Contractor shall, at its own expense, indemnify, protect and defend, the Contracting Authority, its agents and employees, from and against all actions, claims, losses or damage, direct or indirect, of whatever nature, including patent rights, trademark rights and copyright, arising from any act or omission by the Contractor, its staff, its subcontractors and/or any person for which the Contractor is answerable, in the performance of the duties as follows:

a) The Contracting Authority must notify any claims, actions, losses and damage to the Contractor in writing, within 30 days after the Contracting Authority becomes aware of them;

b) Compensation for damages resulting from the Contractor's liability shall be capped to the contract value, however, compensation for loss or damage resulting from fraud or gross negligence of the Contractor and its staff or loss or damage to third parties can in no case be capped;

c) The liability of the Contractor shall be restricted to actions, claims, losses or damage arising from failure to perform the duties and obligations specified in the Contract.

(2) The Contractor shall make good the defects and damage arising from failure to perform the duties and obligations specified in the Contract, at its own expense.

(3) The Contractor shall have no liability if the actions, claims, losses or damage in case they arise as result of the following;

a) The Contracting Authority neglects to take action regarding a written advice of the Contractor, overrides any action, written decision and written advice of the Contractor or forces the Contractor to undertake an activity notwithstanding the written prior objection of the Contractor,

b) The Contracting Authority and its staff fail to follow the written instructions duly provided by the Contractor.

#### **Article 10) Health, Insurance and Occupational Safety Arrangements**

(1) The Contracting Authority shall reserve the right to demand the Contractor and/or its staff to provide a medical report issued by a proper health agency, when deemed necessary.

(2) The Contractor and its staff shall perform its tasks and duties in compliance with the occupational safety procedures and regulations specified by the laws and legislations in force.

(3) When deemed necessary by the Contracting Authority, the Contractor shall take out a compensation insurance policy for an amount agreed on by both parties, valid for the implementation period. The insurance policy shall cover the following;

a) the Contractor itself and its staff and any person for which the Contractor is answerable, in case of an illness, accident at work or on the way to work,

- b) equipment belonging to the Contracting Authority and used by the Contractor or its staff in connection with the contract, in case of loss or damage,
- c) bodily injury and property damage that may be caused to third parties or the staff of the Contracting Authority by reason of the execution of the works as well as the legal liability of such incidents,
- d) permanent disabilities or disabilities for service arising from death or bodily injury due to accidents that occur in the course of works and activities related to the Contract.

(4) When deemed necessary by the Contracting Authority, the Contractor shall provide documents proving that the premiums of the insurance policy are being paid duly on time.

(5) The Contractor shall take all necessary precautionary security and occupational safety measures against any dangers the Contractor itself, its staff or its experts may encounter.

(6) The Contractor shall be responsible for monitoring the level of physical risk to which its staff are exposed and for keeping the Contracting Authority informed of the situation. If the Contracting Authority or the Contractor becomes aware of an imminent threat to the life or health of any of the Contractor's staff, the Contractor must take immediate emergency action to remove the individuals concerned to safety. If the Contractor takes such action, he must communicate this immediately to the Contracting Authority. In such cases suspension of the Contract is possible upon the agreement of both parties.

#### **Article 11) Intellectual and Industrial Property Rights**

(1) The Contracting Authority shall have an irrevocable, royalty-free, non-exclusive licence of all the industrial, intellectual and other property rights (including but not limited to patent rights and copyright) of specifications, drawings, surveys, models, samples, patterns and other records and materials, prepared by the Contractor for the purpose of the Contract or the tasks. The Contractor shall not keep a copy of such documents, records and data or use them for extracontractual purposes without the written consent of the Contracting Authority being present.

(2) The Contracting Authority shall have an irrevocable, royalty-free, non-exclusive licence of all the industrial, intellectual and other property rights (including but not limited to patent rights and copyright) of any written materials prepared during the implementation period of the Contract. Save for the cases where the intellectual and industrial property rights of the written materials were established before the Contract period, the Contracting Authority shall have the right to use, publish, grant sub-licence to third parties and transfer the rights of any written material prepared in relation to the Contract, without any restrictions.

#### **Article 12) Staff and Equipment**

(1) The Contractor must inform the Contracting Authority of all staff which the Contractor intends to use for the implementation of the tasks, other than the key experts whose CVs are provided among the bid documents. Related terms of reference and specifications shall specify the minimum level of training, qualifications and experience of the staff and, where appropriate, the specialisation required. The Contracting Authority shall have the right to oppose the Contractor's choice of staff.

(2) All those working for the Contract related tasks with the approval of the Contracting Authority shall commence their duties on the date or within the period laid down in the Special Conditions, or, failing this, on the date or within the periods notified to the Contractor by the Contracting Authority.

(3) Save as otherwise provided in the contract, those working on the contract shall reside close to their normal place of posting. Where part of the services is to be performed outside the country, the Contractor shall keep the Contracting Authority informed of the names and qualifications of staff assigned to that part of the services.

(4) The Contractor shall:

- a) forward to the Contracting Authority within 7 days of the signature of the contract by both parties, the timetable proposed for placement of the staff;
- b) inform the Contracting Authority of the date of arrival and departure of each member of staff;
- c) submit to the Contracting Authority for its approval a timely request for the appointment of any non-key experts.

(5) The Contractor shall provide its staff with all equipment and supporting materials needed to enable them to carry out their tasks described under this contract efficiently.

### **Article 13) Replacement of Staff**

(1) The Contractor shall not make changes to the agreed staff without the prior approval of the Contracting Authority. The Contractor must on its own initiative propose a replacement in the following cases:

- a) In the event of death, in the event of illness or in the event of accident of an agreed staff;
- b) If it becomes necessary to replace an agreed staff for any other reasons beyond the Contractor's control (e.g. resignation, etc.).

(2) Moreover, in the course of the implementation period, and on the basis of a written and justified request the Contracting Authority can order an agreed staff or expert to be replaced, when the Contracting Authority is of the opinion that a member of the Contractor staff or an expert is showing poor performance in the Contract related tasks.

(3) Where an agreed staff must be replaced, the replacement must possess at least equivalent qualifications and experience. The remuneration to be paid to the replacement cannot exceed that received by the agreed staff who has been replaced. Where the Contractor is unable to provide a replacement with equivalent qualifications and/or experience, the Contracting Authority may either decide to terminate the contract, if the proper performance of it is jeopardised, or, if it considers that this is not the case, accept the replacement, provided that the fees of the latter are renegotiated to reflect the appropriate remuneration level.

(4) Additional costs incurred by the replacement of an agreed staff are the responsibility of the Contractor. Where the expert cannot be replaced immediately, the Contracting Authority may request the Contractor to appoint a temporary expert or take other necessary measures to make up the absence of the said expert. The Contracting Authority must approve or reject the proposed replacement within 30 days. The Contracting Authority makes no payment for the period when the agreed staff to be replaced is absent.

## **IMPLEMENTATION OF THE TASKS**

### **Article 14) Delays in Implementation of the Tasks**

(1) The implementation of the Contract shall be completed within the period of the Contract specified in the Special Conditions. If the Contractor fails to perform the services within the



period of implementation of the tasks specified in the contract, the Contracting Authority shall, without formal notice and without prejudice to its other remedies under the contract, be entitled to liquidated damages for every day which shall elapse between the end of the period of implementation of the tasks specified in the Contract and the actual date of completion of these tasks.

(2) The daily rate for liquidated damages is calculated by dividing the Contract value by the number of days of the period of implementation of the tasks.

(3) If the Contracting Authority has become entitled to claim more than 15% of the Contract value for liquidated damages, it may, after giving notice to the Contractor, terminate the contract and enter into a contract with a third party to complete the services, at the Contractor's cost.

#### **Article 15) Amendment to the Contract**

(1) Any amendment to the contract affecting its object or scope, including an amendment to the total Contract amount, shall be formalised by means of an addendum. Any request for an addendum by the Contractor shall be submitted in writing to the Contracting Authority at least 30 days before the date on which the intended addendum is required to enter into force. This rule shall not apply, in case of special circumstances duly substantiated by the Contractor, and accepted by the Contracting Authority as such.

(2) Prior to the issuance of any administrative order, the Contracting Authority shall notify the Contractor of the nature and the form of the proposed amendment. The Contractor shall then, without delay, submit to the Contracting Authority a written proposal containing:

- a) a description of the tasks to be performed or the measures to be taken and a programme of implementation of the tasks,
- b) any necessary amendments to any of the Contractor's obligations resulting from this Contract.

(3) Following receipt of the Contractor's proposal, the Contracting Authority shall decide as soon as possible whether or not the amendment shall be carried out. If the Contracting Authority decides that the amendment shall be carried out, it shall notify the Contractor through an administrative order stating that the Contractor shall carry out the amendment at the prices and under the conditions given in the Contractor's proposal or as modified by the Contracting Authority in agreement with the Contractor.

(4) On receipt of the administrative order, the Contractor shall carry out the amendments detailed in that administrative order as if such amendments were stated in the Contract and its annexes.

(5) Both parties shall inform their counterpart of a change in the official representative they appointed as soon as possible.

(6) The Contractor shall notify the Contracting Authority of any change of the auditor and bank account. The Contracting Authority shall have the right to oppose the Contractor's change of bank account and auditor.

(7) No amendment can be retroactive. Any amendment that is not formalised by means of an addendum or administrative order and any amendment that violates the terms of this Article shall be deemed void.

**Article 16) Working Hours**

(1) The days and hours of work of the Contractor or the Contractor's staff shall be determined based on the conditions of the relevant task and shall respect the national laws, regulations and customs.

(2) The contractor cannot change the working hours on its own initiative. The working hours are required to be compatible with the working hours of the Contracting Authority and any changes thereof, requires the approval of the Contracting Authority.

**Article 17) Leave Entitlement**

(1) The annual leave to be taken by the contractor, its staff or key-experts during the period of implementation of the tasks shall be at a time approved by the Contracting Authority.

**Article 18) Records**

(1) The Contractor shall keep full, accurate and systematic records and accounts in respect of the tasks and services in such form and detail as is sufficient to establish accurately that the number of working days and the actual incidental expenditure identified in the Contractor's invoice(s) have been duly incurred for the performance of the services.

(2) Timesheets recording the days or hours worked by the Contractor's staff shall be maintained by the Contractor. The amounts invoiced by the Contractor must correspond to these timesheets. The timesheets of long-term staff and experts shall demonstrate the number of working days. The timesheets of short-term staff and experts shall demonstrate the number of working hours. Time spent travelling exclusively and necessarily for the purpose of the implementation of the contract, by the most direct route, may be included in the numbers of days or hours, as appropriate, recorded in these timesheets.

(3) Any records must be kept for a 5 year period after the final payment made under the contract. These documents shall comprise any documentation concerning income and expenditure and any inventory, necessary for the checking of supporting documents, including timesheets, plane and transport tickets, pay slips for the remuneration paid to the experts and invoices or receipts for incidental expenditure. In case of failure to maintain such records the Contracting Authority may terminate the Contract.

(4) The Contractor shall provide the Contracting Authority the opportunity to examine, inspect and copy such records both in course of the implementation and after the Contract period.

**Article 19) Verifications, Checks and Audits by Judicial and Administrative Authorities**

(1) The Contractor shall ensure that any data and documents are easily accessible and filed so as to facilitate the examination of judicial and administrative authorities.

(2) The Contractor shall ensure that the information is readily available at the moment of the audit by judicial and administrative authorities and, if so requested, that data be handed over on time.

**Article 20) Interim and Final Reports**

(1) The approval by the Contracting Authority of reports and documents drawn up and forwarded by the Contractor shall certify that they comply with the terms of the contract.

(2) The Contracting Authority shall inform the Contractor of its approval or refusal and, where the report is refused, notify the reasons and possible requests of amendments, within 30 days of the receipt of interim and final reports. Where the Contracting Authority fails to

inform the Contractor about the result of the submitted reports within 30 days, the Contractor may request, in writing, the approval of said reports. Where the written request of the Contractor is left unanswered for 30 days, all reports and documents submitted shall be deemed as approved.

(3) Where a report or document is approved by the Contracting Authority subject to amendments to be made by the Contractor, the Contracting Authority shall prescribe a period of maximum 15 days for making the amendments requested.

(4) Where the contract is performed in phases, the implementation of each phase shall be subject to the approval, by the Contracting Authority, of the preceding phase except where the phases are carried out concurrently.

## **PAYMENTS AND DEBT RECOVERY**

### **Article 22) Pre-financing Payments and Payments**

(1) A pre-financing payment, if specified in the Special Conditions, may be made of an amount up to maximum 20% of the contract value. A financial guarantee of an amount of minimum 3% of the Contract value is required in case pre-financing payment is necessary.

(2) For service and works contracts; interim and balance payments shall be subject to performance and progress of the Contractor. Payments shall be made only after the interim/final progress reports and a request for payment have been submitted by the Contractor and approved as satisfactory by the Contracting Authority.

(3) For supply contracts; payments shall be made after the delivery of the goods and supplies. Where the Contract specifies a pre-financing payment, the pre-financing payment shall be made after the purchase order and the balance payment shall be made after the delivery of the goods and submission of the invoice.

### **Article 23) Payment and Interest on Late Payments**

(1) In case the payment is delayed by the Contracting Authority, the Contractor may request interest for late payment, at the rediscount rate applied by the Central Bank of Turkey on the first day of the month in which the time-limit expired, plus 3 percentage points.

The interest shall be payable for the time elapses between the expiry of the payment deadline (inclusive) and the date on which the Contracting Authority's account is debited (exclusive).

(2) Payments due by the Contracting Authority shall be made into the bank account mentioned on the financial identification form completed by the Contractor.

(3) For service contracts, requests of payment shall be accompanied by invoices and copies of, or extracts from, the corresponding approved timesheets to verify the amount invoiced for the time input of the experts.

(4) Payment of the final balance shall be subject to performance by the Contractor of all its obligations relating to the implementation of all phases or parts of the services and to the approval by the Contracting Authority of the final phase or part of the services. Final payment shall be made only after the final progress report and a final statement, identified as such, shall have been submitted by the Contractor and approved as satisfactory by the Contracting Authority.

(5) For supply contracts, tasks and duties shall not be considered as completed until the receipt of goods and supplies has been signed. For service contracts, tasks and duties shall not be considered as completed until the final progress report has been approved by the

Contracting Authority. For works contracts, tasks and duties shall not be considered as completed until the final acceptance certificate has been signed.

(6) The Contracting Authority may fully or partially suspend payments due under the Contract, after a formal written notice to the Contractor, where the Contractor lapses into default in performing its duties and obligations arising from the Contract.

#### **Article 24) Financial Guarantee**

(1) In case a pre-financing payment is specified in the Contract, the Contractor shall provide a financial guarantee for an amount no less than 3% of the Contract value.

(2) The financial guarantee shall be provided on the letterhead of the financial institution and shall include the authorized signatures.

(3) Save where otherwise provided in the Special Conditions, the financial guarantee shall be released within the 45 days following the approval of the final progress report.

(4) Should the financial guarantee cease to be valid and the Contractor fail to re-validate it, either a deduction equal to the amount of the pre-financing may be made by the Contracting Authority from future payments due to the Contractor under the contract, or the Contracting Authority may terminate the contract.

(5) If the contract is terminated for any reason whatsoever, the financial guarantee may be invoked forthwith in order to repay any balance still owed to the Contracting Authority by the Contractor, and the guarantor shall not delay payment or raise objection for any reason whatsoever.

#### **Article 25) Recovery of Debts from the Contractor**

(1) The Contractor undertakes to repay any amounts paid in excess of the final amount due to the Contracting Authority within 15 days from the receipt of the debit note issued by the Contracting Authority. Should the Contractor fail to make repayment within the above deadline the Contracting Authority may increase the amounts due by adding interest at the rediscount rate applied by the Central Bank of Turkey on the first day of the month in which the time-limit expired, plus 3 percentage points.

(2) 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 party's right to agree on payment in instalments.

(3) Bank charges arising from the repayment of amounts due to the Contracting Authority shall be borne entirely by the Contractor.

#### **Article 26) Acceptance and Defects Liability in Works Contracts**

(1) Verification of the works by the Contracting Authority with a view to provisional or final acceptance shall take place in the presence of the Contractor.

(2) The Contracting Authority may make use of the various structures, parts of structures or sections of the works forming part of the contract as and when they are completed. Any taking over of the structures, parts of structures or sections of the works by the Contracting Authority shall be preceded by their partial provisional acceptance. However, works may in cases of urgency be taken over prior to acceptance provided an inventory of outstanding work is drawn up by the Contracting Authority and agreed to by the Contractor and the Contracting Authority beforehand. Once the Contracting Authority has taken possession of a structure, a part thereof or section of the works, the Contractor shall no longer be required to make good any damage resulting otherwise than from faulty construction or workmanship.

(3) The works shall be taken over by the Contracting Authority when they have satisfactorily passed the tests on completion and a certificate of provisional acceptance has been issued or is deemed to have been issued. In the certificate of provisional acceptance the Contracting Authority shall state, where appropriate, its reservations and the date on which, in its opinion, the works were completed in accordance with the contract and ready for provisional acceptance.

(4) Save where otherwise provided in the Special Conditions, the duration of the defects liability period shall be 365 days. 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 results from the use of defective materials, faulty workmanship or design of the Contractor.

(5) Within 30 days upon the expiry of the defects liability period, or where there is more than one such period, upon the expiry of the latest period, and when all defects or damage have been rectified, the Contracting Authority shall issue to the Contractor a final acceptance certificate and a copy thereof to the Contracting Authority.

(6) The works of the Contractor due under the Contract shall not be considered as completed until the final acceptance certificate has been signed by the Contracting Authority.

(7) Notwithstanding the issuance 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 such final acceptance certificate is issued. The nature and extent of any such obligation shall be determined by reference to the provisions of the contract.

#### **Article 27) Acceptance, Maintenance and Warranty in Supply Contracts**

(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 final acceptance.

(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. 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 amendments subsequently ordered by the Contracting Authority.

(3) No supplies shall be shipped or delivered to the place of acceptance until the Contractor has received a delivery order from the Contracting Authority. The Contractor shall be responsible for the delivery at the place of acceptance of all supplies and supplier's equipment. If the Contracting Authority fails either to issue the certificate of provisional acceptance or to reject the supplies within the period of 30 days, it shall be deemed to have issued the certificate on the last day of that period.

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

(5) The Contracting Authority 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 goods and supplies which, in the opinion of the Contracting Authority, are not in accordance with the contract;
- b) their replacement with proper and suitable goods and supplies;
- c) the removal and proper re-installation, notwithstanding any previous test thereof or of any installation which in respect of materials, workmanship or design for which the Contractor is responsible, is not, in the opinion of the Contracting Authority, 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.

(6) The Contractor shall, with all speed and at its 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.

(7) Goods and supplies which are not of the required quality specified in the terms of reference 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 Contracting Authority so requires, within a period which the Contracting Authority shall specify, failing which they shall be removed as of right at the expense and risk of the Contractor. Any works incorporating rejected materials shall be rejected.

(8) 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.

(9) The Contractor shall apply for a certificate of provisional acceptance when supplies are ready for provisional acceptance. The Contracting Authority shall within 30 days of receipt of the Contractor's application either:

- a) issue the certificate of provisional acceptance to the Contractor with a copy to the Contracting Authority stating, where appropriate, his reservations, and, inter alia, the date on which, in his opinion, the goods and 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.

(10) If the Contracting Authority fails either to issue the certificate of provisional acceptance or to reject the supplies within the period of 30 days, it shall be deemed to have issued the certificate.

(11) In case of partial delivery, the Contracting Authority reserves the right to give partial acceptance.

(12) Upon provisional acceptance of the supplies, the Contractor shall dismantle and remove temporary structures as well as materials no longer required for use in connection with the implementation of the contract. It shall also remove any litter or obstruction and redress any change in the condition of the place of acceptance as required by the contract.

(13) 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 from any act or omission, that may develop under use of the goods and supplies by the Contracting Authority.

(14) 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; and/or
- b) results from any act or omission of the Contractor during the warranty period; and/or
- c) appears in the course of an inspection made by, or on behalf of, the Contracting Authority.

(15) The Contractor shall at its 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 when the replacement or repair was made to the satisfaction of the Contracting Authority. 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.

(16) If any such defect appears or such damage occurs during the warranty period, the Contracting Authority shall notify the Contractor. If the Contractor fails to remedy a defect or damage within the time limit stipulated in the notification, the Contracting Authority may:

- a) remedy the defect or the damage itself, or employ someone else to carry out the tasks 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 from guarantees held against the Contractor or from both; or
- b) terminate the contract.

(17) In case of emergency, where the Contractor cannot be reached immediately or, having been reached, is unable to take the measures required, the Contracting Authority shall have the tasks carried out at the expense of the Contractor and as soon as practicable inform the Contractor of the action taken.

(18) The warranty period shall commence on the date of provisional acceptance and warranty obligations shall be stipulated in the Special Conditions and technical specifications. Save where otherwise provided in the Special Conditions, the duration of the warranty period shall be 365 days.

(19) Upon expiry of the warranty period, the Contracting Authority shall issue the Contractor a final acceptance certificate and a copy thereof to the Contracting Authority, stating the date on which the Contractor completed its obligations under the contract to the Contracting Authority's satisfaction. The final acceptance certificate shall be issued by the Contracting Authority within 30 days after the expiration of the warranty period.

(20) 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 Contracting Authority.

**Article 28) Revision of Prices**

(1) Save where otherwise specified in the Special Conditions, prices and price/earnings ratio not be revised.

**BREACH OF THE CONTRACT AND TERMINATION****Article 29) Breach of Contract**

(1) Either party commits a breach of contract where it fails to perform its obligations in accordance with the provisions of the contract.

(2) Where a breach of contract occurs, the party injured by the breach is entitled to the following remedies:

- a) damages; and/or
- b) termination of the contract.

(3) Damages may be either:

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

(4) Where the Contracting Authority is entitled to damages, it may deduct such damages from any sums due to the Contractor or call on the appropriate guarantee.

(5) The Contracting Authority shall be entitled to compensation for any damage which comes to light after the contract is completed in accordance with the law governing the contract.

**Article 30) Suspension of the Contract**

(1) The Contracting Authority shall suspend the Contract in the event of presumed substantial errors or irregularities or fraud occurred during the award procedure or the performance of the contract, in order to verify them as such.

(2) Where the award procedure or the performance of the contract proves to have been subject to substantial errors, irregularities or fraud attributable to the Contractor, the Contracting Authority may in addition to the possibility to suspend the performance of the contract, refuse to make payments and/or recover amounts already paid, in proportion to the seriousness of the errors irregularities or fraud, as a precautionary measure.

**Article 31) Termination by the Contracting Authority**

(1) This contract shall be automatically terminated if it has not given rise to any activity and payment related thereto, in the two years following its signing by both parties.

(2) Termination shall be without prejudice to any other rights or powers under the contract of the Contracting Authority and the Contractor.

(3) Subject to any other provision of these General Conditions the Contracting Authority may, by giving 7 (seven) days' notice to the Contractor, terminate the contract in any of the following cases where:

- a) the Contractor is in serious breach of contract for failure to perform its contractual obligations;
- b) the Contractor fails to comply within a reasonable time with the notice given by the Contracting Authority requiring it to make good the neglect or failure to perform its



obligations under the contract which seriously affects the proper and timely performance of the services;

c) the Contractor refuses or neglects to carry out any administrative orders given by the Contracting Authority;

d) the Contractor assigns the contract or subcontracts;

e) the Contractor is bankrupt, subject to insolvency or winding up procedures, is having its assets administered by a liquidator or by the courts, has entered into an arrangement with creditors, has suspended business activities, or is in any analogous situation arising from a similar procedure provided for under any national law or regulations relevant to that Contractor;

f) it has been established by a final judgment that the Contractor has been guilty of grave professional misconduct;

g) the Contractor has committed grave professional misconduct or embezzlement proven by any means which the Contracting Authority can justify;

h) it has been established by a final judgment or a final administrative decision or by proof in possession of the Contracting Authority that the Contractor has been guilty of fraud, corruption, involvement in a criminal organisation or other forms illegal activity;

i) 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;

j) any other legal disability hindering performance of the contract occurs;

k) the Contractor fails to provide the required guarantees or insurance, or the person providing the earlier guarantee or insurance is not able to abide by its commitments.

(4) The Contracting Authority may, thereafter, conclude any other contract with a third party, at the Contractor's own expense. The Contractor's liability for delay in completion shall immediately cease when the Contracting Authority terminates the contract without prejudice to any liability thereunder that may already have arisen.

(5) Upon termination of the contract or when it has received notice thereof, the Contractor shall take immediate steps to bring the implementation of the tasks to a close in a prompt and orderly manner and to reduce expenditure to a minimum.

(6) The Contracting Authority shall, as soon as possible after termination, certify the value of the supplies, services or works and all sums due to the Contractor as at the date of termination.

(7) The Contracting Authority shall not be obliged to make any further payments to the Contractor until the provision of supplies, services or works are completed. After the provision of supplies, services or works are completed, the Contracting Authority shall recover from the Contractor the extra costs, if any, of completing the services, or shall pay any balance still due to the Contractor.

(8) If the Contracting Authority terminates the contract, it shall, be entitled to recover from the Contractor any loss it has suffered up to the value of the Contract.

(9) The Contractor shall not be entitled to claim an indemnity for loss suffered, in addition to sums owed to it for work already performed.

**Article 32) Termination by the Contractor**

(1) The Contractor may, after giving 15 days' notice to the Contracting Authority, terminate the contract if the Contracting Authority:

- a) fails to pay the Contractor the amounts due without any justifiable reason;
- b) consistently fails to meet its obligations after repeated reminders; or
- c) suspends the progress of the Contract tasks or any part thereof for more than 90 days for reasons not specified in the contract, or not attributable to the Contractor's breach or default.

(2) Such termination shall be without prejudice to any other rights of the Contracting Authority or the Contractor acquired under the contract.

(3) In the event of such termination, the Contracting Authority shall pay the Contractor for any loss or damage the Contractor may have suffered. Such additional payment must not be such that the total payments exceed the amount specified in Special Conditions of the contract.

**Article 33) Decease**

(1) If the Contractor is a natural person, the contract shall be automatically deemed as terminated if that person dies. However, the Contracting Authority shall examine any proposal made by its heirs or beneficiaries if they have notified their wish to continue the contract within 15 days of the date of decease. The decision of the Contracting Authority shall be notified to those concerned within 15 days of receipt of such a proposal.

(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 Contracting Authority shall decide whether to terminate or continue the contract in accordance with the undertaking given by the survivors and by the heirs or beneficiaries, as the case may be, within 15 days of the date of decease.

(3) Such persons shall be jointly and severally liable for the proper implementation of the contract to the same extent as the deceased Contractor. Continuation of the Contract shall be subject to the rules relating to establishment of any guarantee provided for in the Contract.

**Article 34) Conditions and Circumstances for the Extension of Implementation Period**

(1) An extension of the implementation period may be granted under the following circumstances:

A. Force majeure circumstances;

- a) Natural disasters
- b) Legal strikes
- c) Epidemics
- d) Declaration of general or partial mobilization
- e) Unforeseeable events, not within the control of either party and which by the exercise of due diligence neither party is able to overcome

B. Causes attributable to the Contracting Authority

Furthermore, the Contractor may request an extension to the implementation period based on the grounds that the failure of the Contracting Authority to fulfil its obligations under the Contract (such as delays in the approval of the final acceptance place or progress) or its

administrative orders delayed the date of completion other than those arising from the Contractor's fault. The Contracting Authority shall consider this request within 7 days after the receipt thereof, and grant full or partial extension.

(2) None of the parties shall be liable for the breach of contract if the delay or other failure to perform their obligations is the result of force majeure, that occurred after the signing of the contract by both parties.

(3) Notwithstanding the provisions of Special Conditions, the Contractor shall not be liable for liquidated damages or termination for breach or default if, and to the extent that, its delay in performance or other failure to perform its obligations under the contract is the result of an event of force majeure. The Contracting Authority shall similarly not be liable, notwithstanding the provisions of Article 29 and Article 37, for payment of interest on delayed payments, for non-performance or for termination by the Contractor for breach or 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.

(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 giving details of the nature, the probable duration and the likely effect of the circumstances. Unless otherwise directed by the Contracting Authority in writing, the Contractor shall continue to perform its obligations under the contract as far as is reasonably practicable, and shall seek all reasonable alternative means for performance of its obligations which are not prevented by the force majeure event. The Contractor shall not put into effect such alternative means unless directed so to do by the Contracting Authority.

## SETTLEMENT OF DISPUTES

### **Article 35) Settlement of Disputes**

(1) The parties shall make every effort to settle amicably any dispute relating to the contract which may arise between them.

(2) Once a dispute has arisen, a party shall notify the other party of the dispute in writing, stating its position on the dispute and any solution which it envisages. Should a party consider that a meeting shall be beneficial for the settlement of the dispute, parties shall organize a meeting and make every effort to settle the said dispute. The parties shall respond to the other party's request for amicable settlement within 10 days after the receipt of the notification. The maximum time period laid down for reaching an amicable settlement shall be 60 days from the date of the notification requesting such a procedure.

(3) If the amicable settlement efforts fail or a party fails to respond in time to a settlement request, each party may refer the dispute to either the decision of a national jurisdiction or arbitration, as specified in the Special Conditions.