

# ***SPECIAL CONDITIONS***

## **CONTENTS**

These conditions amplify and supplement, if necessary, the general conditions governing the contract. Unless the special conditions provide otherwise, those general conditions remain fully applicable. The numbering of the articles of the special conditions is not consecutive but follows the numbering of the articles of the general conditions. In exceptional cases, and with the authorisation of the appropriate Commission departments, other clauses may be added to cover specific situations.

### **Article 2 Language of the contract**

- 2.1 The language used shall be English.

### **Article 4 Communications**

- 4.1 <Indicate here the contact persons, addresses of the parties and their contact details the documents to provide and the procedure to be used by the Parties for communication.>
- 4.2 An electronic system will be used by the contracting authority and the contractor for all stages of implementation including, inter alia, management of the contract (amendments and administrative orders), reporting (including reporting on results) and payments. The contractor will be required to register in and use the appropriate electronic exchange system to allow for the e-management of the contract.

The electronic management of the contract through the aforementioned system may commence on the date on which implementation of the contract starts, as described in Article 18 below, or at a later date. In the latter case, the contracting authority will inform the contractor in writing that he will be required to use the electronic system for all communications within a maximum period of 3 months.

### **[Article 6 Subcontracting]**

- 6.3 EDF only: When selecting subcontractors the contractor must give preference to natural persons or companies from ACP States capable of implementing the tasks required on similar terms.]

### **Article 7 Supply of documents**

<Indicate here the documents, drawings to be supplied and, if necessary, the procedure to be used by the contracting authority and the project manager to approve drawings and other documents provided by the contractor>

### **Article 8 Assistance with local regulations**

<Specify the procedures for obtaining permits, visas, authorisation or licences or, at least, specify the relevant reference texts, if necessary>

### **Article 9 General obligations**

- 9.9 <Specify the specific activities to be put in place by the contractor to comply with its minimum obligation towards visibility and, if applicable, any additional communication activities agreed by the European Commission. These activities must comply with the latest Communication and Visibility Requirements for EU-funded external action, laid down and published by the European Commission.>

## Article 10 Origin

- 10.1 [Under the Multiannual Financial Framework 2014-2020 (contracts/lots below EUR 100 000 under CIR) and under the Multiannual Financial Framework 2021-2027, with the exception of the INSC Regulation 2021/948 of 27 May 2021: All goods purchased can originate in any country.]

[Under the INSC Regulation 2021/948 of 27 May 2021 under the MFF 2021-2027: All goods purchased must originate in an eligible source country as defined in the INSC Regulation 2021/948 of 27 May 2021. For these purposes, 'origin' means the place where the goods are mined, grown, produced or manufactured. The origin of the goods must be determined according to the EU Customs Code or to the relevant international agreement applicable.]

[Under the Multiannual Financial Framework 2014-2020 (contracts/lots above EUR 100 000 under CIR and irrespective of the value for other instruments): All goods purchased must originate in an eligible source country as defined in < insert relevant instrument financing the project/programme>. For these purposes, 'origin' means the place where the goods are mined, grown, produced or manufactured. The origin of the goods must be determined according to the EU Customs Code or to the relevant international agreement applicable.]

[EDF: Goods originating in the EU includes goods originating in the Overseas Countries and Territories.]

<Specify any authorised derogation from the rules of origin>

## Article 11 Performance guarantee

- 11.1 [The amount of the performance guarantee shall be <insert percentage between 5 and 10> % of the total contract price, including any amounts stipulated in addenda to the contract.]

OR: For contracts of EUR150000 or below, the contracting authority may decide, on the basis of objective criteria such as the type and value of the contract, not to require such a guarantee.

[No performance guarantee is required.]

## Article 12 Liabilities and insurance

- 12.1(a) <Specify here the specific requirements of liability for damage to the supplies>

[If you find it necessary to set a limit other than that referred to in the general conditions, add the following clause :

'By way of derogation from Article 12.1(a), paragraph 2, of the general conditions, compensation for damage to the supplies resulting from the

contractor's liability in respect of the contracting authority is capped at an amount equal to <complete with an amount that can be a multiple or fraction of the contract value.> ']

12.1(b) <Specify here the specific requirements of liability for damages to the contracting authority>

[If you find it necessary to set a limit other than that referred to in the general conditions, add the following clause :

'By way of derogation from Article 12.1(b), paragraph 2, of the general conditions, compensation for damage resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to <complete with an amount that can be a multiple or fraction of the contract value>.']

12.2(a), paragraph 1 <Specify here specific requirements on when the requirements of proof of completion of adequate insurance must be provided>

[If you find it necessary to tailor differently when the requirements for proof of insurance must be met, add the following clause :

By derogation from Article 12.2(a), paragraph 1, of the general conditions, [indicate when], the contractor shall ensure that itself, its personnel, its subcontractors and any person for which the contractor is answerable, are adequately insured with insurance companies recognized on the international insurance market, unless the contracting authority has given its express written consent on a specific insurance company.]

12.2(a), paragraph 2 <Specify here specific requirements on when the requirements of communication of cover notes and/or insurance certificates must be fulfilled>

[If you find it necessary to tailor differently the moment cover notes and/or insurance certificates must be communicated, add the following clause :

By derogation from Article 12.2(a), paragraph 2, of the general conditions it is [state when] that the contractor shall provide the contracting authority with all cover notes and/or insurance certificates showing that the contractor's obligations relating to insurance are fully respected. ]

12.2(b), paragraph 2 <Specify any specific insurance requirements to cover the transport of supplies >

This type of insurance will vary depending on the nature of transport (land, air or sea) and the nature of the risks to be covered: loading, intermediate storage, unloading, including stowage and protection, theft, damage, loss, wetting, etc.

In the case of use of Incoterms, the contractor shall provide transport insurance to the extent that it assumes transportation risks. The question

of the extent of the risks assumed by the contractor (seller) depends in particular on the Incoterms used:

- **DDP - Delivered Duty Paid:** Incoterm which imposes on the seller maximum obligations vis-à-vis transportation and loss risks and damage associated with the goods:  
*'the seller delivers the goods when the goods are placed at the disposal of the buyer, cleared for import on the arriving means of transport ready for unloading at the named place of destination. The seller bears all the costs and risks involved in bringing the goods to the place of destination and has an obligation to clear the goods not only for export but also for import, to pay any duty for both export and import and to carry out all customs formalities.'*<sup>1</sup>  
The transfer of risks and costs occurs at the place of unloading of the goods at the agreed place of destination.
- **DAP - Delivered At Place:** Incoterm whereby the buyer bears all risks and costs of import clearance:  
*'the seller delivers when the goods are placed at the disposal of the buyer on the arriving means of transport ready for unloading at the named place of destination. The seller bears all risks involved in bringing the goods to the named place'*<sup>2</sup>, including customs clearance for export, but not for import at the port or at the border of the agreed place of destination.

## Article 13 Programme of implementation of tasks

- 13.2 [If required <specify the timetable for submission and approval of the programme of implementation of the tasks, with dates and deadlines>]

## Article 14 Contractor's drawings

- 14.1 <Specify the drawings and/or samples required from the contractor, the procedures for approving them and any requirements relating to manuals.>

## Article 15 Sufficiency of tender prices

- 15.1 <Specify any additional provisions regarding Article 15 of the general conditions >

## Article 16 Tax and customs arrangements

- 16.1 <Specify if the delivery conditions are DAP instead of DDP as mentioned in the general conditions>

## Article 17 Patents and licences

- 17.1 <Specify whether there is a derogation from Article 17 of the general conditions>

## Article 18 Commencement order

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<sup>1</sup> See <http://www.iccwbo.org/incoterms/>

<sup>2</sup> Idem.

18.1 [<Specify the date on which implementation of the tasks is to commence>]

Or

18.1 [The contracting authority shall inform the contractor by administrative order of the date on which implementation of the tasks shall begin.]

## **Article 19 Period of implementation of the tasks**

19.1 <Specify the implementation period(s) of the tasks in calendar days in relation to the date stipulated in the previous article>

## **Article 24 Quality of supplies**

24.2 <Indicate here if a preliminary technical acceptance is required>

## **Article 25 Inspection and testing**

25.2 <Specify the places/goods to be inspected and tested in accordance with Article 25 of the general conditions and the practical arrangements for testing>

## **Article 26 General principles for payments**

26.1 Payments shall be made in [euros] [<ISO code of national currency>] only for indirect management in the following cases: (i) when legal or local constraints exceptionally impose using the national currency; (ii) when needed, for contracts within the imprest component of a programme estimate].

<Specify the administrative or technical conditions governing payment of pre-financing and final payments> Pre-financing is not applicable to this contract

Payments shall be authorised and made by <give the address of the relevant unit and any other relevant information>.

[In the case of indirect management ex ante procedures and where invoices are presented to the authorities of the country of the contracting authority, the contractor must inform the European Commission at <enter address of the unit in charge if this option is used>, thereof by sending a copy of the correspondence.]

26.3 [Contract under 10<sup>th</sup> EDF only: By derogation, the pre-financing payments shall be made within 90 days from the date on which an admissible invoice is registered by the contracting authority. The final payment to the contractor of the amounts due shall be made within 90 days following provisional acceptance of the goods, after receipt by the contracting authority of an admissible invoice.]

[Contract in indirect management under the general budget of the Union only: By derogation, the final payment to the contractor of the amounts due shall be made within 90 days after receipt by the contracting authority of an invoice and of the application for the certificate of provisional acceptance.]

[Contract in indirect management under the general budget of the Union for which a financing agreement was signed before 01/01/2013 only: By derogation, the final payment to the contractor of the amounts due shall be made within 45 days following provisional acceptance of the goods, after receipt by the contracting authority of an admissible invoice.]

[Contract in indirect management under 11th EDF only where the Commission executes payments: By derogation, the pre-financing payment shall be made within 60 days from the date on which an admissible invoice is registered by the contracting authority. The final payment to the contractor of the amounts due shall be made within 90 days following provisional acceptance of the goods, after receipt by the contracting authority of an admissible invoice.]

26.5 In order to obtain payments, the contractor must forward to the authority referred to in paragraph 26.1 above:

a) [For the 40% pre-financing], [the pre-financing guarantee] [and insert either of the below sentences:

[if the total contract price is below or equal to EUR 60 000:]

[By derogation from article 26.5 of the general conditions, no pre-financing guarantee is required.]

[if the total contract price is above EUR 60 000:]

[When (i) the pre-financing requested is equal or below EUR 300 000 and (ii) the contracting authority does not require a financial guarantee following a risk assessment<sup>1</sup>, by derogation from article 26.5 of the general conditions no pre-financing guarantee is required.]

b) [For the 60 % balance], [For the 100 % balance] the invoice(s) [in triplicate] together with the request for provisional acceptance of the supplies.

26.9 <Specify whether the contract includes a price revision clause. This clause must be drawn up by the competent services of the European Commission in accordance with their internal procedures.>

## Article 28 Delayed payments

28.2 [For indirect management:

By derogation from Article 28.2 of the general conditions, once the deadline laid down in Article 26.3 has expired, the contractor shall, upon demand, be entitled to late-payment interest at the rate and for the period mentioned in the general conditions. The demand must be submitted within two months of receiving late payment.]

## Article 29 Delivery

29.3 <Specify any specific packaging requirements>

[The packaging shall become the property of the recipient subject to environmental considerations].

Or [The packaging shall remain the property of the contractor subject to environmental considerations].

29.5/6/7 <Set out requirements as regards documents to accompany each delivery and markings on the packaging>

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<sup>1</sup> Such risk assessment is required, for example, when a company is awarded a contract without itself meeting the selection criteria, but relying on the capacity of another company.

## Article 31 Provisional acceptance

The certificate of provisional acceptance must be issued using the template in Annex C11.

<Specify the detailed arrangements for provisional acceptance>

[Contract in decentralised/indirect management under the general budget of the Union for which a financing agreement was signed before 01/01/2013 only:

31.2. By derogation, 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 45 days of receipt of the contractor's application either:

- 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 supplies were completed in accordance with the contract and ready for provisional acceptance; or
- 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.

The contracting authority's time limit for issuing the certificate of provisional acceptance to the contractor shall not be considered included in the time limit for payments indicated in Article 26.3. ]

[Contract under EDF only:

By derogation from Article 31.2, second paragraph , the contracting authority's time limit for issuing the certificate of provisional acceptance to the contractor shall not be considered included in the time limit for payments indicated in Article 26.3. ]

## Article 32 Warranty obligations

32.6 <Specify any additional obligations under the warranty, e.g. commercial warranty>

32.7 The warranty must remain valid for <period to be specified, maximum one year> after provisional acceptance.

## Article 33 After-sales service

33.1 <Give details of any after-sales service that the contractor must provide and specify the proportion of the performance guarantee assigned to that activity.>

## Article 40 Settlement of disputes

For direct management:

40.4 [Any disputes arising out of or relating to this contract which cannot be settled amicably shall be referred to the exclusive jurisdiction of the courts of Brussels, Belgium.]

For indirect management:

General budget of the Union:

EITHER



40.4 [Any disputes arising out of or relating to this contract which cannot be settled otherwise shall be referred to the exclusive jurisdiction of <specify> in accordance with the national legislation of the state of the contracting authority.  
]

**OR**

40.4 [Any disputes arising out of or relating to this contract which cannot be settled otherwise shall be referred for arbitration to <specify the arbitration body> in accordance with the rules of arbitration of [the International Chamber of Commerce] [the United Nations Commission on International Trade Law] [<other internationally recognised procedure to be specified >].]

**[EDF:**

[Any dispute arising out of or relating to this contract which cannot be settled otherwise shall:

- (a) in the case of a national contract, be settled in accordance with the national legislation of the state of the contracting authority; and
- (b) in the case of a transnational contract, be settled either:
  - (i) if the parties to the contract so agree, in accordance with the national legislation of the state of the contracting authority or its established international practices; or
  - (ii) by arbitration in accordance with the procedural rules on conciliation and arbitration of contracts financed by the European Development Fund, adopted by Decision 3/90 of the ACP-EEC Council of Ministers of 29 March 1990 (Official Journal No L 382, 31.12.1990, Annex a12 to the practical guide) Please attach Annex A12 of the practical guide to the present contract.]

#### **Article 44 Data protection**

[The following text is to be inserted for indirect management]

[1. Processing of personal data related to the implementation of the contract by the contracting authority takes place in accordance with the national legislation of the state of the contracting authority and with the provisions of the respective financing agreement.

2. To the extent that the contract covers an action financed by the European Union, the Contracting Authority may share communications related to the implementation of the contract, with the European Commission. These exchanges shall be made to the Commission, solely for the purpose of allowing the latter to exercise its rights and obligations under the applicable legislative framework and under the financing agreement with the Partner country – contracting authority. The exchanges may involve transfers of personal data (such as names, contact details, signatures and CVs) of natural persons involved in the implementation of the contract (such as contractors, personnel, experts, trainees, subcontractors, insurers, guarantors, auditors and legal counsel). In cases where the contractor is processing personal data in the context of the implementation of the contract, he/she shall accordingly inform the data subjects of the possible transmission of their data to the Commission. When personal data is transmitted to the Commission, the latter processes them in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the



Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC<sup>1</sup> and as detailed in the specific privacy statement published at ePRAG.]

**[Article 45 Further additional clauses**

<Add other clauses approved by the competent Commission departments.>

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<sup>1</sup> OJ L 205 of 21.11.2018, p. 39