

# GENERAL CONDITIONS OF CONTRACT

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# GENERAL CONDITIONS OF CONTRACT

## 1. Definitions

1.1 In this Contract, the following terms shall be interpreted as indicated:

- a) "The Contract" means the agreement entered into between the Purchaser and the Supplier, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- b) "The Contract Price" means the price payable to the Supplier under the Contract for the full and proper performance of its contractual obligations.
- c) "The Goods" mean all of the equipment, machinery, and/or other materials which the Supplier is required to supply to the Purchaser under the Contract.
- d) "The Services" mean all the services which the Supplier is required to supply – "stand-alone" or ancillary to the supply of the Goods, such as transportation and insurance, and any other incidental Services, such as installation, commissioning, provision of technical assistance, training and other such obligations of the Supplier covered under the Contract.
- e) "GCC" means the General Conditions of Contract contained in this section.
- f) "SCC" means the Special Conditions of Contract.
- g) "The Purchaser" means the organisation purchasing the Goods or Services as named in the SCC.
- h) "The "Consultant" means the individual or firm employed by the Purchaser for consultancy services related to the procurement under this contract as named in the SCC.
- i) "The Supplier" means the individual or firm supplying the Goods and Services under this Contract as named in the SCC.
- j) "The Project Site", where applicable, means the place or places named in the SCC.
- k) "Acceptance" means acceptance by the Purchaser of the Goods and Services (or any part of the Goods and Services where the contract provides for acceptance in parts) which certifies the Supplier's fulfilment of the contract in respect of the performance specified in the Contract.

## 2. Application

2.1 These General Conditions shall apply to the extent that they are not superseded by provisions in other parts of the Contract.

## 3. Country of origin

3.1 The Suppliers, manufacturers, subcontractors and Goods and Services supplied under the Contract can have their origin in any country unless otherwise specified in the SCC.

## 4. Standards

4.1 The Goods or Services supplied under this Contract shall conform to the standards mentioned in the Technical Specifications and, when no applicable

standard is mentioned, to the authoritative standard appropriate to the Goods' country of origin. Such standards shall be the latest issued by the concerned institution.

5. Use of contract documents and information

- 5.1 The Supplier shall not, without the Purchaser's prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern sample or information furnished by or on behalf of the Purchaser in connection therewith, to any person other than a person employed by the Supplier in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for the purposes of such performance.
- 5.2 The Supplier shall not, without the Purchaser's prior written consent, make use of any document or information enumerated in GCC Clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the Contract itself, enumerated in GCC Clause 5.1 shall remain the property of the Purchaser and shall be returned (in all copies) to the Purchaser on completion of the Supplier's performance under the contract if so required by the Purchaser.

6. Patent rights

- 6.1 The Supplier shall indemnify the Purchaser against all third-party claims of infringement of patent, trademark or industrial design rights arising from use of the Goods or any part thereof in the Purchaser's country.

7. Performance security

- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful tenderer shall furnish to the Purchaser the performance security in the amount specified in the SCC.
- 7.2 The proceeds of the performance security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.
- 7.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Purchaser and shall be in one of the following forms:
  - (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the Purchaser's country or abroad, acceptable to the Purchaser, in the form provided in the tender documents or another form acceptable to the Purchaser; or
  - (b) a cashier's or certified cheque.
- 7.4 The performance security will be discharged by the Purchaser and returned to the Supplier not later than thirty (30) days following the date of completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the SCC.

8. Inspections, tests and acceptance

- 8.1 The Purchaser or its representative shall have the right to inspect and/or to test the Goods to confirm their conformity to the Contract specifications at no extra cost to the Purchaser. The SCC and the Technical Specifications shall specify what inspections and tests the Purchaser requires and where they are to be conducted. The Purchaser shall notify the Supplier in writing, in a timely manner, of the identity of any representatives retained for these purposes.
- 8.2 The inspections and tests may be conducted on the premises of the Supplier or its subcontractor(s), at point of delivery and/or at the Goods' final destination. If conducted on the premises of the Supplier or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.
- 8.3 Should any inspected or tested Goods fail to conform to the Specifications, the Purchaser may reject the Goods, and the Supplier shall either replace the rejected Goods or make alterations necessary to meet specification requirements free of cost to the Purchaser.
- 8.4 The Purchaser's right to inspect, test and, where necessary, reject the Goods after the Goods' arrival in the Purchaser's country shall in no way be limited or waived by reason of the Goods having previously been inspected, tested and passed by the Purchaser or its representative prior to Goods shipment from the country of origin.
- 8.5 Upon final delivery of the Goods or Services and performance of all inspections and tests, the Purchaser shall accept such goods or services which conform to the Specifications. Acceptance shall not be unreasonably withheld and be evidenced by an acceptance certificate issued by the Purchaser or its agent.
- 8.6 Nothing in GCC Clause 8 shall in any way release the Supplier from any warranty or other obligations under this Contract.

## 9. Packing

- 9.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination as indicated in the Contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Goods' final destination and the absence of heavy handling facilities at all points in transit.
- 9.2 The packing, marking and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the SCC, and in any subsequent instructions ordered by the Purchaser.

## 10. Delivery and documents

- 10.1 Delivery of the Goods Services shall be made by the Supplier in accordance with the terms specified in its Schedule of Requirements. The details of shipping and/or documents for Goods to be furnished by the Supplier are specified in the SCC.

10.2 For purposes of the Contract, “EXW”, “FOB”, “FCA”, “CIF”, “CIP”, and other trade terms used to describe the obligations of the parties shall have the meanings assigned to them by the current edition of Incoterms, published by the International Chamber of Commerce, Paris.

10.3 Documents to be submitted by the Supplier are specified in the SCC.

## 11. Insurance

11.1 The Goods supplied under the Contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.

11.2 Where delivery of the Goods is required by the Purchaser on a CIF or CIP basis, the Supplier shall arrange and pay for cargo insurance, naming the Purchaser as the beneficiary. Where delivery is on an FOB or FCA basis, insurance shall be the responsibility of the Purchaser.

## 12. Transportation

12.1 Where the Supplier is required under the Contract to deliver the Goods FOB, transport of the Goods, up to and including the point of putting the Goods on board the vessel at the specified port of loading, shall be arranged and paid for by the Supplier and the cost thereof shall be included in the Contract Price. Where the Supplier is required under the Contract to deliver the Goods FCA, transport of the Goods and delivery into the custody of the carrier at the place named by the Purchaser or other agreed point shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price.

12.2 Where the Supplier is required under the Contract to deliver the Goods CIF or CIP, transport of the Goods to the port of destination or such other named place of destination in the Purchaser’s country, as shall be specified in the Contract, shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price.

12.3 Where the Supplier is required under the Contract to transport the Goods to a specified place of destination within the Purchaser’s country, defined as the Project Site, transport to such place of destination in the Purchaser’s country, including insurance and storage, as shall be specified in the Contract, shall be arranged by the Supplier, and the related costs shall be included in the Contract Price.

12.4 Where the Supplier is required under the Contract to deliver the Goods CIF or CIP, no restriction shall be placed on the choice of the carrier. Where the Supplier is required under the Contract (a) to deliver the Goods FOB or FCA, and (b) to arrange on behalf and at the expense of the Purchaser for international transportation on specified carriers or on national flag carriers of the Purchaser’s country, the Supplier may arrange for such transportation on alternative carriers if the specified carriers or national flag carriers are not available to transport the Goods within the period(s) specified in the Contract.

## 13. Incidental Services

13.1 The Supplier may be required to provide any or all of the following Services,

including additional Services, if any, specified in the SCC:

- a) performance or supervision of on-site assembly and/or start-up of the supplied Goods;
- b) furnishing of tools required for assembly and/or maintenance of the supplied Goods;
- c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied Goods;
- d) performance or supervision or maintenance and/or repair of the supplied Goods, for a period of time agreed by the parties, provided that this service shall not relieve the Supplier of any warranty obligations under this Contract; and
- e) training of the Purchaser's personnel, at the Supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied Goods.

13.2 Prices charged by the Supplier for incidental Services, if not included in the Contract Price for the Goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged for other parties by the Supplier for similar Services.

#### 14. Spare parts

14.1 As specified in the SCC, the Supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the Supplier:

- (a) such spare parts as the Purchaser may elect to purchase from the Supplier, provided that this election shall not relieve the Supplier of any warranty obligations under the Contract; and
- (b) in the event of termination of production of the spare parts:
  - (i) advance notification to the Purchaser of the pending termination, in sufficient time to permit the Purchaser to procure needed requirements; and
  - (ii) following such termination, furnishing at no cost to the Purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

#### 15. Warranty

15.1 The Supplier warrants that the Goods supplied under the Contract are new, unused, of the most recent or current models and incorporate all recent improvements in design and materials unless provided otherwise in the Contract. The Supplier further warrants that all Goods supplied under this Contract shall have no defect, arising from design, materials or workmanship (except insofar as the design and/or material is required by the Purchaser's specifications) or from any act or omission of the Supplier, that may develop under normal use of the supplied Goods in the conditions obtaining in the country of final destination.

15.2 This warranty shall remain valid for 12 months after the Goods or Services, or

any portion thereof as the case may be, have been accepted by the Purchaser at the final destination indicated in the Contract, unless specified otherwise in the SCC.

- 15.3 The Purchaser shall promptly notify the Supplier in writing of any claims arising under this warranty.
- 15.4 Upon receipt of such notice, the Supplier shall, within the period specified in the SCC, and with all reasonable speed, repair or replace the defective Goods or parts thereof, without costs to the Purchaser other than, where applicable, the cost of inland delivery of the repaired or replaced Goods or parts from EXW or the port or place of entry to the final destination.
- 15.5 If the Supplier, having been notified, fails to remedy the defect(s) within the period specified in the SCC, within a reasonable period, the Purchaser may proceed to take such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.

## 16. Payment

- 16.1 The method and conditions of payment to be made to the Supplier under the Contract shall be specified in the SCC.
- 16.2 The Supplier's request(s) for payment shall be made to the Purchaser in writing, accompanied by an invoice describing, as appropriate, the Goods delivered and Services performed, and by documents submitted pursuant to GCC Clause 10 and upon fulfilment of other obligations stipulated in the Contract.
- 16.3 Payments shall be made promptly by the Purchaser, but in no case later than sixty (60) days after of submission of an invoice or claim by the Supplier.
- 16.4 The currency or currencies in which payment is made to the Supplier under this Contract shall be specified in the SCC subject to the following general principle: payment will be made in the currency or currencies in which the payment has been requested in the Supplier's tender.

## 17. Prices

- 17.1 Prices charged by the Supplier for Goods delivered and Services performed under the Contract shall not vary from the prices quoted by the Supplier in its tender, with the exception of any price adjustments authorised in the SCC or in the Purchaser's request for tender validity extension, as the case may be.

## 18. Change orders

- 18.1 The Purchaser may at any time, by a written order given to the Supplier pursuant to GCC Clause 31, make changes within the general scope of the Contract in any one or more of the following:
  - (a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
  - (b) the method of shipment or packing;
  - (c) the place of delivery; and/or
  - (d) the Services to be provided by the Supplier.

- 18.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or delivery schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this clause must be asserted within thirty (30) days from the date of the Supplier's receipt of the Purchaser's change order.
19. Contract amendments
  - 19.1 Subject to GCC Clause 18, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.
20. Assignment
  - 20.1 The Supplier shall not assign, in whole or in part, its obligations to perform under the Contract, except with the Purchaser's prior written consent.
21. Subcontracts
  - 21.1 The Supplier shall notify the Purchaser in writing of all subcontracts under this Contract, if not already specified in its tender. Such notification, in the original tender or later, shall not relieve the Supplier from any liability or obligation under the Contract.
  - 21.2 Subcontracts must comply with the provisions of GCC Clause 3.
22. Delays in the Supplier's performance
  - 22.1 Delivery of the Goods and performance of Services shall be made by the Supplier in accordance with the time schedule prescribed by the Purchaser in the Schedule of Requirements.
  - 22.2 If at any time during performance of the Contract, the Supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the Goods and performance of Services, the Supplier shall promptly notify the Purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, with or without liquidated damages, in which case the extension shall be ratified by the parties by amendment of the Contract.
  - 22.3 Except as provided under GCC Clause 25, a delay by the Supplier in the performance of its delivery obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 23, unless an extension of time is agreed upon pursuant to GCC Clause 22.2 without the application of liquidated damages.
23. Liquidated damages for delays
  - 23.1 Subject to GCC Clause 25, if the Supplier fails to deliver any or all of the Goods or perform the Services within the time period(s) specified in the Contract, the Purchaser shall, without prejudice to its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the SCC of the delivered price of the delayed Goods or



unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in the SCC. Once the maximum is reached, the Purchaser may consider termination of the Contract pursuant to GCC Clause 24.

24. Termination for default

24.1 The Purchaser, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate this Contract in whole or in part:

(a) if the Supplier fails to deliver any or all of the Goods within the time period(s) specified in the Contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 22;

(b) if the Supplier fails to perform any other obligation(s) under the Contract.

24.2 In the event the Purchaser terminates the Contract in whole or in part pursuant to GCC Clause 24.1, the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Services similar to those undelivered, and the Supplier shall be liable to the Purchaser for any excess costs for such similar Goods or Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

25. Force Majeure

25.1 Notwithstanding the provisions of GCC Clauses 22, 23 and 24, the Supplier shall not be liable for forfeiture of its performance security, liquidated damages or termination for default, if and to the extent of the delay in performance or other failure to perform its obligations under the Contract is the result of an event of "Force Majeure".

25.2 For the purposes of this Clause, "Force Majeure" means an event beyond the control of the Supplier and not involving the Supplier's fault or negligence and not foreseeable. Such events may include, but are not restricted to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.

25.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

26. Termination for insolvency

26.1 The Purchaser may at any time terminate the Contract by giving written notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Purchaser.

27. Termination for convenience

27.1 The Purchaser, by written notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.

27.2 The Goods that are complete and ready for shipment within thirty (30) days of the Supplier's receipt of notice of termination, shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:

- (a) to have any portion completed and delivered at the Contract terms and prices; and/or
- (b) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Services and for materials and parts previously procured by the Supplier.

28. Resolution of disputes

28.1 The Purchaser and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.

28.2 If, after thirty (30) days from the commencement of such informal negotiation, the Purchaser and the Supplier have been unable to resolve amicably a Contract dispute, either party may require that the dispute be referred to the formal mechanisms specified herewith.

28.3 The dispute resolution mechanism shall be as follows:

- (a) In the case of a dispute between the Purchaser and a Supplier which is a national of the Purchaser's country, the dispute shall be referred to adjudication/arbitration in accordance with the laws of the Purchaser's country.
- (b) In the case of a dispute between the Purchaser and a foreign Supplier, the dispute shall be settled by arbitration in accordance with the provisions of the UNCITRAL Arbitration Rules.
- (c) The place of arbitration shall be the Purchasers city, Republic of North Macedonia.
- (d) The arbitration proceedings shall be conducted in the language governing the Contract.

Notwithstanding any referral of a dispute to arbitration herein:

- (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
- (b) the Purchaser shall pay the Supplier any monies due the Supplier.

29. Governing language

29.1 The Contract shall be written in the language specified in the SCC. Subject to

GCC Clause 30, the version of the Contract written in the specified language shall govern its interpretation. All correspondence and other documents pertaining to the Contract which are exchanged by the parties shall be written in the same language.

30. Applicable law

30.1 The Contract shall be interpreted in accordance with the laws of the Purchaser's country, unless otherwise specified in the SCC.

31. Notices

31.1 Any notice given by one party to the other pursuant to this Contract shall be sent to the other party in writing or by cable, telex or facsimile and confirmed in writing to the other party's address specified in the SCC.

31.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.

32. Taxes and duties

32.1 A foreign Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the Purchaser's country.

32.2 A local Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods to the Purchaser.