

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 For the Contracting Authority

The Regional Authorising Officer
5th Floor ECOWAS Commission
Plot 101, Yakubu Gowon Crescent, Asokoro District
Abuja, NIGERIA

For the Contractor

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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 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

The Contractor shall provide all operational and maintenance manuals of all the supplies to the Contracting Authority, prior to the time for provisional acceptance.

Article 9 General obligations

- 9.9 The Contractor shall take the necessary measures to ensure the visibility of the European Union financing or co-financing. These activities must comply with the rules lay down in the Communication and Visibility Manual for EU External Actions published on the EuropeAid Website:
https://ec.europa.eu/europeaid/funding/communication-and-visibility-manual-eu-external-actions_en

Article 10 Origin

- 10.1 All goods purchased must originate in a Member State of the European Union or a country covered by the 11th EDF programme. For these purposes, 'origin' means the place where the goods are mined, grown, produced or manufactured and/or from which services are provided. The origin of the goods must be determined according to the EU Customs Code or to the relevant international agreement applicable.

Goods originating in the EU includes goods originating in the Overseas Countries and Territories.

Article 11 Performance guarantee

- 11.1 The amount of the performance guarantee shall be 10% of the total contract price, including any amounts stipulated in addenda to the contract.

Article 12 Liabilities and insurance

12.2(b), paragraph 2 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.'*¹
The transfer of risks and costs occurs at the place of unloading of the goods at the agreed place of destination.

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

Article 13 Programme of implementation of tasks

- 13.2 Within five (5) working days of the commencement of the contract, the Contractor shall submit the programme for the implementation of the tasks to the Contracting Authority. The Contracting Authority shall approve the programme within five (5) working days.

All items must be delivered, tested and commissioned within 120 calendar days of the start of implementation of the contract.

Article 18 Commencement order

- 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 The implementation period of the tasks shall be 120 calendar days in relation to the date stipulated in Article 18.1.

Article 24 Quality of supplies

- 24.2 A preliminary technical acceptance will be required for Lots No 1, 2 and 3 to ascertain compliance with the Technical Specifications based either on samples or entire supplies as will be determined by the Contracting Authority.

The quality of supplies must comply with the Technical Specifications.

Article 25 Inspection and testing

- 25.2 The supplies of Lots No 1, 2 and 3 will be inspected and tested in accordance with Article 25 of the General Conditions.

The testing will take place at the place of delivery in each ECOWAS Maritime Centre and ECOWAS Multinational Maritime Coordination Centre.

Article 26 General principles for payments

- 26.1 Payments shall be made in euros.

Payments shall be authorised and made by:

The Contracting Authority
The Regional Authorizing Officer/President of ECOWAS Commission
Plot 101, Yakubu Gowon Crescent, Asokoro District
Abuja, NIGERIA

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:

The Head of Delegation
European Union Delegation,
European Union Crescent, Off Constitution Avenue,
Central Business District, Abuja, Nigeria,
delegation-nigeriua@ec.europa.eu

thereof by sending a copy of the correspondence.

- 26.3 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
 - b) For the 60% balance, the invoice(s) in triplicate together with the request for provisional acceptance of the supplies.
- 26.9 This is a fixed price contract. There shall be no price revision.

Article 28 Delayed payments

- 28.2 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 The Contractor shall bear all risks pertaining to the goods until provisional acceptance at destination. The supplies shall be packaged to prevent their damage or deterioration in transit to their destination

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

- 29.5/6/7 Each supply delivery shall be accompanied by a statement drawn up by the Contractor, accompanied by a waybill indicating the types and quantities of items supplied. Waterproof material shall be used to boldly label and identify the package for each item.

Each supply delivery shall be accompanied by the following documents:

- a) User Manuals
- b) Packing list
- c) Warranty Certificate
- d) Copy of the Certificate of Origin

Each delivery must be accompanied by markings on the packaging stating: the Contractor's name, the Contract reference, the description and quantity of the supplies, and the address of delivery. Such information must also be stated in a document transmitted to the Beneficiary at the address of delivery (with copy transmitted simultaneously to the Contracting Authority at the address indicated under Article 4 of these Special Conditions).

Article 31 Provisional acceptance

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

- 31.2 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 The Contractor must provide standard commercial warranty to the Beneficiary. The Contractor shall warrant that the supplies are new, unused, of the most recent models and incorporate all recent improvements in design and materials.
- The Contractor shall further warrant that none of the supplies have any defect arising from design, materials or workmanship.
- 32.7 The warranty must remain valid for a period of one (1) year after provisional acceptance.

Article 33 After-sales service

- 33.1 In addition to the requirements of Article 31.1 of the General Conditions, the contractor shall provide after-sales services and maintenance of all supplies and installations for a period of 12 months after provisional acceptance. The proportion of the performance guarantee assigned to this activity shall be equal to 50%.

Article 40 Settlement of disputes

- 40.4 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)

Article 44 Data protection

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, staff, 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/EC¹ and as detailed in the specific privacy statement published at ePRAG.

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¹ OJ L 205 of 21.11.2018, p. 39