**VOLUME 2**

**SECTION 3**

**SPECIAL CONDITIONS**

**CONTENTS**

These conditions amplify and supplement the general conditions governing the contract. Unless the special conditions provide otherwise, the general conditions remain fully applicable. The numbering of the articles of the special conditions is not consecutive but follows the numbering of the general conditions. Other special conditions should be indicated afterwards.

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

2.1 The language used shall be English.

**Article 4** **Communication**

4.1 Communications between parties that are referred to in the Conditions shall be valid only when writing either electronically or via hard copy. A notice shall be effective only when it is delivered.

4.2 An electronic (Email) system will be used by the contracting authority and the contractor for all stages of implementation management of the contract (amendments and administrative orders), reporting (including reporting on results) and E- payments. The contractor will be required to submit an official email to allow for easy communication of the contract.

**Article 5** **Supervisor and supervisor’s representative**

5.2 Except where otherwise specifically stated, the Project Manager shall decide contractual matters between the Procuring Entity/Client and the Contractor in the role representing the Procuring Entity.

**Article 7** **Subcontracting**

7.1 In the selection of subcontractors, the contractor shall give preference to natural persons, companies, or firms of ACP States capable of implementing the tasks required on similar terms.

7.2 The Contractor may subcontract with the approval of the Project Manager, and its application texts. Subcontracting shall not alter the Contractor’s obligations.

7.3 The Contractor shall cooperate and share the Site with public authorities, utilities, and the Client (MLFM) between the dates given in the Schedule of Other Contractors, as referred to in the Special condition. The Contractor shall also provide facilities and services for them as described in the Schedule.

 7.4 The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in the Special condition, to carry out the functions stated in the Schedule or other personnel approved by the Project Manager. The Project Manager shall approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Schedule.

7.5 If the Project Manager requests the Contractor to remove a person who is a member of the Contractor’s staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.

**Article 8** **Documents to be provided.**

8.1. Contract Agreement

8.2Service Order

8.3Special Conditions of Contract

8.4 General Conditions of Contract,

8.5. Specifications

8.6. Drawings

8.7. Bill of Quantities

8.8 Declaration of honour of the contractor

**Article 9** **Access to the site**

9.1 The contractor is reminded that there is a Representative of AICS or of Italian Government in the state of the contracting authority. The contractor is obliged to give the representative free access to its sites, factories, workshops, etc., and generally assist the representative, like the project Supervisor, in the performance of his duties. The same provisions also apply to the appointed representatives of AICS.

**Article 12** **General obligations**

12.1 The General Conditions of Contract applicable to this Contract will be the “Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer”, First Edition 1999 published by the Fédération Internationale des Ingénieurs – Conseils (FIDIC).

12.2 The definitions and conditions as set out in Section 1.2 (Particular Conditions of Contract) will apply to this contract and the Engineer undertakes that the only variations from the General Conditions of Contract are those set out in Section 1.2 (Particular Conditions of Contract).

**Article 15** **Performance guarantee**

15.1 The amount of the performance guarantee will be 10 % of the amount of the contract and any addenda thereto.

15.8 Within 60 days after the deliverance of the certificate of provisional acceptance according and the completion of any outstanding work or reservation, 50 % of the amount of the performance guarantee may be released.

**Article 16** **Liabilities and Insurance**

16.1 The Contractor shall provide, in the joint names of the Procuring Entity and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles **stated in the Special contract condition for** the following events which are due to the Contractor’s risks:

(a) Loss of or damage to the Works, Plant, and Materials.

(b) Loss of or damage to Equipment.

(c) Loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and

(d) Personal injury or death.

16.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager’s approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.

16.3 If the Contractor does not provide any of the policies and certificates required, the Procuring Entity may affect the insurance which the Contractor should have provided and recover the premiums the Procuring Entity has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.

16.4 Alterations to the terms of insurance shall not be made without the approval of the Project Manager.

16.5 Both parties shall comply with any conditions of the insurance policies.

**Article 17** **Programme of implementation of tasks**

17.1 Within the time stated in the special contract condition, after the date of the Letter of Acceptance, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works.

17.2 An update of the Program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.

17.3 The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period stated in the special contract condition. If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount stated in the special contract condition from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted.

17.4 The Project Manager’s approval of the Program shall not alter the Contractor’s obligations. The Contractor may revise the Program and submit it to the Project Manager again at any time. A revised Program shall show the effect of Variations and Compensation Events.

17.5 The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost.

17.6 The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

17.7 Request for extension of time shall be made not later than within a time stated in SCC. Any request made after that period may be rejected by the Procuring Entity or accepted without prejudice to the application of liquidated damages.

**Article 19** **Contractor’s drawings and execution studies**

 19.1. The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, who is to approve them if they comply with the Specifications and Drawings

 19.2. The Contractor shall be responsible for design of Temporary Works

 19.3 The Project Manager’s approval shall not alter the Contractor’s responsibility for design of the Temporary Works

 19.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.

19.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before this use.

**Article 20** **Sufficiency of tender prices**

The prices and rates to be inserted in the Schedule of Quantities and daywork shall be full inclusive values of the work described under the several items. It will include all costs and expenses which may be required in and for the construction of the work described together with all general risks, liabilities and obligations set forth or implied in the documents on which the tender is based. All items in the Bill must be priced exclusive of VAT

**Article 21.** **Exceptional risks**

From the Starting Date until the Defects Liability Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Procuring Entity’s risks are Contractor’s risks.

**Article 24** **Interference with traffic**

The contractor shall provide and install, at his expenses and under his/her sole responsibility, the scaffolding and any other device needed for the whole implementation of the works.

He/she shall permanently hold a works diary on the works site, at the disposal of the engineer and the project manager. This diary will compile all the observations and the instructions prescribed in the field. Prior to being used, the type of diary will be approved by the project manager.

She/he shall bear the expenses linked to the installation and use of his material without claiming any compensation, except in an event of duly justified force majeure.

Access to the whole works area shall be forbidden to the public. Outside and inside the works area, the contractor shall take all the necessary measures in order to:

* Obtain the licence to use the public roads for works,
* Ensure free access to neighbouring residents,
* Ensure traffic security. To this end, excavations will, where appropriate, be surrounded by solid barriers,
* He/she shall particularly implement, at his expenses and under his responsibility, all the provisional works and necessary diversions and shall ensure proper road signalling and supervision according to the regulation in force,
* Ensure the passing of vehicles, unless in the event of absolute impossibility,
* Ensure the free outflow of wastewater (rainwater or other)
* Preserve from any damage the surrounding works, those of the public road such as electric lines, pipes and any type of cable found in the land,
* Keep in working order, for the whole duration of the works the existing cables, pipes and installations.

For all the works being implemented and, in any regard, the contractor shall be entirely responsible for accidents, damage or any loss that might be caused as a result of a lack of precaution or of an error caused by his or her workers or employees, staff, equipment, work, to citizens on the public road, passers-by or neighbouring residents and their possessions and to any person.

The contractor shall also be held responsible for the cables, pipes and any other works found in the land. She/he shall respect them and have them repaired should he damage them and pay for the possible compensation she/he should be requested for service failure of accidents and in a general way, deal with all the complaints issued by public services or private persons.

The contractor shall eventually be responsible for the damage that could arise to neighbouring buildings. Where necessary, bailiffs’ reports over the condition of such buildings, before and after the works, will be done at his expenses, as will the repairs of the damage caused, irrespective of their cost. He/she will deal with any complaint in this regard.

It is expressly stipulated that for everything regarding the above-mentioned points, the client, engineer, and their agents are exempted from any responsibility. It will be considered that the prices proposed by the contractor in his bid implicitly include all the accessory costs, expenses and consequences caused by anything resulting from the implementation of the works referred to. The obligations mentioned here above will under no circumstances lead to compensations.

**Article 27** **Demolished materials**

27.2 Demolition materials become the property of the contracting authority.

**Article 29** **Temporary works**

29.12The contractor shall construct an appropriate shelter that can be closed and locked; it shall be made of materials accepted by the engineer. This shelter shall not be used as a store of materials; it shall be used by the workers as a resting shelter and must be supplied with temporary sanitary equipment. All shall be done to guarantee the local hygienic standards. All workers will be required to utilize this sanitary equipment for their needs.

 Areas for storage of material shall be well prepared to avoid their contact with unwanted materials.

**Article 30** **Soil studies**

30.1 Geotechnical Tests will be conducted under the Request of Project manager.

**Article 32** **Patents and licenses**

32.1 The Contractor shall get along, if it is necessary, with the owners or the owners of license of patents of which he would like to apply or would have applied the processes. He will pay the necessary fees and ensure the client against any claim or action on their part.

**Article 34** **Period of implementation of tasks**

34.1 The Intended Maximum Completion Period is 8 months.

**Article 36** **Delays in the implementation of tasks**

36.1 The Contractor shall pay liquidated damages to the Procuring Entity/Client at the rate of one thousandth (1%o) of the total amount of the contract per each day of delay to complete any phase of the works as stated in the work schedule as approved by the Project Manager. The total amount of liquidated damages shall not exceed 5% of the total amount of the contract.

36.2 Once the maximum is reached, the purchaser may terminate the contract or extend its duration until full completion. However, such extension of the contract shall not exceed the time stated in specials condition of contract and penalties shall continue to accrue until full completion of the contract or termination.

36.3 The Procuring Entity may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor’s liabilities.

**Article 40** **Origin and quality of works and materials.**

40.1All goods purchased and materials under the contract may originate in any country.

40.2. The Quality test report of Purchased Materials should be submitted to the Project Manager.

40.3 The quality of work and workmanship will be strictly monitored and in no way will work quality be compromised.

40.4 All work shall meet the requirements as set forth in the standard specifications.

 40.5 The Poor quality of work will not be negotiable.

40.6 The Quality Assurance System shall consist of procedures and checks and balances to ensure compliance with all requirements of the Contract.

40.7 The Contractor shall ensure that all key staff members are trained and equipped to implement the Quality Assurance System.

The Quality Assurance System shall address all requirements of the Contract, but particularly.

a) Minimum requirements.

b) Quality control system.

c) Measurement system.

d) Approval system.

e) Site administration

27.8 When importing goods, any change in the specified origin must be pointed out to the Project Manager and approved by him.

**Article 41** **Inspection and testing**

41.1 Identifying Defects

The Project Manager shall check the Contractor’s work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor’s responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.

41.2. Tests

If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.

41.3. Correction of Defects

41.4 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the SCC. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

41.5 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager’s notice.

41.6. Uncorrected Defects

If the Contractor has not corrected a defect within the time specified in the Project Manager’s notice, the Project Manager shall assess the cost of having the Defect corrected, and the Contractor shall pay this amount.

**Article 43** **Ownership of plant and materials**

43.1 The equipment, temporary, containers structures, plant and materials on the site will be owned by Contractor after the Execution Works

**Article 44:** **General principles for payments**

44.1 Payments shall be made in Euro in the RWF account given by the Contractor

44.2 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.

44.3 The Project Manager shall check the Contractor’s monthly statement and certify the amount to be paid to the Contractor.

44.4 The value of work executed shall be determined by the Project Manager

44.5 The value of work executed shall comprise the value of the quantities of the items in the Bill of Quantities completed.

44.6 The value of work executed shall include the valuation of Variations and Compensation Events.

44.7 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

44.8 Payments shall be adjusted for deductions for advance payments and retention. The Procuring Entity shall pay the Contractor the amounts certified by the Project Manager within 60 days of the date of each certificate. If the Procuring Entity makes a late payment, the Contractor shall be paid interest equivalent to 1/1000 for every day of delayed payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made.

**Article 46** **Pre-financing**

29.1 The Advance Payments not exceeding 10 % of the contract amount shall be given to the contractor upon her/his request after submission of advance payment security from bank of insurance company covering its totality.

29.2 Repayment of the pre-financing shall take the form of deductions based on monthly claims.

1. The flatrate‑ pre-financing (maximum of 10 %) shall be repaid by means of deductions from instalments and, if necessary, the balance due to the contractor. This repayment shall begin with the first instalment and be completed, at the very latest, by the time 80 % of the amount of the contract has been paid.

Repayment shall be made in the same currency as the pre-financing.

The amount to be deducted from each instalment shall be calculated using the following formula:



where:

R = the amount to be repaid

Va = the total amount of pre-financing

Vt = the initial contract amount

D = the amount of the instalment.

The result is rounded up to two decimal places.

1. The pre-financing for plant, machinery and tools — and the pre-financing for other major prior outlays (20 % maximum) — shall be repaid by means of deductions from instalments and, if necessary, the balance due to the contractor. Repayment shall begin with the first instalment and end, at the very latest, by the time 90 % of the amount of the contract has been paid.

The amount to be deducted from each instalment shall be calculated using the following formula:



where:

R = the amount to be repaid

Va = the total amount of pre-financing

Vt = the initial contract amount

D = the amount of the instalment.

**Article 347** **Retention monies**

47.1 The Procuring Entity shall retain from each payment due to the Contractor the proportion is 10%until Completion of the whole of the Works.

47.2 On completion of the whole of the Works, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed, and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected.

30.3 On completion of the whole Works, the Contractor may substitute retention money with an “on demand” Bank guarantee.

**Article 48 Price revision**

There will be no price revision.

**Article 32** **Measurement**

32.1 This is a unit-price/lump sum hybrid contract.

**Article 33** **Interim payments**

 33.1 The estimated contract value of the Works executed during the month shall be agreed with the Engineer’s representative on the site prior to the preparation of the Statement. The quantities claimed for the various items shall be accurate and shall not simply be guessed or based on a percentage of the scheduled quantity.

**Article 51** **Final statement of account**

51.1 The contractor shall, submit to the supervisor/clients a draft final statement of account when it applies for the final acceptance certificate. In order to enable the supervisor to prepare the final statement of account, the draft final statement of account is submitted with supporting documents showing in detail the value of the work done in accordance with the contract and all further sums which the contractor considers to be due to it under the contract.

51.2 Within 30 days from issuing the final acceptance certificate referred to in Article 51.1, the supervisor shall prepare and signed the final statement of account.

**Article 53** **Delayed payments**

53.1 By derogation from Article 53.1 of the general conditions, once the time-limit referred Article 44.3 has expired, the contractor shall be entitled to late-payment interest at the rate and for the period mentioned in the general conditions.

However, when the interest calculated in accordance with the first subparagraph is lower than or equal to EUR 200, it shall be paid to the creditor only upon a demand submitted within two months of receiving late payment.

**Article 59** **Partial acceptance**

59.3The defects liability period provided for in Article 61 shall run from the Provision hand Over

**Article 60** **Provisional acceptance**

60.1 In complement to Article 60.1 of the general conditions The Defects Liability period is 12 months from the provisional handover

**Article 61** **Defects liability**

61.1 The defects liability period is defined as the period commencing on the date of provisional acceptance, during which the contractor is required to make good any defect in, or damage to, any part of the work which may appear or occur during this period as notify by the supervisor or the contracting authority. The rights and obligations of the parties with regard to this defect's liability period are laid down in Article 61 of the general conditions.

**Article 68** **Dispute settlement**

68.4 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 No 3/90 of the ACP-EEC Council of Ministers of 29 March 1990 (Official Journal No L 382 of 31.12.1990, Annex A12 of the practical guide.)

**Article 72** **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, 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[[1]](#footnote-1) and as detailed in the specific privacy statement published at ePRAG.]

1. OJ L 205 of 21.11.2018, p. 39 [↑](#footnote-ref-1)