

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.

How to complete these special conditions:

Where you see < ... >, enter the information relevant to the special conditions. Square brackets [] and parts shaded in grey indicate options to choose: they should be deleted when applicable, but should not be modified. All other parts of these standard instructions must be left unchanged. In the final version of the instructions to tenderers, please remember to delete this paragraph, any other text with yellow highlighting and to suppress grey brackets when applicable.

Note that the special conditions provide for allowed deviations from the general conditions. The use of further deviations from the general conditions requires an exception to be granted by the relevant services of the European Commission.

Article 2 Language of the contract

- 2.1 The language used shall be English.

Article 4 Communication

- 4.1 <Indicate here the contact persons, addresses of the parties, their other 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 33 of the general conditions to the contract, 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 5 Supervisor and supervisor's representative

- 5.2 <Option 1: often for such low value works contracts, there will be no supervisor's representative, the supervisor himself retaining his responsibilities: if so, please stipulate as follows: [Under this contract, the supervisor does not delegate his duties and authority to a supervisor's representative]>.

Option 2: Alternatively, specify the powers of the supervisor's representative in those 2 subclauses: [.....]

5.4 <Specify the practical arrangements for administrative orders.>

[Article 7 Subcontracting

EDF only:

7.3 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.]

Article 9 Access to the site

9.1 The contractor is reminded that there is a head of delegation of the European Commission in the state of the contracting authority. The contractor is obliged to give the head of delegation free access to its sites, factories, workshops, etc., and generally assist the head of delegation, like the project supervisor, in the performance of his duties. The same provisions also apply to the appointed representatives of the head of delegation.

All correspondence between the contractor and the contracting authority or project supervisor must be copied, for information, to the head of delegation of the European Commission at the following official address:

<Enter official address.>

Article 12 General obligations

12.9 <Specify the specific activities to be put in place by the contractor to comply with its minimum obligation toward visibility. These activities must comply with the rules lay down in the Communication and Visibility Manual for EU External Actions published by the European Commission.>

Article 15 Performance guarantee

15.1 By derogation to Article 15 of the general conditions, no performance guarantee is required under this contract.

Article 16 Liabilities and insurance

16.1 a) By way of derogation from Article 16.1, a) paragraph 2, of the general conditions, compensation for damage to the works resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to the contract value.

16.1 b) By way of derogation from Article 16.1, 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 the contract value.

Article 17 Programme of implementation of tasks

17.1 The contractor shall provide the supervisor with a simplified programme of implementation of the tasks. This programme shall include at least the order and time limits in which the contractor proposes to carry out the works, and shall be based on the tranches foreseen in Article 49.1 of the special conditions.

- 17.2. The supervisor shall return this document to the contractor with any relevant remarks within 10 days of receipt, save where the supervisor, within those 10 days, notifies the contractor of its wish for a meeting in order to discuss the documents submitted.

Article 21 Exceptional risks

- 21.4 <Specify any potential exceptional weather conditions.>

Article 34 Period of implementation of tasks

- 34.1 <Specify the period(s) of implementation of tasks: number of months in figures and words>

Article 36 Delays in the implementation of tasks

- 36.1 The rate of liquidated damages for delays in the completion of works shall be 0.1% of the contract price for every day or part thereof which elapses between the end of the period of implementation of tasks and the actual date of completion, up to a maximum amount of 10% of the contract price or, if the contract is subdivided into phases, 10% of the price of the phase concerned.

Article 39 Work register

- 39.1 <Specify if a work register is not required. If required, specify the practical details.>
- 39.2 <Specify the technical rules for drawing up statements.>

Article 40 Origin and quality of works and materials

- 40.1 All goods purchased under the contract must originate in any eligible source country as defined in <insert relevant instrument financing the project > programme. [General budget of the Union for calls where the CIR applies + EDF: However, the goods to be purchased may originate from any country, whenever the total price of the estimated quantity of those goods, as reflected in a separate item of the breakdown of the lump-sum price (Volume 4.2.3) is below EUR 100 000. A category of similar goods to be purchased shall not be broken down over more than 1 item of the breakdown of the lump-sum price (Volume 4.2.3)]

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 the applicable international agreement.

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

<Specify any authorised derogation from the rules of origin>

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

- 40.2 The works and the objects, appliances, equipment or materials used in their construction must comply with:
- (*) the following specifications <specify the specifications.>
 - (*) the requirements of <specify the technical document(s) containing these requirements.>
- 40.3 <Specify whether preliminary technical acceptance is necessary and the conditions governing its implementation.>

Article 43 Ownership of plant and materials

- 43.2 The equipment, temporary structures, plant and materials on the site shall for the duration of the execution of the works, be vested in the contracting authority.

Article 44: General principles for payments

- 44.1 Payments shall be made in [euro] [<national currency> only for indirect management].
- 44.2 If invoices are submitted to the contracting authority, the contractor shall inform the European Commission thereof by sending a copy to <enter address of the EU delegation if this option is used>.
- 44.3 [General budget of the Union only]

[Option 1 – Indirect management:

By derogation, pre-financing payment to the contractor for the lump-sum advance shall be made within 30 days. Other pre-financing payments to the contractor shall be made within 90 days. Interim payments to the contractor of the amounts due under each of the interim payment certificates approved by the supervisor shall be made within 90 days, and the final payment to the contractor of the amounts due after the final statement of account issued by the supervisor shall be made within 90 days.]

[Option 2 – Direct management:

By derogation, pre-financing payment to the contractor for the lump-sum advance shall be made within 30 days. Other pre-financing payments to the contractor shall be made within 60 days. Interim payments to the contractor of the amounts due under each of the interim payment certificates approved by the supervisor shall be made within 60 days, and the final payment to the contractor of the amounts due after the final statement of account issued by the supervisor shall be made within 60 days.]]

- 44.3 [11th EDF only - Indirect management:

By derogation to Article 44.3.a), pre-financing payment to the contractor for the lump-sum advance shall be made within 60 days]

Article 46 Pre-financing

- 46.1 The only pre-financing granted to the contractor, is the lump sum advance referred to in Article 46.1(a).
- 46.2 By derogation to Article 46.2 of the general conditions, the lump sum advance referred to in Article 46.1(a) shall be 20% of the original contract price.
- 46.3(c) By derogation to Article 46.3(c) of the general conditions, no pre-financing guarantee is required.
- 46.8 The tranches laid down in Article 49.1 of these special conditions are determined so that the pre-financing is fully repaid before provisional acceptance.

Article 47 Retention monies

- 47.1 The sum retained to guarantee implementation of the contractor's obligations during the defects liability period is 10% of the contract price. By derogation to Article 47.1 of the general conditions, that money is not retained from interim payments. The tranches laid down in Article 49.1 of these special conditions are determined so that the retention sum amounts to 10% of the contract price at the moment of the certificate of provisional acceptance.

47.2 By derogation to Article 47.2 of the general conditions, the retention sums cannot be substituted by a retention guarantee.

Article 48 Price revision

48.1 Prices are fixed and shall not be revised.

Article 49 Measurement

49.1 This is a lump-sum contract.

Under the conditions imposed by the special conditions and general conditions, the amounts due shall be calculated through the following tranches, expressed as percentage of the contract price:

	Percentage	Nature	Timing
1.	20%	Lump-sum advance of Article 46.1(a)	After conclusion of the contract
2.	...%	Interim payment of Article 50	<p>for example: After completion of <to be determined phase in construction> or</p> <p>for example: After completion of <to be determined percentage> of the firm quantities for which the contractor submitted its all-in price.</p> <p>[When determining the % of the interim payment, take account that 1) the 20% pre-financing is not repaid through each interim payment and 2) the 10% retention sum is neither deducted from each interim payment: the interim payment tranches should hence be determined in such a way as to implicitly recuperate the 20% pre-financings, while keeping 10% unpaid after provisional acceptance].</p>
4.	...%	Interim payment of Article 50	[as above]
...	...%	Interim payment of Article 50	After issuing of the certificate of provisional acceptance
<last>	10%	Retention money of Article 47	Within 45 days of the issuing of the signed final statement of account

Article 50 Interim payments

50.7 The interim payments will be paid as determined in Article 49.1 of these special conditions.

[For direct management, add the following article:

Article 53 Delayed payments

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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 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 effect 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 defects liability period are laid down in Article 61 of the general conditions.

Article 68 Dispute settlement

68.4 [Direct management:

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

[Indirect management:

[General budget of the Union:

EITHER

Any dispute 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

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 No 3/90 of the ACP-EEC Council of Ministers of 29 March 1990 (Official Journal No L 382, 31.12.1990, Annex A12 of the practical guide.)
<Please attach Annex A12 of the practical guide to the present contract>]]

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Article 72 Data protection

[Not applicable for indirect management.]

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