**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 For the Contracting Authority

|  |  |
| --- | --- |
| Name: |  |
| Address: |  |
| e-mail: |  |

For the Supervisor

|  |  |
| --- | --- |
| Name: |  |
| Address: |  |
| e-mail: |  |

For the Works Contractor.

|  |  |
| --- | --- |
| Name: |  |
| Address: |  |
| e-mail: |  |

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

5.2 Office accommodation for the Supervisor and eventually required equipment and facilities will be provided by the Contractor

5.3 The Supervisor acts for the Contracting Authority. He has no authority to relieve either party of any duties, obligations or responsibilities under the Contract or to amend the Contract.

Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by the Supervisor (including absence or disapproval) shall not relieve the Contractor from any responsibility he has under the Contract, including the responsibility for errors, omissions, discrepancies and non-compliances.

Any failure to disapprove any work, plant or materials shall not constitute approval, and shall therefore not prejudice the right of the Supervisor to reject the work, plant or materials.

The Supervisor may issue to the Contractor (at any time) instructions which may be necessary for the execution of the works and the remedying of any defects, all in accordance with the Contract. The Contractor shall only take instructions from the Supervisor. If an instruction constitutes a modification, Article 37 of General Conditions shall apply.

Whenever the Supervisor shall proceed to agree or determine any matter, the Supervisor shall consult with each party in an endeavour to reach agreement. If agreement is not achieved, the Supervisor shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.

During the construction stage Supervisor shall be entitled to perform checks on Contractor progress as well as compliance with Technical Specification. These checks shall be performed at least once in two weeks and Supervisor shall have right to ask for clarification, to approve or reject proposed works solution. Contractor shall not be entitled to any additional costs and/or extension of time, which may occur as result of clarification or rejection of the part of disputed works performed.

The Supervisor and the Contracting Authority shall monitor the Project according to Volume 3 and the approved Time Schedule.

5.4 Approval or rejections will be given through administrative orders issued by the Supervisor except when it is foreseen otherwise in the General Conditions. Administrative orders issued by the Supervisor shall be dated, numbered and entered in a register. The Supervisor shall send them electronically (by email) to representatives of the Contractor, and of the Contracting Authority. Hard copies shall be delivered by hand to representatives of the Contractor, and where appropriate, also to the representative of the Contracting Authority. Always, a copy of the administrative order and referring documents from the Contractor are sent to the Contracting Authority.

**Article 8 Documents to be provided**

8.1 Unless it is necessary for the purposes of the contract, the drawings, specifications and other documents provided by the Contracting Authority shall not be used or communicated to a third party by the Contractor without the prior consent of the Supervisor. The drawings available to the Contractor for the performance of the Contract are those annexed to Volume 5 of the present Tender Dossier.

**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.

**Article 12 General obligations**

12.9 Contractor has obligation to mark construction site with appropriate billboard in according with Visual Identity Manual (VIM) of the Interreg-IPA Cross-border Cooperation Romania-Serbia Programme which may be found at <http://www.romania-serbia.net>.

**Article 15 Performance guarantee**

15.1 The amount of the performance guarantee will be 5% of the amount of the contract and any addenda thereto.

15.8 The performance guarantee shall be released within 10 days of the issuing of the signed provisional acceptance referred to in Article 60, for its total amount except for amounts which are the subject of amicable settlement, conciliation, arbitration or litigation.

**Article 16 Liabilities and insurance**

16.1 a) Insurance of construction site must be in line with Serbian Legislation regulating this issue.

**Article 17 Programme of implementation of tasks**

The Contractor shall, within 15 (fifteen) days after the date of the issue of the Commencement Order, submit for the Supervisors’ approval detailed Programme of Implementation of the Contract. The Supervisor shall make comments and/or objections concerning the Programme and schedules supplied by the Contractor within 7 (seven) calendar days of their submission. It shall be considered that all these comments and/or objections are accepted by the Contractor, if he should not contradict them in writing, either by registered letter, or facsimile sent on the Supervisor, within 4 (four) calendar days of their receipt. The order in which the Contractor intends to carry out the works, including the anticipated timing of each stage of construction, Contractor’s documents, procurement, manufacture, inspection, delivery to site, construction, erection, testing, commissioning and trial operation, Provisional and Final Acceptance. The interrelations among all activities must be shown, as well as, the critical paths, the earliest time for the critical activities commencement or end respectively and the margin foreseen.

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

19.1 The contractor shall submit any drawings, documents, sample and/or models requested by the Supervisor within 15 days from the official request. Contractor will provide exact (made by geodetic survey if necessary) drawings of works performed and underground installations for submission to Republic Cadastral Office and other relevant institutions in line with Serbian legislation.

19.7 Language of the manuals and drawings must be Serbian in line with Serbian legislation.

**Article 20 Sufficiency of tender prices**

Tender prices must cover all necessary design and build activities. No extension of value of the contract is possible except for situations falling under Supervisor Authority in line with Article 37. of GC.

**Article 21 Exceptional risks**

21.4 Exceptional weather conditions are the risk of the Contractor. All costs incurred by the Contractor due to exceptional weather conditions have to be borne by the Contractor

**Article 24 Interference with traffic**

24.1 Contractor will request permission to impede traffic on communication links from relevant institutions if necessary in line with Serbian legislation. No important operation of any kind, especially cutting through, transit over, or closing existing roads, water conduits or other public utility shall be carried out without the written consent of the Supervisor

**Article 27 Demolished materials**

27.2 No demolition materials will become the property of the Contracting Authority.

27.4 The Contractor will remove demolition materials at its own expense and in line with Serbian legislation.

**Article 29 Temporary works**

29.2 There are not temporary works to be designed by the Contracting Authority. Should the Contractor need any additional information or drawings apart from those being part of the Tender Dossier, he will put his request to the Contracting Authority. Final decision will be on the side of the Supervisor

**Article 30 Soil studies**

30.1 No special soil studies are expected for this contract. In case that Contractor observes any problem he should consult with Supervisor. In case Supervisor decides that soil studies are needed because any reason they will be obligation of Contracting Authority as well changed in technical designs.

**Article 32 Patents and licenses**

32.1 There is no derogation from Article 32 of the GC

**Article 34 Period of implementation of tasks**

34.1 Period of implementation of tasks will be 7 months from date when contract is signed by both parties.

**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 Work register is required, to be in line with Serbian Construction legislative and Supervisor instructions.

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

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

40.2 The works and the objects, appliances, equipment or materials used in their construction must comply with:

* the requirements specified in Volume 3 (Technical Requirements).
* the specifications as in Volume 4.
* the specifications as in Volume 5.

40.3 No preliminary technical acceptance is necessary.

**Article 41 Inspection and testing**

The Supervisor shall at all reasonable times:

(a) have full access to all parts of the Site and to all places from which natural Materials are being obtained, and

(b) during production, manufacture and construction (at the Site and elsewhere), be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture of Plant and production and manufacture of Materials, on the basis of approved QA & QP.

The Contractor shall give the Supervisor and the appointed CA's Personnel full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Contractor from any obligation or responsibility.

The following shall apply to all tests specified in the Contract, other than the Tests on Completion:

The Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Contractor shall agree, with the Supervisor, the time and place for the specified testing of any Plant, Materials and other parts of the Works.

The Supervisor may vary the location or details of specified tests, or instruct the Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, the cost of carrying out this Modification shall be borne by the Contractor, notwithstanding other provisions of the Contract.

The Supervisor shall give the Contractor not less than 24 hours' notice of the Supervisor 's intention to attend the tests. If the Supervisor does not attend at the time and place agreed, the Contractor may proceed with the tests, unless otherwise instructed by the Supervisor, and the tests shall then be deemed to have been made in the Supervisor’s presence. The Contractor shall forthwith forward dully certified copies of the test results to the Supervisor for his evaluation.

**Article 43 Ownership of plant and materials**

43.2 All equipment, temporary works, plant and materials on site owned by the Contractor or by any company in which the Contractor has a controlling interest shall, for the duration of the execution of the works, be made subject to a lien in favour of the Contracting Authority.

**Article 44: General principles for payments**

44.1 Payments shall be made in RSD for companies registered in Republic of Serbia if offer is in RSD for companies registered in Republic of Serbia or in RSD in accordance with InforEuro exchange rate for month of invoice if offer is in EUR. Payment will be in EUR for companies registered outside of Republic of Serbia.

44.3 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.

**Article 46 Pre-financing**

46.1 Pre-financing is possible for this contract.

46.2 If requested prior signature of Contract by Contractor maximum amount of the pre-financing is 20 % of the original contract price but pre-financing guarantee covering entire amount is obligatory.

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

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 47 Retention monies**

47.1 No retention monies are required for this contract.

**Article 48 Price revision**

48.1 This is unit-price contract. No unit prices given in financial offer revision is possible

**Article 49 Measurement**

49.1 This is a unit-price contract. Supervisor is authorized to check and measure work performed on site given in interim/final report of Contractor and authorizes payments in according with financial offer of Contractor (Bill of Quantities) and in line with authority given to him by this Contract.

**Article 50 Interim payments**

50.1 At the beginning of each month during Contract implementation tenderer will compose report of temporary work situation. Report will be examined and approved by Supervisor and it will be used as base for interim payment request. In case that work finished have value of more than 10% of Contract value Contractor will then submit approved report with request for payment to Contracting Authority.

**Article 51 Final statement of account**

51.1 The Contractor shall, submit to the Supervisor a draft final statement of account when it applies for the provisional 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 certificate of provisional acceptance referred to in article 62, the Supervisor shall prepare and signed the final statement of account.

**Article 59 Partial acceptance**

59.3 The defects liability period provided for in Article 61 shall run from after the date specified in the Provisional Acceptance Certificate

**Article 60 Provisional acceptance**

60.1 In complement to Article 60.1 of the general conditions the works shall be taken over by the Contracting Authority when they have satisfactorily passed the tests on completion and a certificate of provisional acceptance has been issued or is deemed to have been issued.

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

61.6 The defects liability work necessitated by normal wear and tear is not to be carried out by the Contractor.

61.7 Duration of the defects liability period is 365 days on all works and equipment installed.

**Article 68 Dispute settlement**

68.4 Any dispute arising out of or relating to this Contract which cannot be settled otherwise shall be referred to the exclusive jurisdiction of competent Court of Law in accordance with the national legislation of the state of the Contracting Authority.

**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-2) 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 [↑](#footnote-ref-2)