

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 Any written communication relating to this Contract between the Contracting Authority and/or the Project Manager, on the one hand, and the Contractor on the other must state the Contract title and identification number, and must be sent by post, e-mail or by hand.

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Contact person: **Igor Zdraveski** Project manager
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(on behalf of Contracting Authority)

Contact details for the Contractor:

Contact person: <name>

Address: <address>

Email: <e-mail address>

- 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 7 Supply of documents

- 7.2. The contracting authority shall co-operate with the contractor to provide information that the latter may reasonably request in order to perform the contract.
- 7.3. The contracting authority shall notify the contractor of the name and address of the project manager.
- 7.4. 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 contracting authority.
- 7.5. The project manager shall have authority to issue to the contractor administrative orders incorporating such supplementary documents and instructions as are necessary for the proper execution of the contract and the remedying of any defects therein.

Article 8 Assistance with local regulations

Article 8 of the General Conditions shall apply.

Article 9 General obligations

- 9.1. The contractor shall execute the contract with due care, efficiency and diligence in accordance with the best professional practice.
- 9.2. The contractor shall, in accordance with the provisions of the contract, design, manufacture, deliver to site, erect, test and commission the supplies and carry out any other work including the remedying of any defects in the supplies. The contractor shall also provide all necessary equipment, supervision, labour and facilities required for the implementation of the tasks.
- 9.4. The contractor shall supply, without delay, any information and documents to the contracting authority and the European Commission upon request, regarding the conditions in which the contract is being executed.
- 9.5. The contractor shall respect and abide by all laws and regulations in force in the country where the supplies are to be delivered and shall ensure that its personnel, their dependants, and its local employees also respect and abide by all such laws and regulations. The contractor shall indemnify the contracting authority against any claims and proceedings arising from any infringement by the contractor, its employees and their dependants of such laws and regulations.
- 9.6. Should any unforeseen event, action or omission directly or indirectly hamper performance of the contract, either partially or totally, the contractor shall immediately and at its own initiative record it and report it to the contracting authority. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the contractor to ensure full compliance with its obligations under the contract. In such event the contractor shall give priority to solving the problem rather than determining liability.
- 9.9 The Contractor must 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 on the website of the programme:
http://www.ipa-cbc-programme.eu/gallery/Files/news/programme/12.09.2018/Information-%26-Publicity-Guide_September2018.pdf

According to Article 4.2.9 Supplies and Equipment, "Any equipment used in an EU-funded action should be clearly identified, and visibly carry the EU flag and the phrase ***“Provided with the support of the EU”*** in the operational language of the EU programme and in the local language. "

Article 9a - Code of conduct

- 9a.1 The contractor shall at all times act impartially and as a faithful adviser in accordance with the code of conduct of its profession. It shall refrain from making public statements about the project without the prior approval of the contracting authority. It shall not commit the contracting authority in any way without its prior consent and shall, where appropriate, make this obligation clear to third parties.

Physical abuse or punishment, or threats of physical abuse, sexual abuse or exploitation, harassment and verbal abuse, as well as other forms of intimidation shall be prohibited. The contractor shall also provide to inform the contracting authority of any breach of ethical standards or code of conduct as set in the present Article. In case the contractor is aware of any violations of the abovementioned standards he shall report in writing within 30 days to the contracting authority

- 9.a.5 The payments to the contractor under the contract shall constitute the only income or benefit it may derive in connection with the contract. The contractor and its staff must not exercise any activity or receive any advantage inconsistent with their obligations under the contract.

- 9a.6 The execution of the contract shall not give rise to unusual commercial expenses. Unusual commercial expenses are commissions not mentioned in the contract or not stemming from a properly concluded contract referring to the contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commission paid to a company which has every appearance of being a front company. The European Commission may carry out documentary or on-the-spot checks it deems necessary to find evidence in case of suspected unusual commercial expenses.

The respect of the code of conduct set out in the present Article constitutes a contractual obligation. Failure to comply with the code of conduct is always deemed to be a breach of the contract under Article 35 of the General Conditions. In addition, failure to comply with the provision set out in the present Article can be qualified as grave professional misconduct that may lead either to suspension or termination of the contract, without prejudice to the application of administrative sanctions including exclusion from participation in future contract award procedures.

Article 9b Conflict of interest

- 9.b.1 The contractor shall take all necessary measures to prevent or end any situation that could compromise the impartial and objective performance of the contract. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which may arise during performance of the contract shall be notified to the contracting authority without delay. In the event of such conflict, the contractor shall immediately take all necessary steps to resolve it.

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- 9.b.2 The contracting authority reserves the right to verify that such measures are adequate and may require additional measures to be taken if necessary. The contractor shall ensure that its staff, including its management, is not placed in a situation which could give rise to conflict of interests. Without prejudice to its obligation under the contract, the contractor shall replace, immediately and without compensation from the contracting authority, any member of its staff exposed to such a situation.
- 9.b.3 The contractor shall refrain from any contact which would compromise its independence or that of its personnel.
- 9.b.4 The contractor shall limit its role in connection with the project to the provision of the supplies described in the contract.

Article 10 Origin

- 10.1 All goods purchased must originate in a Member State of the European Union or a country covered by the Instrument for pre-accession assistance under the INTERREG IPA CBC 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.

All supplies under this contract may originate from any country

Article 11 Performance guarantee

- 11.1. The contractor shall, together with the return of the countersigned contract, furnish to the contracting authority with a guarantee for the full and proper execution of the contract. The amount of the guarantee shall be as specified in the special conditions. It shall be of 10% of the total contract price, including any amounts stipulated in addenda to the contract.
- 11.2. The performance guarantee shall be held against payment to the contracting authority for any loss resulting from the contractor's failure to perform its contractual obligations under the contract.
- 11.3. The performance guarantee shall be in the format provided for in the contract and may be provided in the form of a bank guarantee, a banker's draft, a certified cheque, a bond provided by an insurance and/or bonding company, an irrevocable letter of credit or a cash deposit made with the contracting authority. If the performance guarantee is to be provided in the form of a bank guarantee, a banker's draft, a certified cheque or a bond, it shall be issued by a bank or bonding and/or insurance company approved by the contracting authority.

- 1.4. The performance guarantee shall be denominated in the currency MK Denars in which the contract is payable. No payments shall be made in favour of the contractor prior to the provision of the guarantee. The guarantee shall continue to remain valid until the contract has been fully and properly performed.
- 11.7. The performance guarantee shall be released within 60 days of the issuing of the signed final acceptance certificate for its total amount except for amounts which are the subject of amicable settlement, arbitration or litigation.

Article 12 Liabilities and insurance

12.1(a) No derogation from the General Conditions

12.1(b) No derogation from the General Conditions

12.2(a), paragraph 1 No derogation from the General Conditions

12.2(a), paragraph 2 No derogation from the General Conditions

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.’*¹The transfer of risks and costs occurs at the place of unloading of the goods at the agreed place of destination.

Article 13 Programme of implementation of tasks

- 13.2 The implementation period of tasks shall run from the date of signature of the contract by the last party and will end with issuing provisional acceptance certificate

Article 14 Contractor’s drawings

N/A

¹See <http://www.iccwbo.org/products-and-services/trade-facilitation/incoterms-2010/the-incoterms-rules/>.

Article 15 Sufficiency of tender prices

15.1 Article 15 of the General Conditions shall apply.

Article 16 Tax and customs arrangements

16.1 The terms of delivery of the goods shall be DDP (Delivered Duty Paid) – Incoterms 2010, International Chamber of Commerce.

Article 17 Patents and licences

17.1 No derogation from Article 17 of the General Conditions.

Article 18 Commencement order

18.1 The implementation of the tasks shall commence with the commencement of the contract.

Article 19 Period of implementation of the tasks

19.1 The implementation period of tasks shall run from the date of signature of the contract by the last party.

Article 20 Extension of period of implementation of the tasks

20.1. Article 20 of the General Conditions shall apply.

Article 23 – Suspension

23.2 Suspension in the event of presumed breach of obligations or irregularities or fraud:

The contract may be suspended in order to verify whether presumed breach of obligations or irregularities or fraud occurred during the award procedure or the performance of the contract. If these are not confirmed, performance of the contract shall resume as soon as possible.

Article 24 Quality of supplies

24.2 Preliminary technical acceptance is required as specified in General Conditions.

Article 25 Inspection and testing

25.1 The contractor shall ensure that the supplies are delivered to the place of acceptance in time to allow the project manager to proceed with acceptance of the supplies. The contractor is deemed to have fully appreciated the difficulties which it might encounter in this respect, and it shall not be permitted to advance any grounds for delay in fulfilling its obligations.

Article 26 General principles for payments

26.1 Payments shall be made in MKD Denars according the current European monthly accounting rate of the Euro. Financial data to be provided by the tenderer in the standard tender form must be expressed in EUR which can be found at the following address:

Payment under the contract shall be made after acceptance of supplies by the Contracting Authority through signature of acceptance protocol and provisional/final certificates of acceptance. Payment will be within the 90 days after invoices acceptance by the contracting authority

- 26.2 Payments due by the contracting authority shall be made to the bank account mentioned on the financial identification form completed by the contractor. The same form, annexed to the invoice, must be used to report changes of bank account.
- 26.9 No price revision clause.
- 26.13. Where the award procedure or the performance of the contract proves to have been subject to breach of obligations, irregularities or fraud attributable to the contractor, the contracting authority may in addition to the possibility to suspend the performance of the contract in accordance with Article 23.2 and to terminate the contract as provided for in Article 36, suspend payments and/or recover amounts already paid, in proportion to the seriousness of the breach of obligations, irregularities or fraud. In addition to measures referred above, the contracting authority may reduce the contract value in proportion to the seriousness of the irregularities, fraud or of the breach of obligations, including where the activities concerned were not implemented or were implemented poorly, partially or late.

Article 28 Delayed payments

N/A

Article 29 Delivery

- 29.1. The contractor shall deliver the supplies in accordance with the conditions of the contract. The supplies shall be at the risk of the contractor until their final acceptance.
- 29.2. The contractor shall provide such packaging of supplies as is required to prevent their damage or deterioration in transit to their destination as indicated in the contract. The packaging shall be sufficient to withstand, without limitation, rough handling, exposure to extreme temperatures, salt and precipitation during transit and open storage. Package size and weight shall take into consideration, where appropriate, the remoteness of the final destination of the supplies, and the possible absence of heavy handling facilities at all points in transit.
- 29.3. The packaging, marking and documentation inside and outside the packages shall comply with such requirements as shall be expressly provided for in the special conditions, subject to any amendments subsequently ordered by the project manager or the contracting authority.
- 29.4. No supplies shall be shipped or delivered to the place of acceptance until the contractor has received a delivery order from the project manager. The contractor shall be responsible for the delivery at the place of acceptance of all supplies and supplier's equipment required for the purpose of the contract.
- 29.7. Delivery shall be deemed to have been made when there is written evidence available to both parties that delivery of the supplies has taken place in accordance with the terms of the contract, and the invoice(s) and all such other documentation specified in the special conditions, have been submitted to the contracting authority. Where the supplies are delivered to an establishment of the contracting authority, the latter shall bear the responsibility of bailee, in

accordance with the requirements of the law applicable to the contract, during the time which elapses between delivery for storage and acceptance.

Article 30 - Verification operations

- 30.1. The supplies shall not be accepted until the prescribed verifications and tests have been carried out at the expense of the contractor. The verifications and tests may be conducted before shipment, at the point of delivery and/or at the final destination of the goods.

Article 31 Provisional acceptance

- 31.1. The supplies shall be taken over by the contracting authority when they have been delivered in accordance with the contract, have satisfactorily passed the required tests, or have been commissioned as the case may be, and a certificate of provisional acceptance has been issued or is deemed to have been issued. The certificate of provisional acceptance must be issued using the template in Annex C11.

Article 32 Warranty obligations

- 32.1. The contractor shall warrant that the supplies are new, unused, of the most recent models and incorporate all recent improvements in design and materials, unless otherwise provided in the contract. The contractor shall further warrant that all supplies shall have no defect arising from design, materials or workmanship, except insofar as the design or materials are required by the specifications, or from any act or omission, that may develop under use of the supplies in the conditions obtaining in the country of the contracting authority.
- 32.7 The duration of the warranty period shall be 365 days. The warranty period shall commence on the date of provisional acceptance.

Article 33 After-sales service

- 33.1 The contractor shall undertake to carry out or have carried out the maintenance and repair of supplies and to provide a rapid supply of spare parts.
- a) such spare parts as the contracting authority may choose to purchase from the contractor, it being understood that this choice shall not release the contractor from any warranty obligations under the contract;
 - b) in the event of termination of production of the spare parts, advance notification to the contracting authority to allow it to procure the parts required and, following such termination, provision at no cost to the contracting authority of the blueprints, drawings and specifications of the spare parts, if and when requested.

Article 34 Final acceptance

- 34.1. Upon expiry of the warranty period, or where there is more than one such period, upon expiry of the latest period, and when all defects or damage have been rectified, the project manager shall issue the contractor a final acceptance certificate and a copy thereof to the contracting authority, stating the date on which the contractor completed its obligations under the contract to the project manager's satisfaction. The final acceptance certificate shall be issued by the project manager within 30 days after the expiration of the warranty period or as soon as any repairs ordered under Article 32 have been completed to the satisfaction of the project manager.
- 34.2. The contract shall not be considered to have been performed in full until the final acceptance certificate has been signed or is deemed to have been signed by the project manager.

Article 35 Breach of contract

Article 35 of the General Conditions shall apply.

Article 36 - Termination by the contracting authority

- 36.1. The contracting authority may, at any time and with immediate effect, subject to Article 36.9, terminate the contract, except as provided for under Article 36.2.
- 36.2. Subject to any other provision of these general conditions, the contracting authority may, by giving seven day notice to the contractor, terminate the contract in any of the following cases where:
 - a) the contractor is in serious breach of contract for failure to perform its contractual obligations;
 - b) the contractor fails to comply within a reasonable time with the notice given by the project manager requiring it to make good the neglect or failure to perform its obligations under the contract which seriously affects the proper and timely implementation of the tasks;

- c) the contractor refuses or neglects to carry out any administrative orders given by the project manager;
- d) the contractor assigns the contract or subcontracts without the authorisation of the contracting authority;
- e) the contractor is bankrupt, subject to insolvency or winding up procedures, is having its assets administered by a liquidator or by the courts, has entered into an arrangement with creditors, has suspended business activities, or is in any analogous situation arising from a similar procedure provided for under national law or regulations;
- f) any organisational modification occurs involving a change in the legal personality, nature or control of the contractor, unless such modification is recorded in an addendum to the contract;
- g) any other legal disability hindering performance of the contract occurs;
- h) the contractor fails to provide the required guarantees or insurance, or the person providing the earlier guarantee or insurance is not able to abide by its commitments;
- i) the contractor has been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- j) it has been established by a final judgment or a final administrative decision or by proof in possession of the contracting authority that the contractor has been guilty of fraud, corruption, involvement in a criminal organisation, money laundering or terrorist financing, terrorist related offences, child labour or other forms of trafficking in human beings or circumventing fiscal, social or any other applicable legal obligations, including through the creation of an entity for this purpose;
- k) the contractor, in the performance of another contract financed by the EU budget/EDF funds has been declared to be in serious breach of contract, which has led to its early termination or the application of liquidated damages or other contractual penalties or which has been discovered following checks, audits or investigations by the European Commission, the contracting authority, OLAF or the Court of Auditors;
- l) after the award of the contract, the award procedure or the performance of the contract proves to have been subject to breach of obligations, irregularities or fraud;
- m) the award procedure or the performance of another contract financed by the EU budget/EDF funds proves to have been subject to breach of obligations, irregularities or fraud which are likely to affect the performance of the present contract;
- n) the contractor fails to perform its obligation in accordance with Article 9a and Article 9b;
- o) the contractor fails to comply with its obligation in accordance with Article 10.

The cases of termination under points (e), (i), (j), (l), (m) and (n) may refer also to persons who are members of the administrative, management or supervisory body of the contractor and/or to persons having powers of representation, decision or control with regard to the contractor.

The cases of termination under points (a), (e), (f), (g), (i), (j), (k), (l), (m) and (n) may refer also to persons jointly and severally liable for the performance of the contract.

The cases under points (e), (i), (j), (k), (l), (m) and (n) may refer also to subcontractors.

- 36.9. Where the termination is not due to an act or omission of the contractor, force majeure or other circumstances beyond the control of the contracting authority, the contractor shall be entitled to claim in addition to sums owed to it for work already performed, an indemnity for loss suffered.

Article 38 Force majeure

- 38.1. Neither party shall be considered to be in default or in breach of its obligations under the contract if the performance of such obligations is prevented by any circumstances of *force majeure* which arises after the date of notification of award or the date when the contract becomes effective

Article 40 Settlement of disputes

- 40.1 The parties shall make every effort to settle amicably any dispute relating to the contract which may arise between them.
- 40.4 Any disputes arising out of or relating to this Contract which cannot be settled otherwise shall be referred to the exclusive jurisdiction of Republic of North Macedonia in accordance with the national legislation of the state of the Contracting Authority.

Article 41 Applicable law

- 41.1. This contract shall be governed by the law of the country of the contracting authority.

Article 43 Verifications, checks and audits by European Union bodies

Article 43 of the General Conditions shall apply.

Article 44 Data protection

Article 44 of the General Conditions shall apply.

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