**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 <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 Under this contract, the Supervisor does not delegate his duties and authority to a Supervisor's Representative. The Project supervisor will be assigned by the contracting authority with separate service contract.

**Article 8 Documents to be provided**

8.1 Contracting authority shall provide drawing design, building permit and all other relevant documents necessary for the execution of the works to the contractor.

**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:

Delegation of the European Union in Republic of North Macedonia

Mr. Nafi Saracini, Programme Manager

52v Kiril and Metodija St. 1000 Skopje

**Article 12 General obligations**

12.9 The contractor must comply with the objectives and priorities and guarantee the visibility of the EU financing (Communication and Visibility Manual for EU External Actions) and Programme’s Communication and Visibility Guidelines.

**Article 15 Performance guarantee**

15.1 The amount of the performance guarantee will be 20% of the amount of the contract and any addenda thereto.

**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 art. 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 This contract does not foresee any derogation from the General Conditions.

**Article 24 Interference with traffic**

24.1 <Specify any permission to impede traffic on communication links.>

24.2 <Specify any special measures required of the contractor in respect of traffic on and around the site.>

**Article 34 Period of implementation of tasks**

34.1 Period of implementation of tasks is 5 (five) months from the commencement day until issuing of provisional acceptance certificate.

**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 and it will be developed according the legislation of the Republic of North Macedonia.

39.2 Work register statements should be filled in Macedonian Language in forms that are specified by the national legislation of the Republic of North Macedonia, certified by the Supervisor appointed by the Contracting Authority.

**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 the Instrument for Pre-accession Assistance (IPA II) regulation programme. 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.

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 legislation and standards in force in the Republic of North Macedonia.

40.3 The preliminary technical acceptance will be conducted according the national legislation in force and the conditions governing its implementation. The acceptance will be confirmed by the Supervisor (Final Technical Report for the Civil Construction).

**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 MKD. The conversion to MKD shall be made upon the exchange rate indicated in InforEuro at the day of payment available on the following web link: <https://ec.europa.eu/info/funding-tenders/procedures-guidelines-tenders/information-contractors-and-beneficiaries/exchange-rate-inforeuro_en>.

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 The only pre-financing granted to the contractor, is the lump sum advance with 20% of the contract value.

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) No pre-financing shall be granted until:

a) The signature of the contract;

b) Provision of the performance guarantee in accordance with Article 15;

c) Provision, for the full amount of the pre-financing, of a financial guarantee which shall remain effective until the pre-financing has been completely repaid by the contractor out of interim payments under the contract unless otherwise provided for in the special conditions;

d) Fulfillment of the contractor's obligation under Article 16;

e) Approval of the programme of implementation of tasks by the supervisor.

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

1. The flat‑rate 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 47 Retention monies**

47.1 The sum retained to guarantee implementation of the contractor’s obligations during the defects liability period is 20 % 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 20% 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. The amounts due shall be calculated

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. | 20% | Interim payment of Article 50 | After completion of 50% of the firm quantities for which the contractor submitted its all-in price. |
| 3. | 40% | Interim payment of Article 50 | After issuing of the certificate of provisional acceptance |
| last | 20% | Retention money of Article 47 | Within 45 days of the issuing of the signed final statement of account |

**Article 50 Interim payments**

50.1 The interim payments will be paid as determined in Article 49.1 of these Special Conditions.

**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 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 62, the supervisor shall prepare and signed the final statement of account.

**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.

**Article 68 Dispute settlement**

68.4 Any disputes arising out of or relating to this Contract which cannot be settled otherwise shall be referred to the exclusive jurisdiction of the Court in Bitola 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, 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/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)