**VOLUME 2**

**SECTION 3SPECIAL CONDITIONS** **FOR EUROPEAN UNION EXTERNAL ACTIONS**

**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. Exceptionally, and with the approval of the competent European Commission departments, other clauses can be indicated to cover particular situations.

**Contract value**

The contracting authority hereby agrees to pay to the contractor, in consideration of the execution and completion of the works and remedying of defects therein, the amount of the contract value mentioned in article 2 of the Main Conditions or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the contract. VAT will be paid in compliance with the binding regulations, national law and international agreements concerning the execution of the project.

The amount of the contract value mentioned in article 2 of the Main Conditions shall be composed of:

* Contract price (excluding VAT/other taxes) RSD <amount>

- VAT and other taxes [EUR] [<ISO code of national currency> only for indirect management] <amount> .

**Order of precedence of contract documents**

The following documents shall be deemed to form and be read and construed as part of this contract, in the following order of precedence:

1. The main conditions
2. the special conditions,
3. the general conditions,
4. the bill of quantities (after arithmetical corrections) and detailed breakdown of prices,
5. the technical and/or performance specifications,
6. the design documentation (drawings),
7. the tender,
8. any other documents forming part of the contract.

The various documents making up the contract shall be deemed to be mutually explanatory; in cases of ambiguity or divergence, they shall prevail in the order in which they appear above. Addenda shall have the order of precedence of the document they are amending.

**Article 2 Language of the contract**

2.1 The language used shall be English.

**Article 4 Communication**

4.1 Any written communication related to this Contract between the Contracting Authority on the one hand and the Contractor on the other hand, must state the Contract title and contract number and must be sent by post, fax, e-mail or by hand to the following addresses:

**For the Contracting Authority:**

|  |  |
| --- | --- |
| Name: |  |
| Contact Person: |  |
| Address: |  |
| Telephone: |  |
| E-mail: |  |

**For the Contractor:**

|  |  |
| --- | --- |
| Name: |  |
| Contact Person: |  |
| Address: |  |
| Telephone: |  |
| E-mail: |  |

**For the Supervisor:**

|  |  |
| --- | --- |
| Name: |  |
| Contact Person: |  |
| Address: |  |
| Telephone: |  |
| E-mail: |  |

E-mail communications between the parties are also permitted, in particular for communications between the Supervisor and the Contractor. Formal notifications, such as notifications of termination or breach or notifications which have an impact on Contract Price or additional cost claims must be submitted through the methods mentioned above. Email may be used as a supplementary notification method for such formal notifications.

Where signed documents are transmitted electronically they shall be confirmed by delivery of hard copy with the original signatures within one week.

4.4 Communication via electronic exchange system (EES)

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.

After the entry into force of this contract, at any time during its course the contracting authority may formally notify in writing the contractor that certain communications will be made by electronic means through the EU Funding & Tenders Portal (the Portal), in accordance with the Portal Terms and Conditions and using the forms and templates provided there. The Portal can be accessed via the following URL: <https://ec.europa.eu/info/funding-tenders/opportunities/portal/> The notification shall indicate whether all or only certain communications under the contract will take place through the Portal. The notification shall have full legal effect from the date specified therein, which shall allow a reasonable period of time for the contractor to complete all necessary steps to have access to the Portal. The activation of the use of the Portal shall be at no additional cost for the contracting authority.

If the use of the Portal is activated, any communication covered by the activation notification related to the implementation of this contract shall be made through the Portal (except if explicitly instructed otherwise by the contracting authority or if communication via the Portal is hindered by factors beyond the control of the parties).

Communications by contractors through the Portal must be made by persons authorised according to the Portal Terms and Conditions. For naming the authorised persons to use the Portal, each contractor must designate before the date of effect of the activation notification a ‘legal entity appointed representative (LEAR)’. The role and tasks of the LEAR are stipulated in their appointment letter (see Portal Terms and Conditions).

If the communication via the Portal is hindered, instructions will be provided by the contracting authority by email and may also be published on the Portal.

During the course of the contract, the contracting authority reserve(s) the right to further extend the coverage of the communications made through the Portal (if its use has been already activated) or to activate the use of other electronic exchange systems, at no additional cost for the contracting authority.

In case of discrepancy between the clauses of the Portal Terms and Conditions or Terms and Conditions of other electronic exchange system and the clauses of this contract, the clauses of this contract (including its annexes) shall prevail.

4.5 & 4.6 Mail or email communication

If communications through the Portal have not been activated or a certain type of communication is not yet supported by the Portal, communications will be sent via email, or, exceptionally, on paper, via mail services, to the following addresses, until communications via the Portal are activated.

For the purpose of this contract, mail or email communications must be sent to the following addresses:

Contracting authority:

[Full name]

[Full official address]

[Email: [complete]] ]

Contractor (or leader in the case of a joint tender):

[*Full name*]

[*Function*]

[*Company name*]

[*Full official address*]

Email: [*complete*]

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

5.2 The name and address of the Supervisor and his Representative(s) shall be given to the Contractor after the award of the Contract.

The Contracting Authority shall appoint a Supervisor to carry out duties referred to in the Contract. The Supervisor may have further staff to which he delegates matters related to the Contract.

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.

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.

5.4 The Supervisor shall obtain the written approval of the Contracting Authority prior taking any of the following actions specified in the General Conditions:

(a) Approve any extension of time determined under Article 35 of the General Conditions;

(b) Approve any modification of the Contract and/or issuing any administrative order under Article 37 of 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, of the Beneficiary and of the Contracting Authority. Hard copies shall be delivered by hand to representatives of the Contractor and of the Beneficiary, and where appropriate, also to the representative of the Contracting Authority.

**Article 8 Documents to be provided**

8.1 The Supervisor’s approval of any technical documentation shall not relieve the Contractor of his responsibilities under the Contract.

The Contractor should maintain manuals as work diary together with proposed or changed drawings during the permanent work in a format and manner approved by the Supervisor.

The Contractor shall be responsible for the safekeeping of any formal documents relating to the Works.

**Article 9 Access to the site**

There is no a derogation from Article 9 of the GC.

**Article 12 General obligations**

12.9 The visibility measures must comply with the rules laid down in the Communication and Visibility Manual for EU External Actions published by the European Commission: <http://ec.europa.eu/europeaid/work/visibility/index_en.htm>.

**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.

**Article 16 Liabilities and insurance**

16.1 a) The amount of insurance covering liability with regard to risks and civil liability insurance shall be in according with Article 16 of General Conditions.

**Article 17 Programme of implementation of tasks**

The Contractor shall submit to the Supervisor an Internal Implementation Programme in Critical Path Analysis format within 14 days after the commencement of the works.

The programme shall reflect any specific requirements set out in the Contract Documents and Contractor's Tender, giving details on:

a) the list of sub-contractors he proposes to employ on the Works together with details of the part of the Works he proposes to subcontract;

b) the schedule of key personnel and organisation chart;

c) the schedule of sources of materials, plant and equipment for incorporation into the works;

d) milestones for all major groups of works etc. within the stated time for completion

e) an approximate cash flow with monthly disbursement plan.

In the preparation of the Implementation Programme the Contractor shall take into account adverse weather conditions which may severely restrict progress in the winter months or during other wet periods of the year. Programmes incorporating restricted working, or a temporary Suspension of Works shall be accepted by the Supervisor, but such acceptance shall not relieve the Contractor from his obligations under the Contract to complete the works in accordance with the agreed programme.

The Contractor’s Implementation Programme shall not, for any reason, exceed the overall contract period as stipulated in the Contract. It shall only be revised and increased upon approval of an Addendum to the Contract. Upon the written request by the Supervisor, the Programme and Schedule shall be updated by the Contractor and submitted to the Supervisor in hard copy and electronic format.

The Programme and Schedule shall be submitted in hard copy and electronic format. Programme shall take into account the appropriate time needed for purpose of informing public regarding closing the roads and streets or for limiting or disconnecting water, electricity or other utilities.

The Supervisor shall make comments and/or objections concerning the Programme and Schedule supplied by the Contractor within 10 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 fax sent to the Supervisor, within 7 calendar days of their receipt.

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

19.1 On the basis of the Technical Specifications, Drawings and other information contained in the Tender Documents, the Contractor shall supply all further fabrication and working drawings, documents, calculations, official permits and other data necessary for the construction of the Works and for satisfying the technical parameters stipulated in the Contract. The Contractor may supply this information successively in parts, but each part submitted should be complete to such an extent that it can be judged and approved by the Supervisor in isolation as part of the whole.

The Supervisor may instruct the Contractor to prepare particular drawings or to make any modifications, including calculations for any part of the project. These calculations and drawings are part of the Contractor’s duties.

The Contractor shall prepare and keep up-to-date a complete set of As-Built records showing the precise locations, sizes and details of all the work executed. These records shall be kept on site and shall be used exclusively for this purpose. They shall be available to the Supervisor at any time. Hard copies shall be provided to the Supervisor when requested, in particular as evidence in support of Interim Payment Certificates. The absence of such records may lead to the Supervisor not forwarding submitted Interim Payment Certificates to the Contracting Authority.

The Contractor shall submit to the Supervisor As-Built drawings in a clear and easy-to-understand form, in one original of the reproducible negatives or drawings in electronic format, and two hard copies for each completed section of the works.

The works shall not be considered to be completed for the purpose of provisional acceptance until such drawings have been supplied to the Contracting Authority. Operation and maintenance manuals and As-Built drawings shall be handed over to the Supervisor not later than **14** days after provisional acceptance of the works. After revision, the Supervisor shall certify them or return them to the Contractor for correction and amendment.

19.7 The manuals and drawings shall be supplied in the language of the original with translation into English and Serbian Language, as instructed by the Supervisor.

**Article 20 Sufficiency of tender prices**

20.4 The contactor will calculate and present the amount for each item, based on the quantities of materials and works presented in the Volume 4 - Bill of Quantities.

The unit price for unforeseen works, to be recognized throughout the project and ordered by the Contracting Authority shall be derived from the Contract's Unit Prices of a same or similar type of works or extracted from referent recent similar contracts.

Throughout the construction of the Works the Contractor shall provide and maintain for the site staff appropriate offices, stores, dining rooms, sanitary and health and safety facilities etc. All operating and maintenance expenses connected therewith (lighting, heating, water supply etc.) shall be borne by the Contractor. The Contractor may require land outside the Site for his offices, stores, workshops, fabrication plants etc. The expenses and other costs so incurred shall be at the expense of the Contractor.

20.5 The Contractor shall make his own arrangements for provision of water, electricity and telephones and shall observe all regulations of the appropriate local authority and shall bear all expenses in connection therewith.

**Article 21 Exceptional risks**

21.4 There are no exceptional risks other than specified in the General Conditions.

**Article 24 Interference with traffic**

24.1 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.

The Contractor shall inform the Supervisor in due time which shall be not less than **7** calendar days in writing before commencing such works in order that the Supervisor may arrange adequate supervision and safety precautions. With his application for permission to start construction work, the Contractor shall submit to the Supervisor a list of all major plant he and his sub-contractors intend to use, indicating their characteristics (Excavators, trucks, cranes, compaction equipment, rollers, concrete mixers, equipment, etc.).

The Contractor shall select routes, choose and use such vehicles and restrict and distribute loads in such a way to prevent damage to the roads or structures communicating with or on the routes to the Site. The Contractor shall ensure that roads and bridges that have become damaged due to the Contractor’s use of that infrastructure, in the opinion of the Supervisor, are reinstated to a serviceability level similar to that which existed prior to the Contractor’s use of the infrastructure.

Reinstatement shall be to the approval of the Supervisor. All expenses related to these procedures shall be covered by the Contractor.

The Contractor shall obtain any permission from the relevant authorities, which may be required to impede traffic on communication links, for his use of routes, signs and directions.

24.2 TheContractor will have to take necessary measures to secure the transportation of heavy loads and big size loads and/or any load on and around the site.

1. the Contractor shall (as between the Parties) be responsible for any maintenance which may be required for his use of access routes;
2. the Contractor shall provide all necessary signs or directions along access routes, and shall obtain any permission which may be required for his use of routes, signs and directions;
3. the Contracting Authority and the Beneficiary shall not be responsible for any claims which may arise from the use or otherwise of any access route,
4. the Contracting Authority and the Beneficiary do not guarantee the suitability or availability of particular access routes, and

Costs due to non-suitability or non-availability, for the use required by the Contractor, of access routes shall be borne by the Contractor

**Article 27 Demolished materials**

27.2 No material to be removed from the site as result of demolition, dislocations etc. will become the property of the Contracting Authority.

27.4 The contractor will be responsible for removal and disposal to the landfill of the demolition material.

**Article 29 Temporary works**

29.2 The Contracting Authority shall never be responsible for design of any particular temporary works, and temporary works shall always be resolved between the Supervisor and the Contractor.

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 Supervisor/Beneficiary. Final decision will be on the side of the Supervisor.

**Article 30 Soil studies**

30.1 The Contractor shall make available to the Supervisor, the personnel and equipment necessary for carrying out any soil survey which the Supervisor considers reasonably necessary. The Contractor shall bear all costs, without compensation, of the manpower and equipment used for any soil survey that may be necessary for the undisturbed project execution.

**Article 32 Patents and licenses**

32.1 There is no a derogation from Article 32 of the GC.

**Article 34 Period of implementation of tasks**

34.1 The period of implementation of tasks is 12 months.

**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 A work register shall be kept in English and Serbian language. It will be kept on the site by the Contractor, who shall enter in it at least the following information:

(a) the weather conditions, interruptions of work owing to inclement weather, hours of work, number and type of workmen employed on the site, materials supplied, equipment in use, equipment not in working order, tests carried out in situ, samples dispatched, unforeseen circumstances, as well as orders given to the Contractor;

(b) detailed statements of all the quantitative and qualitative elements of the work done and the supplies delivered and used, capable of being checked on the site and relevant in calculating payments to be made to the Contractor

39.2 The statements shall be prepared by the Contractor, in accordance with the Specifications and the Bill of Quantities respectively. The statements shall be two separate documents, one for quality control and one for quantitative measurement. The documents shall be permanently kept at the site, in hard copy and in electronic format. The Contractor shall measure, in cooperation with the Supervisor’s staff, and prepare records of the work executed in such detail as instructed by the Supervisor.

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

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

## 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 requirements specified in Volume 3 (Technical Requirements).

• the specifications as in Volume 4.

40.3 No preliminary technical acceptance is necessary.

**Article 41 Inspection and testing**

Inspection and testing shall be performed in accordance with the article 41 of GC and requirements of the applicable technical regulations and local legislations.

All materials and Equipment used are subject to inspection and testing by the Supervisor and Beneficiary and/or his substitutes at factory and on arrival at site.

The Contractor shall submit to Supervisor a schedule for factory tests to be performed during implementation of the project. The schedule must be approved by the Contracting Authority Representative/Supervisor and Beneficiary.

**Article 43 Ownership of plant and materials**

43.2 Equipment and materials intended for incorporation in the permanent works, but not yet incorporated in the permanent works and for which any interim payment has been made by the Contracting Authority, shall be vested in the Contracting Authority and visibly marked as such.

**Article 44: General principles for payments**

44.1 Payments shall be made in the RSD for companies registered in Republic of Serbia or EUR for companies registered outside Republic of Serbia.

In case the contract is concluded in EURO, and payments are made in RSD, applicable exchange rate must be InforEuro exchange rate for the month of issuing of invoice.

44.2 There is no a derogation from Article 44.2 of the GC..

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 may be granted to the Contractor, at his request and before the first interim payment take places, as a lump sum advance, after provision of the performance guarantee in accordance with Article 15.

46.2 The total amount of the pre-financing will be 10% of the original contract price.

46.3(c) When (i) the pre-financing requested is equal or below EUR 300 000 **and** (ii) the contracting authority does require a financial guarantee.

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 Not applicable

**Article 48 Price revision**

Not applicable

**Article 49 Measurement**

49.1 This is a unit-price contract. No additions may be made to the items in the bill of quantities.

**[**This is a lump‑sum contract.

The amounts due shall be calculated <for example: by measuring the percentage of works carried out in relation to the firm quantities of each item of the breakdown of the lump-sum price and by applying that percentage to the lump-sum price of the related item>/<for example: through the following tranches …. >.]

**Article 50 Interim payments**

50.1 Payments will be practically arranged in the following way:

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) and (2)

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 59 Partial acceptance**

59.3 The defects liability period provided for in Article 62 shall run from the date of the latest Provisional Acceptance is signed.

**Article 60 Provisional acceptance**

60.1 In complement to article 60.1 of the General Conditions the Design for construction and As built design shall be submitted by the Contractor to the Supervisor before the Provisional Acceptance Certificate is issued by the Supervisor.

**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 normal wear and tear maintenance works shall not be borne by the Contractor.

**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 relevant Court in Novi Sad applying the national legislation of the Contracting Authority.

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