

GENERAL CONDITIONS

FOR SERVICES CONTRACTS

NOTE

These General Conditions for services contracts are used by Lux-Development for certain contracts financed by the Government of the Grand Duchy of Luxembourg. They have been modelled on the “General Regulations, General Conditions and procedural rules on conciliation and arbitration for works, supplies and services contracts financed by the European Development Fund (EDF)”.

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PRELIMINARY PROVISIONS

Article 1 : Definitions

1.1. The following definitions apply to these General Conditions and to the contract :

Donor : The Government of the Grand Duchy of Luxembourg,

Donor's Representative : Lux-Development, Luxembourg Agency for Development Cooperation, acting under mandate of the Ministry of Foreign Affairs and Co-operation of the Grand Duchy of Luxembourg. As Donor's Representative, Lux-Development acts as the implementing agency of the obligations falling to the Government of the Grand Duchy of Luxembourg as set out in the project bilateral agreement and project document.

Partner State : a State which has signed a cooperation agreement and a project bilateral agreement with the Government of the Grand Duchy of Luxembourg and for the benefit of which the project is implemented and on whose territory the contract must be performed.

National implementing agency : the body appointed by the partner Government which acts as the implementing agency for the obligations of the Government of the partner State as laid down in the project bilateral agreement and the project document.

Convention : the cooperation agreement and the project bilateral agreement signed between the partner State and the Government of the Grand-Duchy of Luxembourg.

Project : All the activities which are the subject of a project bilateral agreement and the objectives, activities and results of which are described in a project document that is an integral part of the project bilateral agreement and for which services, supplies and works must be undertaken as part of the contract.

Project Management : Double supervision of the project carried out by the chief technical adviser, the CTA, under direct contract of the Donor's Representative and the national project director, the NPD, designated by the implementing agency of the partner country.

Contracting Authority : the legal person governed by public or private law, formally appointed in a mutual agreement by the Donor's Representative and the national implementing agency, which concludes the contract or in whose name the contract is concluded with the Contractor.

State of the Contracting Authority : the country of origin of the appointed Contracting Authority either the Grand Duchy of Luxembourg or the partner country.

Supervisor : the natural or legal person to whom the responsibility of directing and/or monitoring the performance of a contract has been granted by mandate, and to whom the appointed Contracting Authority may delegate its rights and/or responsibilities under the contract.

Supervisor's representative : any natural or legal person appointed by the Supervisor in connection with the contract who is authorised to represent the Supervisor in the exercise of the rights and/or responsibilities delegated to him. Consequently, where the Supervisor's duties, rights and/or responsibilities are delegated to his representative, any reference to the Supervisor also refers to his representative.

Contract : the contract concluded by the parties for the provision of services, including all its annexes and all the documents incorporated into it.

Contractor : the party with whom the Contracting Authority concludes the contract.

Services : services which must be performed by the Contractor as part of the contract, such as studies, design, technical assistance and training.

Terms of reference : the document drawn up by the Contracting Authority setting out its requirements and/or objectives in respect of the provision of services, specifying, where relevant, the methods and resources to be used by the Contractor and/or the results to be attained by him.

Day : calendar day.

Time limits : those periods in the contract which begin on the day following the act or event which serves as the starting point for the calculation of those periods. Should the last day of the period not be a working day, the period shall expire at the end of the first working day following the last day of the period.

Contract value : the sum stated in the contract representing the initial estimate payable for the provision of the services or such other sum as ascertained at the end of the contract as due to the Contractor under the contract.

Price schedule : the completed schedule of prices, including the breakdown of the overall price submitted by the Contractor with his tender, modified as necessary, and forming a part of the unit price contract,

Breakdown of the overall price : the itemized list of rates and prices showing the breakdown of the price in a lump sum contract, but not forming part of the contract,

Drawings : drawings provided by the Contracting Authority and/or the Supervisor, and/or drawings provided by the Contractor and approved by the Supervisor, for the performance of the services,

Writing : any handwritten, typewritten or printed communication, including telex, cable and facsimile transmission,

Administrative order : any instruction or order issued by the Supervisor to the Contractor in writing regarding the performance of the services,

Communications : certificates, notices, orders and instructions issued under the contract,

National currency : the currency of the partner State,

Foreign currency : any permissible currency which is not the national currency and which is indicated in the contract,

General damages : the sum, not stated beforehand in the contract, which is awarded by a court or arbitration tribunal, or agreed between the parties, as compensation payable to an injured party for a breach of the contract by the other party,

Liquidated damages : the sum stated in the contract as compensation payable by the Contractor to the Contracting Authority for failure to perform the contract or part thereof within the periods under the contract, or as payable by either party to the other for any other specific breach identified in the contract,

Special Conditions : the Special Conditions issued by the Donor's Representative as part of the invitation to tender, as amended where necessary, and incorporated into the contract, consisting of :

- a) amendments to these General Conditions ;
- b) special contractual clauses ;
- c) technical specifications ; and
- d) any other matter related to the contract.

1.2. The headings and titles in these General Conditions shall not be taken as part thereof or be taken into consideration in the interpretation of the contract.

1.3. Where the context so permits words in the singular shall be deemed to include the plural and vice versa and words in the masculine shall be deemed to include the feminine and vice versa.

- 1.4. Words designating persons or parties shall include firms and companies and any organization having legal capacity.

Article 2 : Law and language of the contract

- 2.1. The law of the contract shall be the law of the State of the Contracting Authority unless otherwise stated in the Special Conditions.
- 2.2. In all matters which are not covered by these General Conditions, the law of the contract shall apply.
- 2.3. The language of the contract and of all communications between the Contractor, Contracting Authority and Supervisor or their representatives shall be as stated in the Special Conditions. All reports, recommendations and dossiers prepared by the Contractor under the contract shall also be in the language stated in the Special Conditions.

Article 3 : Order of precedence of contract documents

- 3.1. Unless otherwise stipulated in the contract, the order of precedence of the contract documents shall be as stated in the Special Conditions.

Article 4 : Notices and written communications

- 4.1. Unless otherwise specified in the Special Conditions, communications between the Contracting Authority and/or the Supervisor on the one hand, and the Contractor on the other hand, shall be sent by post, cable, telex, facsimile transmission or personal delivery, to the appropriate addresses designated by those parties for that purpose.
- 4.2. If the sender requires evidence of receipt, he shall state such requirement in his communication and, whenever there is a deadline for the receipt of the communication, he shall demand evidence of receipt of his communication. In any event, the sender shall take all the necessary measures to ensure receipt of the communication.
- 4.3. Wherever in the contract provision is made for the giving or issue of any notice, consent, approval, certificate or decision by any person, unless otherwise specified, such notice, consent, approval, certificate or decision shall be in writing and the words "notify", "consent", "certify", "approve" or "decide" shall be construed accordingly. Any such consent, approval, certificate or decision shall not be withheld or delayed unreasonably.

Article 5 : Supervisor and Supervisor's representative

- 5.1. The Supervisor shall carry out the duties specified in the contract. Except as expressly stated in the contract, the Supervisor shall not have authority to relieve the Contractor of any of his obligations under the contract.
- 5.2. The Supervisor may, from time to time, while retaining ultimate responsibility, delegate to the Supervisor's representative any of the duties and authority vested in the Supervisor and he may at any time revoke such delegation or replace the representative. Any such delegation, revocation or replacement shall be in writing and shall not take effect until a copy thereof has been delivered to the Contractor.
- 5.3. Any communication given by the Supervisor's representative to the Contractor in accordance with the terms of such delegation shall have the same effect as though it had been given by the Supervisor himself, provided that :
 - a) any failure on the part of the Supervisor's representative to disapprove any report or part of the services shall not prejudice the authority of the Supervisor to disapprove such report or services and to give the instructions necessary for the rectification thereof ;
 - b) the Supervisor shall be at liberty to reverse or vary the content of such communication.

- 5.4. Instructions and/or orders issued by the Supervisor shall be by way of administrative orders. Where applicable, such orders shall be dated, numbered and entered in a register, and copies thereof, delivered by hand, where appropriate, to the Contractor's representative.

Article 6 : Cession

- 6.1. A cession shall be valid only if it is a written agreement by which the Contractor transfers his contract, or part of thereof, to a third party.
- 6.2. The Contractor may not, without the prior written consent of the Contracting Authority and the Donor's Representative, cede the contract or any part thereof, or any benefit or interest thereunder, except where the Contractor :
- a) makes a surety payable to the Contractor's bankers covering any monies due or to become due under the contract ; or
 - b) transfers to its insurers the Contractor's right to obtain compensation from any other person who is liable in cases where the insurers have indemnified the Contractor for loss it has suffered or for which it has assumed liability.
- 6.3. For the purpose of Article 6.2, the approval of a cession by the Contracting Authority shall not relieve the Contractor of his obligations for the part of the contract already performed or the part not assigned.
- 6.4. If the Contractor has ceded his contract without authorization, the Contracting Authority may, without giving formal notice thereof, apply as of right the sanctions for breach of contract provided for in Articles 43 and 44.
- 6.5. Assignees must satisfy the eligibility criteria applicable for the award of the contract.

Article 7 : Sub-contracting

- 7.1. A sub-contract shall be valid only if it is a written agreement by which the Contractor entrusts performance of a part of his contract to a third party.
- 7.2. The Contractor shall not sub-contract to nor engage another independent Contractor to perform any part of the services without the prior written authorization of the Contracting Authority. The services to be sub-contracted and the identity of the independent Contractor shall be notified to the Contracting Authority. The Contracting Authority shall, with due regard to the provisions of Article 4.3, within thirty days of receipt of the notification, notify the Contractor of his decision, stating reasons, should he withhold such authorization.
- 7.3. In the selection of sub-contractors and/or other independent contractors, preference shall be given to natural persons, companies or firms of the State of the Contracting Authority capable of providing the services required on equivalent terms.
- 7.4. Sub-contractors and/or independent contractor must satisfy the eligibility criteria applicable for the awards of the contract.
- 7.5. The Contracting Authority shall have no contractual relations with the sub-contractors and/or independent contractors.
- 7.6. The Contractor shall be responsible for the acts, defaults and negligence of his sub-contractors and/or other independent consultants and their agents or employees, as if they were the acts, defaults or negligence of the Contractor, his agents or employees. The approval by the Contracting Authority of the sub-contracting of any part of the contract or of the engagement by the Contractor of other independent Contractors or sub-contractors to perform any part of the services shall not relieve the Contractor of any of his obligations under the contract.

- 7.7. If a sub-contractor or independent contractor is found by the Contracting Authority or the Supervisor to be incompetent in discharging his duties, the Contracting Authority or the Supervisor may request the Contractor forthwith, either to provide an independent contractor or sub-contractor with qualifications and experience acceptable to the Contracting Authority as a replacement, or to resume the performance of the services himself.
- 7.8. If the Contractor enters into a sub-contract or engages another independent Contractor without prior approval, the Contracting Authority may, without giving formal notice thereof, apply as of right the sanctions for breach of contract provided for in Articles 40 and 41.

OBLIGATIONS OF THE CONTRACTING AUTHORITY

Article 8 : Supply of information

- 8.1. The Contracting Authority shall supply the Contractor as soon as possible with any information and/or documentation at its disposal which may be relevant to the performance of the contract. Such documents shall be returned to the Contracting Authority at the completion of the services.
- 8.2. The Contracting Authority shall as far as possible provide the Contractor with any assistance in obtaining information relevant to the contract that the latter may reasonably request in order to perform the contract.

Article 9 : Assistance with local regulations

- 9.1. The Contractor may request the assistance of the Contracting Authority in obtaining copies of laws, regulations, and information on local customs, orders or bye-laws of the country where the services are to be performed which may affect the Contractor in the performance of his obligations under the contract. The Contracting Authority may provide the assistance requested to the Contractor at the Contractor's cost.
- 9.2. Subject to the provisions of the laws and regulations on foreign labour of the State in which the services are to be performed, the national implementing agency shall make all efforts necessary to facilitate the procurement by the Contractor of all required visas and permits, including work and residence permits, for the personnel whose services the Contractor and the Contracting Authority consider necessary as well as residence permits for their families.
- 9.3. The Contracting Authority shall issue to its officials, agents and representatives all such instructions as may be necessary or appropriate to facilitate the prompt and effective implementation of the services.

OBLIGATIONS OF THE CONTRACTOR

Article 10 : General obligations

- 10.1. The Contractor shall respect and abide by all laws and regulations in force in the partner State and shall ensure that his personnel, their dependents, and his 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, his employees and the dependents of such laws and regulations.
- 10.2. The Contractor shall perform the services with due care, efficiency and diligence, in accordance with the best professional practices and in compliance with these General Conditions, the terms of reference and the Supervisor's instructions.
- 10.3. The Contractor shall comply with administrative orders given by the Supervisor. Where the Contractor considers that the requirements of an administrative order go beyond the authority of the Supervisor or of the scope of the contract, he shall, on pain of being time-barred, give notice, with reasons, to the Supervisor within thirty days after receipt thereof. Execution of the administrative order shall not be suspended because of this notice.
- 10.4. If the Contractor or any of his sub-contractors, independent contractors, agents or servants offers to give or agrees to offer or to give or gives to any person, any bribe, gift, gratuity or commission as an inducement or reward for doing or forbearing to do any act in relation to the contract or any other contract with the Contracting Authority, or for showing favour or disfavour to any person in relation to the contract or any other contract with the Contracting Authority, then the Contracting Authority may, without prejudice to any accrued rights of the Contractor under the contract, terminate the contract, in which case the provisions of Articles 40 and 41 shall apply.
- 10.5. The Contractor shall treat all documents and information received in connection with the contract as private and confidential, and shall not, save in so far as may be necessary for the purposes of the performance thereof, publish or disclose any particulars of the contract without the prior consent in writing of the Contracting Authority or the Supervisor after consultation with the Contracting Authority. If any disagreement arises as to the necessity for any publication or disclosure for the purpose of the contract, the decision of the Contracting Authority shall be final.
- 10.6. If the Contractor is a joint venture or consortium of two or more persons, all such persons shall be jointly and severally bound to fulfil the terms of the contract according to the law of the State of the Contracting Authority and shall, at the request of the Contracting Authority, designate one of such persons to act as leader with authority to bind the joint venture or consortium. The composition or the constitution of the joint venture or consortium shall not be altered without the prior consent in writing of the Contracting Authority.

Article 11 : Code of conduct

- 11.1. The Contractor shall at all times act loyally and impartially and as a faithful adviser to the Contracting Authority in accordance with the rules and/or code of conduct of his profession as well as with appropriate discretion. He shall, in particular, refrain from making any public statements concerning the project or the services without the prior approval of the Contracting Authority, and from engaging in any activity which conflicts with his obligations towards the Contracting Authority under the contract. He shall not commit the Contracting Authority in any way whatsoever without its prior consent in writing, and shall, where appropriate, make this obligation clear to third parties.

- 11.2. For the duration of the contract, the Contractor and his employees shall respect the political, cultural and religious practices prevailing in the partner State.
- 11.3. The remuneration of the Contractor under the contract shall constitute his only remuneration in connection with the contract and neither he nor his personnel shall accept any commission, discount, allowance, indirect payment or other consideration in connection with, or in relation to, or in discharge of, his obligations under the contract.
- 11.4. The Contractor shall not have the benefit, whether directly or indirectly, of any royalty or of any gratuity or commission in respect of any patented or protected article or process used in or for the purposes of the contract or the project, unless it is agreed by the Contracting Authority in writing that he may.
- 11.5. The Contractor and his staff shall maintain professional secrecy, for the duration of the contract and after completion thereof. In this connection, except with the prior written consent of the Contracting Authority, neither the Contractor nor the personnel employed or engaged by him shall at any time communicate to any person or entity any confidential information disclosed to them or discovered by them, or make public any information as to the recommendations formulated in the course of or as a result of the services. Furthermore, they shall not make any use prejudicial to the Contracting Authority, of information supplied to them and of the results of studies, tests and research carried out in the course and for the purpose of performing the contract.

Article 12 : Independence

- 12.1. The Contractor shall refrain from any relationship which would compromise his independence or that of his staff. If the Contractor fails to maintain such independence, the Contracting Authority may, without prejudice to compensation for any damage which he may have suffered on this account, terminate the contract forthwith, without giving formal notice thereof.
- 12.2. The Contractor shall after the conclusion or termination of the contract, limit his role in connection with the project to the provision of the services. Except with the written permission of the Contracting Authority, the Contractor and any other Contractor, Contractor or supplier with whom the Contractor is associated or affiliated shall be disqualified from the execution of works, supplies or other services for the project in any capacity, including tendering for any part of the project.

Article 13 : Specifications and designs

- 13.1. The Contractor shall prepare all specifications and designs using accepted and generally recognized systems acceptable to the Contracting Authority and taking into account the latest design criteria.
- 13.2. The Contractor shall ensure that the specifications and designs and all documentation relating to procurement of goods and services for the project are prepared on a impartial basis so as to promote competitive tendering.

Article 14 : Indemnification

- 14.1. The Contractor shall indemnify, protect and defend, at his expense, the Contracting Authority, its agents and employees, from and against all actions, claims, losses or damage arising from any act or omission by the Contractor in the performance of the services, including any violation of any legal provisions, or rights of third parties, in respect of patents, trade marks and other forms of intellectual property such as copyrights.
- 14.2. The Contractor shall indemnify, protect and defend, at his expense, the Contracting Authority, its agents and employees, from and against all actions, claims, losses or damages arising out of the Contractor's failure to perform his obligations under Article 10 provided that :

- a) the Contractor is notified of such actions, claims, losses or damages not later than 30 days after the Contracting Authority becomes aware of them ;
 - b) the ceiling on the Contractor's liability under Article 14.2 shall be limited to the amount stated in the Special Conditions, and that such ceiling shall not apply to actions, claims, losses or damages caused by the Contractor's wilful misconduct ;
 - c) the Contractor's liability under Article 14.2 shall be limited to actions, claims, losses or damages directly caused by such failure to perform his obligations under the contract and shall not include liability arising from unforeseeable occurrences incidental or indirectly consequential to such failure.
- 14.3. The Contractor shall, at his expense, upon request of the Contracting Authority, remedy any defect in the performance of the services in the event of the Contractor's failure to perform his obligation under the contract.
- 14.4. Notwithstanding any contrary provisions in Article 14, the Contractor shall have no liability whatsoever for actions, claims, losses or damages occasioned by :
- a) the Contracting Authority omitting to act on any recommendation, or overriding any act, decision or recommendation, of the Contractor, or requiring the Contractor to implement a decision or recommendation with which the Contractor has stated his disagreement or on which he has expressed a serious reservation ; or
 - b) the improper execution of the Contractor's instructions by agents, employees or independent Contractors of the Contracting Authority.
- 14.5. The Contractor shall remain responsible for any breach of his obligations under the contract for such period after the services have been completed as may be determined by the law of the contract.

Article 15 : Medical and insurance arrangements

- 15.1. The engagement by the Contracting Authority of the Contractor shall be conditional upon the provision of evidence satisfactory to the Contracting Authority that the Contractor and/or his personnel are in good health and are not subject to any disability which may interfere with the performance of the services. The Contracting Authority may request the Contractor and/or his personnel performing the services to undergo a medical examination by a qualified medical practitioner before leaving his or their usual place of residence and shall as soon as is practicable furnish the Contracting Authority with the medical report resulting therefrom.
- 15.2. For the duration of the contract, the Contractor shall obtain medical insurance for himself and other persons employed by him under the contract. Except as may be specified in the contract, the Contracting Authority shall be under no liability in respect of the medical expenses of the Contractor.
- 15.3. The Contracting Authority shall undertake no responsibility in respect of any life, health, accident, travel and other insurance which may be necessary or desirable for the personnel of the Contractor or of his sub-contractors or other independent contractors for the purposes of the services, nor for any members of the families of such persons.
- 15.4. Within twenty days of notification of approval of the contract the Contractor shall take out and maintain a full indemnity insurance policy in a sum up to the limit stated in the Special Conditions and covering, from the start of performance of the contract and throughout its duration, the following aspects :
- a) the Contractor's liability in respect of sickness or industrial accident affecting his employees, including the cost of repatriation on health grounds ;
 - b) loss of, or damage to, the Contracting Authority's equipment used to perform the contract ;

- c) civil liability in the event of accidents caused to third parties or to the Contracting Authority and any employee of that authority arising out of the performance of the contract ;
 - d) accidental death or permanent disability resulting from bodily injury incurred during the contract ; and
 - e) such other insurance as may be specified in the Special Conditions as required by the laws of the State of the Contracting Authority.
- 15.5. The Special Conditions may also require the Contractor to insure against loss or damage to the personal effects of his employees and their families located in the partner State.
- 15.6. The Contractor shall furnish proof of the insurance policy and of regular payment of premiums without delay whenever required to do so by the Contracting Authority or the Supervisor.

Article 16 : Proprietary rights in reports and documents

- 16.1. All reports and data such as maps, diagrams, drawings, specifications, plans, statistics, calculations and supporting records or materials acquired, compiled or prepared by the Contractor in the performance of the contract shall be confidential and shall be the absolute property of the Contracting Authority. The Contractor shall, upon completion of the contract, deliver all such documents and data to the Contracting Authority. The Contractor may retain copies of such documents and data, but shall not use them for purposes unrelated to his contract without prior written approval of the Contracting Authority.
- 16.2. The Contractor shall not publish articles relating to the services or refer to them when carrying out any services for others, or divulge information obtained from the Contracting Authority, without the written consent of the Contracting Authority.

NATURE OF THE SERVICES

Article 17 : The nature of the services

- 17.1. The Contractor shall perform the services under the contract in accordance with the terms of reference.
- 17.2. The contract may consist of one or more of the following missions :
- a) project identification and definition study ;
 - b) economic or market study ;
 - c) pre-feasibility and/or feasibility study ;
 - d) project performance study (preliminary or detailed design, and where appropriate final design for performance, preparation of tender dossier) ;
 - e) supervision of the project ;
 - f) management of the performance of the project ;
 - g) provision of personnel ;
 - h) other forms of technical assistance.
- 17.3. The Special Conditions shall state the terms of reference, which shall include, inter alia :
- a) the object and scope of the contract ;
 - b) the degree of accuracy to be attained and the different phases or parts of the services ; and
 - c) the type and content of reports, statements, plans, calculations, measurements, specifications, estimates and any other document that the Contractor is to draw up on completion of each phase or part of the study and on completion of the study itself.
- 17.4. Where the contract is for technical assistance to the Contracting Authority and/or Supervisor, the Contractor is entrusted with an advisory function for the benefit of the Contracting Authority and/or Supervisor in respect of all the technical aspects of the project which may arise out of its execution. The Contractor shall not have decision-making responsibility.
- 17.5. Where the contract is for management of the execution of the project, the Contractor shall assume, in accordance with the laws of the partner State and, subject to the Supervisor's authority, all the duties of management inherent in supervising the performance of a project.
- 17.6. If under the Special Conditions the Contractor is required to prepare a tender dossier, the dossier shall contain all documents necessary for consulting suitable Contractors, manufacturers and suppliers, and for preparing tenders with a view to carrying out the works or providing the supplies or services covered by an invitation to tender. The Contracting Authority shall provide the Contractor with the information necessary for drawing up the administrative part of the tender dossier.
- 17.7. Where the contract is for supervision of a project, the Contractor is entrusted with the direction of the performance stage of the project.
- 17.8. Notwithstanding Article 12.2, the Contractor responsible for the study and/or design stages of the project may be entrusted with further services in the management and supervision of the project including the provision of technical assistants.

Article 18 : Provision of personnel

- 18.1. Where the contract is for the provision of personnel for the execution of a project, the Contractor shall provide such personnel in specific fields relating to the execution of the project, in the form of technical assistance in an advisory and/or managerial role. Such personnel shall be under the direct authority of the Supervisor.
- 18.2. The services shall be carried out by the personnel specified in the contract for the periods of time indicated therein. The Contractor may, with the prior approval of the Contracting Authority, make minor adjustments to such periods as may be appropriate to ensure the efficient performance of the services, provided that such adjustments will not cause payments made under the contract to exceed the contract price.
- 18.3. The Contractor shall be responsible for the quality of the staff which he places at the disposal of the Contracting Authority.
- 18.4. The Contractor shall not make changes in the personnel without the prior approval of the Contracting Authority. However, the Contractor shall provide a replacement with at least equivalent qualifications and experience and acceptable to the Contracting Authority if :
 - a) on account of sickness or accident, a member of staff is unable to continue providing his services ;
 - b) any person specified in the contract is found by the Contracting Authority to be incompetent in discharging or unsuitable for the performance of his duties under the contract ;
 - c) for any other reasons beyond the control of the Contractor, it becomes necessary to replace any of his personnel.
- 18.5. The remuneration to be paid for a person provided as a replacement shall not exceed the remuneration which would have been payable to the person replaced.
- 18.6. Except in the case of replacement resulting from death or where the Contracting Authority requests a replacement not provided for by the contract, the Contractor shall bear all the additional costs arising out of or incidental to such replacement. Such costs shall include the costs of the return journey of the replaced member of staff and his family and, if necessary, the expenses arising from the need to maintain simultaneously at the place of work the member of staff to be replaced and his replacement.

Article 19 : Staff and equipment

- 19.1. The staff which the Contractor uses for the implementation of the contract shall be approved by the Contracting Authority. The Special Conditions shall specify the minimum level of training, qualifications and experience of the Contractor's personnel and, where appropriate, the specialization required.
- 19.2. References and/or curriculum vitae of each member of the Contractor's staff to be employed under the contract shall be submitted to the Contracting Authority for approval either with the Contractor's tender in the case of a tender procedure or, in other cases, before the conclusion of the contract.
- 19.3. The Contracting Authority shall notify his approval or refusal within thirty days of the appointment of the Contractor or the submission under Article 19.2, as the case may be.
- 19.4. Staff approved by the Contracting Authority shall commence their duties on the date or within the period laid down in the Special Conditions or, failing this, on the date or within the periods notified to the Contractor by the Contracting Authority.
- 19.5. Save as otherwise provided in the Special Conditions, the staff of the Contractor shall reside close to their place of work. Where part of the services is to be performed outside the partner State, the Contractor shall keep the Supervisor informed of the names and qualifications of staff assigned to that part of the services and of the equipment used.

- 19.6. The Contractor shall :
- a) forward to the Supervisor within fifteen days of the award of the contract, the timetable proposed for placement of the staff, specification of their duties and a list of the equipment he intends to use for the services ;
 - b) inform the Supervisor in sufficient time of the date of arrival and departure of each member of staff ;
 - c) submit to the Supervisor for his approval a timely request for any change of staff and for any alteration to the original timetable or change of equipment.
- 19.7. The Contractor shall adopt all measures necessary to provide and continue to provide his staff with the equipment required to enable them to carry out their specified duties under conditions which are most conducive to efficiency.

Article 20 : Trainees

- 20.1. The Contractor shall provide training for the duration of the contract for trainees assigned to him by the Contracting Authority or the Donor's Representative under the terms of the contract.
- 20.2. Instruction by the Contractor of such trainees shall not confer on them the status of employees of the Contractor. However, they must comply with the Contractor's instructions, and with the provisions of Article 11, as if they were employees of the Contractor. The Contractor may on reasoned request in writing obtain the replacement of any trainee whose work or conduct is unsatisfactory.
- 20.3. Unless otherwise provided in the contract, remuneration for trainees and travel, accommodation and all other expenses incurred by the trainees, shall be borne by the Contracting Authority or the Donor's Representative.
- 20.4. The Contractor shall make a quarterly report on the training to the Contracting Authority or the Donor's Representative. Immediately prior to the completion of the services, the Contractor shall draw up a report on the result of the training and an assessment of the qualifications obtained by the trainees with a view to their future employment. The form of such reports and the procedure for presenting them shall be as laid down in the Special Conditions.

PERFORMANCE OF THE CONTRACT

Article 21 : Commencement orders

- 21.1. The Contracting Authority shall fix the date on which performance of the contract is to commence, and advise the Contractor either in the notification of award of contract or by administrative order issued by the Supervisor.
- 21.2. The date for commencing performance shall be not later than one hundred and eighty days following notification of award of the contract unless agreed otherwise by the parties.
- 21.3. Where provision is made for services to be performed outside the partner State, the contract shall commence, insofar as such services are concerned, on the actual date of their performance, which shall not precede the date fixed by the Contracting Authority.

Article 22 : Period of performance

- 22.1. The period of performance shall commence on the date fixed in accordance with Article 21.1 and shall be as stated in the contract without prejudice to extensions of the period which may be granted under Article 23.
- 22.2. If provision is made for separate periods of performance for separate lots, such periods shall not be aggregated in cases where one Contractor is allocated more than one lot.
- 22.3. If in the case of technical cooperation projects covering a number of years, the Special Conditions make provision for several contractual periods, the period of performance shall be fixed taking into consideration the provisions of Article 31 and the parties shall be bound only for the first period. Save where one of the parties wishes to terminate the contract on the expiry of a contract period, the contract shall be renewed by means of successive riders at the end of each period, specifying the measures to be taken by the Contractor. The remuneration for the new period shall be fixed by the principles established in the contract.
- 22.4. Any intention not to renew the contract for a further contractual period must be notified to the other party not later than ninety days prior to the expiry of the current contractual period.

Article 23 : Extension of period of performance

- 23.1. The Contractor may request an extension to the period of performance if he is or will be delayed in completing the contract by any of the following causes :
 - a) extra or additional services ordered by the Supervisor ;
 - b) administrative orders affecting the date of completion other than those arising from the Contractor's default ;
 - c) failure of the Contracting Authority to fulfil his obligations under the contract ;
 - d) any suspension of the services which is not due to the Contractor's default ;
 - e) force majeure ;
 - f) any other causes of delay referred to in these General Conditions which are not due to the Contractor's default.
- 23.2. The Contractor shall, within fifteen days of becoming aware that delay may occur, notify the Supervisor of his intention to make a request for extension of the period of performance to which he considers himself entitled and shall within sixty days thereafter, except where otherwise agreed between the Contractor and Supervisor, deliver to the Supervisor full and detailed particulars of the request, in order that such request may be investigated at the time.

- 23.3. The Supervisor shall, by written notice to the Contractor after due consultation with the Contracting Authority and, where appropriate, the Contractor, grant such an extension of the period of performance as may be justified, either prospectively or retrospectively or inform the Contractor that he is not entitled to an extension.

Article 24 : Delays in performance

- 24.1. If the Contractor does not perform the services within the period(s) of performance specified in the contract, the Contracting Authority shall, without formal notice and without prejudice to his other remedies under the contract, be entitled to liquidated damages for every day, or part thereof, which shall elapse between the end of the period specified for performance or extended period of performance under Article 23 and the actual date of completion, at the rate and up to the maximum amount specified in the Special Conditions.
- 24.2. If the Contracting Authority is entitled to the maximum claim under Article 24 he may, after giving notice to the Contractor :
- a) terminate the contract ; and
 - b) complete the services at the Contractor's cost.

Article 25 : Suspension

- 25.1. The Contractor shall, on the order of the Supervisor, suspend the performance of the services or any part thereof for such time and in such manner as the Supervisor may consider necessary.
- 25.2. The Supervisor, after consultation with the Contracting Authority and the Contractor, shall determine such extension of the period of performance to be made to the Contractor in respect of such claim as shall, in the opinion of the Supervisor, be fair and reasonable.
- 25.3. If the period of suspension exceeds one hundred and eighty days and the suspension is not due to the Contractor's default, the Contractor may, by notice to the Supervisor, request permission to resume performance of the services within thirty days or terminate the contract.

Article 26 : Modifications

- 26.1. The Supervisor shall have power, without changing the object or scope of the contract, to order any modification to any part of the services necessary for the proper completion of the services. Such modifications may include additions, omissions, substitutions, changes in quality, quantity and changes in the specified sequence, method or timing of execution of the services. No order for a modification shall have the effect of invalidating the contract, but the financial effect, if any, of all such modifications shall be valued in accordance with Articles 26.5 and 26.7.
- 26.2. No modification shall be made except by administrative order, provided that :
- a) if for any reason, the Supervisor shall find it necessary to give an order orally, he shall as soon as possible thereafter confirm the order by an administrative order ;
 - b) if the Contractor shall confirm in writing an oral order given for the purpose of Article 26.2 a) and this confirmation shall not be contradicted in writing forthwith by the Supervisor, an administrative order shall be deemed to have been issued for the modification.
- 26.3. Without prejudice to Article 26.2, prior to any administrative order for modification, the Supervisor shall notify the Contractor of the nature and form of such modification. As soon as possible, after receiving such notice, the Contractor shall submit to the Supervisor a proposal containing :

- a) a description of the services to be performed or the measures to be taken and a work programme for the implementation of the modifications ; and
 - b) any necessary modifications to the work programme or to any of the Contractor's obligations under the contract ; and
 - c) any adjustment to the contract price in accordance with the rules as set out in Article 26.
- 26.4. Following the receipt of the Contractor's submission referred to in Article 26.3, the Supervisor shall, after due consultation with the Contracting Authority, and where appropriate the Contractor, decide as soon as possible whether or not the modification shall be carried out. If the Supervisor decides that the modification shall be carried out he shall issue the administrative order stating that the modification shall be carried out at the prices and under the conditions given in the Contractor's submission referred to in Article 26.3 or as modified by the Supervisor in accordance with Article 26.5.
- 26.5. The prices for all modifications ordered by the Supervisor in accordance with Articles 26.2 and 26.4 shall be ascertained by the Supervisor in accordance with the following principles :
- a) where the task is of similar character and executed under similar conditions to an item priced in the price schedule it shall be valued at such rates and prices contained therein ;
 - b) where the task is not of a similar character or is not executed under similar conditions, the rates and prices in the contract shall be used as the basis for valuation so far as is reasonable, failing which, a fair valuation shall be made by the Supervisor ;
 - c) if the nature or amount of any modification relative to the nature or amount of the whole of the contract or to any part thereof shall be such that in the opinion of the Supervisor any rate or price contained in the contract for any task is by reason of such modification rendered unreasonable, then the Supervisor shall fix such rate or price as in the circumstances he shall think reasonable and proper ;
 - d) where a modification is necessitated by default or breach of contract by the Contractor, any additional cost attributable to such modification shall be borne by the Contractor.
- 26.6. On receipt of the administrative order requesting the modification, the Contractor shall proceed to carry out the modification and be bound by these General Conditions in so doing as if such modification were stated in the contract. The services shall not be delayed pending the granting of any extension of time for completion or adjustment to the contract price. Where the order for a modification precedes the adjustment to the contract price, the Contractor shall keep records of the costs of undertaking the modification and of time expended thereon. Such records shall be open to inspection by the Supervisor at all reasonable times.
- 26.7. Where, on provisional acceptance, an increase or reduction in the total value of the services required under the contract which result from an administrative order or from some other circumstance which is not caused by the Contractor's default exceeds 15% of the contract price, the Supervisor shall, after consultation with the Contracting Authority and the Contractor, determine any additions to or reduction from the contract price as a consequence of the application of Article 26.5. The sum so determined shall be based on the amount by which the increase or decrease in value of the services exceeds 15%. The sum shall be notified by the Supervisor to the Contracting Authority and the Contractor and the contract price adjusted accordingly.

Article 27 : Working hours

- 27.1. The days and hours of work of the Contractor in the partner State shall be fixed on the basis of the laws, regulations and customs of that State and the requirements of the services being provided.

Article 28 : Leave entitlement

- 28.1. Where the contract provides for annual leave, the Contractor shall, during the period of performance of the contract, be entitled to take annual leave on the terms laid out in Article 28.
- 28.2. Entitlement to annual leave shall accrue at the rate stated in the contract. Such leave shall be allowable for every full period of six months and any part of a month thereafter during which the Contractor is performing the services. Annual leave shall be taken during the period of performance of the contract at a time approved by the Supervisor.
- 28.3. Entitlement to annual leave shall not be commuted into cash, unless in the opinion of the Supervisor the requirements of the services are such that annual leave cannot be taken during the period of performance of the contract.
- 28.4. The Contractor shall not be entitled to either sick or casual leave provided, however, that the Supervisor may, at his sole discretion whether for compassionate reasons or otherwise, permit the Contractor to take unpaid leave during the period of performance of the contract.

Article 29 : Information

- 29.1. The Contractor shall furnish the Supervisor with such information relating to the services and the project as the Supervisor may at any time request. In this respect, periodic reports, whose subject matter and frequency shall be as laid down in the Special Conditions, shall be drawn up by the Contractor. Implementation difficulties or technical omissions in the terms of reference shall form the subject of special reports.

Article 30 : Records

- 30.1. The Contractor shall keep accurate and systematic records and accounts in respect of the services in such form and detail as is customary in the profession and as shall be sufficient to establish accurately that the costs and expenditures which are referred to in Article 35 have been duly incurred for the performance of the services.
- 30.2. The Contractor shall permit the Supervisor to inspect, at any reasonable time, the records and accounts relating to the services and to make copies thereof and shall permit the Supervisor or any person authorized by the Supervisor, at any reasonable time, to audit such records and accounts both during and after provision of the services.

Article 31 : Submission of reports

- 31.1. Immediately prior to the completion of the services the Contractor shall draw up a confidential general report together, where appropriate, with a financial analysis of the project and a critical study of any major problems which may have arisen during the performance of the project.
- 31.2. The report referred to in Article 31.1 shall be forwarded to the Supervisor in the number of copies stated in the Special Conditions, not later than sixty days after the completion of the services by the Contractor. Such report shall not bind the Contracting Authority.
- 31.3. Where the contract is performed in phases, the execution of each phase shall give rise to the preparation of a report by the Contractor, save as otherwise provided in the Special Conditions.

- 31.4. The persons other than the Supervisor to whom copies of the reports and documents referred to in Articles 29 and 31 are to be sent and the time limits within which the Contractor shall forward them shall be stated in the Special Conditions. Such time limits shall take account of periods specified in the Special Conditions for examining and approving or rejecting reports and documents by the Contracting Authority.

Article 32 : Approval of reports and documents

- 32.1. The approval by the Contracting Authority of reports and documents drawn up and forwarded by the Contractor shall certify that they comply with the terms of the contract.
- 32.2. The Contracting Authority shall, within the time limits laid down in the Special Conditions, notify the Contractor of his decision concerning the documents or reports forwarded to him, giving reasons should he reject the reports or documents, or request amendments.
- 32.3. Where a report or document is approved by the Contracting Authority subject to amendments to be made by the Contractor, the Contracting Authority shall prescribe a period for making the amendments requested.
- 32.4. Where the contract is performed in phases, the execution of each phase shall be subject to the approval, by the Contracting Authority, of the preceding phase except where the phases are carried out concurrently.

PAYMENTS

Article 33 : General provisions

- 33.1. The currency or currencies of payments shall be as stated in the contract.
- 33.2. The administrative and technical conditions to which the payment of advances, interim payments or payment of balance are subject, in accordance with Articles 34 to 39, shall be as stated in the Special Conditions.

Article 34 : Advances

- 34.1. If the Special Conditions so provide, advances shall be granted to the Contractor, at his request, for operations connected with the performance of the services, as a lump sum advance enabling him to meet expenditure resulting from the commencement of the contract.
- 34.2. Subject to the provisions of the Special Conditions, the total amount of the advances shall not exceed 20 % of the original contract price.
- 34.3. No advance shall be granted until :
 - a) the conclusion of the contract ;
 - b) the Contractor has provided the Donor's Representative with a separate directly liable guarantee for the full amount of the advance, established 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. If the 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 and the Donor's Representative in accordance with the eligibility criteria applicable for the award of the contract. In any case, the guarantee shall be valid and remain effective for at least sixty days after acceptance of the final report.
- 34.4. The Contractor shall use the advance exclusively for operations connected with the performance of the services. Should the Contractor misuse any portion of the advance, it shall become due and repayable immediately and no further advance payment shall be made to him.
- 34.5. Should the advance guarantee cease to be valid and the Contractor fail to re-validate it, the Donor's Representative may either make a deduction equal to the amount of the advance from future payments due to the Contractor under the contract, or if the Donor's Representative considers such a deduction to be impracticable, he may terminate the contract.
- 34.6. If the contract is terminated for any reason whatsoever, the guarantees securing the advances may be invoked forthwith in order to repay the balance of the advances still owed by the Contractor, and the guarantor shall not delay payment or raise objection for any reason whatever.
- 34.7. The advance guarantee provided for in Article 34 shall be released as and when advances are reimbursed.
- 34.8. Further conditions and procedures for granting and reimbursing advances shall be as laid down in the Special Conditions.

Article 35 : Payment procedure

- 35.1. The Contractor shall be entitled to interim payments or to the payment of the final balance in accordance with the procedures, schedule and time limits stipulated in the contract as and when the services are provided and accepted.

- 35.2. Remuneration for parts of a month shall be based on a daily rate of one thirtieth of the corresponding monthly unit price. Abatements for any incomplete provision of services shall be made on the basis of the prices laid down in the contract in respect of the part of the services which were not provided.
- 35.3. For the part of the contract which is based on overall and fixed prices or on unit prices, provision may be made for the payment of interim payments only in respect of services rendered and, in the case of the part of a contract based on the reimbursement of costs, on submission of the appropriate supporting documents.
- 35.4. The amount of an interim payment shall not exceed 90% of the value of the services to which it relates; the remaining 10% thus withheld shall be paid as a final balance.
- 35.5. The frequency of interim payments shall be as laid down in the Special Conditions. As a general rule they shall be paid either on a monthly basis or as and when certain phases or parts of the services are completed.
- 35.6. The conditions to which payments relating to other services entrusted to the Contractor shall be subject, shall be as laid down in the Special Conditions.
- 35.7. For each payment, the Contractor shall send the Contracting Authority four copies of a written request for payment together with itemized statements, accompanied by receipts, invoices, vouchers and other appropriate supporting materials, of the amounts payable for each month or period.
- 35.8. Within thirty days of receipt of the said application for interim payment, it shall be approved or amended in such manner that, in the Supervisor's opinion, the application reflects the amount due to the Contractor in accordance with the contract. In cases where there is a difference of opinion as to the value of an item, the Supervisor's view shall prevail. On determination of the amount due to the Contractor, the Supervisor shall issue to the Contracting Authority and the Contractor an interim payment certificate for the amount due to the Contractor and shall inform the Contractor of the services for which payment is being made.
- 35.9. The Supervisor may, by an interim payment certificate, make any corrections or modifications to any previous certificate issued by him and shall have power to modify the valuation in or withhold the issue of any interim payment certificate if the services or any part thereof are not being carried out to his satisfaction.
- 35.10. Payment of the final balance shall be subject to performance by the Contractor of all his obligations relating to the execution of all phases or parts of the services and to the approval by the Contracting Authority of the final phase or part of the services. Final payment shall be made only after the final report and a final statement, identified as such, shall have been submitted by the Contractor and approved as satisfactory by the Contracting Authority. Any amount which the Contracting Authority has paid, or caused to be paid, in accordance with Article 35 in excess of the Contractor's entitlement under the contract, shall be reimbursed by the Contractor to the Contracting Authority within thirty days after receipt by the Contractor of notice thereof.
- 35.11. If any of the following events occurs and persists, the Contracting Authority may, by written notice to the Contractor, suspend in whole or in part, payments due to the Contractor under the contract :
- a) the Contractor defaults in the performance of the contract ;
 - b) any other condition for which the Contractor is responsible under the contract and which, in the opinion of the Contracting Authority, interferes, or threatens to interfere, with the successful performance of the project or the contract.

Article 36 : Travel and transport

- 36.1. Unless the Special Conditions provide otherwise, the travel expenses for eligible staff of the Contractor and of their spouses and dependent children within the meaning of the law of the country in which the Contractor has his registered place of business, shall be reimbursed by the Contracting Authority. These costs shall be limited to the cost of the most direct practicable route between the usual place of residence and the place where the contract is to be performed.
- 36.2. Air travel shall be by economy class. Journeys necessitating travel by sea, rail or river shall be made first class. The cost of transporting the luggage of eligible staff between the usual place of residence and the place where the contract is to be performed shall be borne by the Contracting Authority within the weight limits stipulated in the Special Conditions.
- 36.3. The conditions under which transport cost of documents, equipment and materials may be borne by the Contracting Authority, shall be as stated in the Special Conditions.
- 36.4. In all cases, reimbursement will be subject to submission of supporting documents.

Article 37 : Revision of prices

- 37.1. Unless otherwise stipulated in the Special Conditions, and except as provided in Article 37.4, contracts shall be at fixed prices which shall not be revised.
- 37.2. Where the prices may be revised under the contract, such revision shall take into account variation in the prices of significant local or external elements which served as a basis for the calculation of the tender price, such as manpower and other services. The detailed rules for the revision shall be as laid down in the Special Conditions.
- 37.3. Prices contained in the Contractor's tender shall be deemed :
 - a) to have been arrived at on the basis of the conditions in force thirty days prior to the latest date fixed for the submission of tenders, or in the case of direct agreement contracts, on the date of the contract ; and
 - b) to have taken account of the legislation and the relevant tax arrangements applicable at the reference date fixed in Article 37.3 a).
- 37.4. In the event of changes to or introduction of any national or State statute, ordinance, decree, or other law, or any regulation or bye-law of any local or other public authority, after the date stated in Article 37.3 which causes a change in the contractual relationship between parties to the contract, the Contracting Authority and the Contractor shall consult on how best to proceed further under the contract, and may as a result of such consultation decide :
 - a) to modify the contract ;
 - b) on payment of compensation for the resulting imbalance by one party to the other ; or
 - c) to terminate the contract by mutual agreement.
- 37.5. In the event of a delay in the performance of the services for which the Contractor is responsible or at the end of the period of performance, revised as necessary in accordance with the contract, there shall be no further revision of prices within the thirty days before completion of the services except for the application of new price indexation, if this is to the benefit of the Contracting Authority.

Article 38 : Delayed payments

- 38.1. Payment to the Contractor of the amounts due under each of the interim payment certificates, and the certificate for the final balance issued by the Supervisor shall be made by the Donor's Representative within ninety days of such certificate being delivered to him. If the period laid down for payment has been exceeded, the Contractor shall qualify for interest calculated pro rata on the basis of the number of days delay at the rate specified in the Special Conditions, subject to a maximum period also specified therein. The Contractor shall be entitled to such payment without formal notice and without prejudice to any other right or remedy under the contract. In the case of the final statement of account, the interest for the delayed payment shall be calculated on a daily basis at the rate specified in the Special Conditions.
- 38.2. Any default in payment of more than one hundred and twenty days from the expiry of the period laid down in Article 38.1 shall entitle the Contractor either not to perform the contract or to terminate it.

Article 39 : Payment to third parties

- 39.1. All orders for payments to third parties may be carried out only after a cession made in accordance with Article 6. The cession shall be notified to the Contracting Authority.
- 39.2. Notification of beneficiaries of cession shall be the sole responsibility of the Contractor.
- 39.3. In the event of a legally binding attachment of the property of the Contractor affecting payments due to him under the contract and without prejudice to the time limit laid down in Article 38, the Contracting Authority shall have thirty days, starting from the day when it receives notification of the definitive lifting of the obstacle to payment, to resume payments to the Contractor.

BREACH OF CONTRACT AND TERMINATION

Article 40 : Breach of contract

- 40.1. Either party commits a breach of contract where he fails to discharge any of his obligations under the contract.
- 40.2. Where a breach of contract occurs, the party injured by the breach shall be entitled to the following remedies :
- a) damages ; and/or
 - b) termination of the contract.
- 40.3. Damages may be :
- a) general damages ; or
 - b) liquidated damages.
- 40.4. In any case where the Contracting Authority is entitled to damages, it may deduct such damages from any sums due to the Contractor or from the appropriate guarantee.
- 40.5. Subject to the law of the State of the Contracting Authority, the Contracting Authority shall be entitled to compensation for any damage which comes to light after the contract is completed.

Article 41 : Termination by the Contracting Authority

- 41.1. The Contracting Authority may, at any time and with immediate effect, terminate the contract, except as provided for in Article 41.2.
- 41.2. Except as otherwise provided in these General Conditions, the Contracting Authority may, after giving seven days notice to the Contractor, terminate the contract in any of the following cases where :
- a) the Contractor fails to carry out the services substantially in accordance with the contract ;
 - b) the Contractor continues to default for a period of fourteen days after the Contracting Authority has given notice to him of suspension of payments under Article 35.11 ;
 - c) the Contractor fails to comply within a reasonable time with the notice given by the Supervisor requiring him to make good the neglect or failure to perform his obligations under the contract which seriously affects the proper and timely performance of the services ;
 - d) the Contractor refuses or neglects to carry out administrative orders given by the Supervisor ;
 - e) the Contractor assigns the contract or sub-contracts without the authorization of the Contracting Authority ;
 - f) the Contractor becomes bankrupt or insolvent, or has a receiving order made against him, or compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or goes into liquidation ;
 - g) any adverse final judgment is made in respect of an offence affecting the professional conduct of the Contractor ;
 - h) any other legal disability hindering performance of the contract occurs ;
 - i) any organizational modification occurs involving a change in the legal personality, nature or control of the Contractor, unless such modification is recorded in an endorsement to the contract ;

- j) the Contractor fails to maintain his independence in accordance with Article 12.1 ;
 - k) the Contractor fails to provide the required guarantees or insurance, or if the person providing the earlier guarantee or insurance is not able to abide by his commitments.
- 41.3. Termination shall be without prejudice to any other rights or powers under the contract of the Contracting Authority and the Contractor. The Contracting Authority may, thereafter, complete the services itself, or conclude any other contract with a third party, for the account of the Contractor. The Contractor's liability for delay in completion shall immediately cease when the Contracting Authority terminates the contracts without prejudice to any liability thereunder that may have already been incurred.
- 41.4. Upon termination of the contract or when he has received notice thereof, the Contractor shall take immediate steps to bring the services to a close in a prompt and orderly manner and to reduce expenditure to a minimum.
- 41.5. The Supervisor shall, as soon as is possible after termination, certify the value of the services and all sums due to the Contractor as at the date of termination.
- 41.6. The Contracting Authority shall not be obliged to make any further payments to the Contractor until the services are completed, whereupon the Contracting Authority shall be entitled to recover from the Contractor the extra costs, if any, of completing the services, or shall pay any balance due to the Contractor.
- 41.7. If the Contracting Authority terminates the contract, it shall be entitled to recover from the Contractor any loss it has suffered up to the maximum amount stated in the contract. If no maximum amount is stated, the Contracting Authority shall, without prejudice to its other remedies under the contract, be entitled to recover that part of the contract price which is attributable to that part of the services which has not, by reason of the Contractor's failure, been satisfactorily completed.
- 41.8. Where the termination is not due to an act or omission of the Contractor, the Contractor shall be entitled to claim in addition to sums owing to him for work already performed, an indemnity for loss suffered.

Article 42 : Termination by the Contractor

- 42.1. The Contractor may, after giving fourteen days notice to the Contracting Authority, terminate the contract if the Contracting Authority :
- a) fails to pay the Contractor the amounts due under any certificate of the Supervisor after the expiry of the time limit stated in Article 38.2 ; or
 - b) consistently fails to meet his obligations after repeated reminders ; or
 - c) suspends the progress of the services or any part thereof for more than one hundred and eighty days for reasons not specified in the contract, or not due to the Contractor's default.
- 42.2. Such termination shall be without prejudice to any other rights of the Contracting Authority or the Contractor acquired under the contract.
- 42.3. In the event of such termination, the Contracting Authority shall pay the Contractor for any loss or injury the Contractor may have suffered. Such additional payment may not exceed a limit which has to be specified in the contract.

Article 43 : Force majeure

- 43.1. Neither party shall be considered to be in default or in breach of his obligations under the contract if the performance of such obligations is prevented by any circumstances of force majeure which arise after the date of notification of the award or the date when the contract becomes effective, whichever is the earlier.

- 43.2. The term force majeure, as used herein shall mean strikes, lock-outs or other industrial disturbances, acts of the public enemy, wars, whether declared or not, blockades, insurrection, riots, epidemics, landslides, earthquakes, storms, lightning, floods, erosion, civil disturbances, explosions, and any other similar unforeseeable events, not within the control of either party and which by the exercise of due diligence neither party is able to overcome.
- 43.3. Notwithstanding the provisions of Articles 24 and 41, the Contractor shall not be liable for liquidated damages or termination for default if, and to the extent that, his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure. The Contracting Authority shall similarly not be liable, notwithstanding the provisions of Articles 38 and 42, to termination by the Contractor for default, if, and to the extent that, the Contracting Authority's delay or other failure to perform its obligations is the result of force majeure.
- 43.4. If either party considers that any circumstances of force majeure have occurred which may affect performance of his obligations he shall promptly notify the other party and the Supervisor giving details of the nature, the probable duration and likely effect of the circumstances. Unless otherwise directed by the Supervisor in writing, the Contractor shall continue to perform his obligations under the contract as far as is reasonably practicable, and shall seek all reasonable alternative means for performance of his obligations which are not prevented by the force majeure event. The Contractor shall not put into effect such alternative means unless directed so to do by the Supervisor.
- 43.5. If the Contractor incurs additional costs in complying with the Supervisor's directions or using alternative means under Article 43.4 the amount thereof shall be certified by the Supervisor.
- 43.6. If circumstances of force majeure have occurred and persist for a period of one hundred and eighty days then, notwithstanding any extension of the period of performance that the Contractor may by reason thereof have been granted, either party shall be entitled to serve upon the other thirty days' notice to terminate the contract. If at the expiry of the period of thirty days the situation of force majeure persists, the contract shall terminate and in consequence thereof, the parties shall be released from further performance of the contract.

Article 44 : Decease

- 44.1. Where the Contractor is a natural person, the contract shall be automatically terminated if that person dies. However, the Contracting Authority shall examine any proposal made by the heirs or beneficiaries if they have notified their wish to continue the contract. The decision of the Contracting Authority shall be notified to those concerned within thirty days of receipt of such proposal.
- 44.2. Where the Contractor consists of natural persons and one or more of them die, a report shall be agreed between the parties on the progress of the services and the Contracting Authority shall decide whether to terminate or continue the contract in accordance with the undertaking given by the survivors and by the heirs or beneficiaries, as the case may be.
- 44.3. In the cases provided for in Articles 44.1 and 44.2, persons offering to continue to perform the contract shall notify the Contracting Authority thereof within fifteen days of the date of decease.
- 44.4. Such persons shall be jointly and severally liable, or as otherwise stated in the Special Conditions, for the proper performance of the contract to the same extent as the Contractor. Continuation of the contract shall be subject to the rules relating to establishment of any guarantee provided for in the Special Conditions.

SETTLEMENT OF DISPUTES

Article 45 : Settlement of disputes

- 45.1. The Contracting Authority and the Contractor shall make every effort to amicably settle any dispute relating to the contract which may arise between them, or between the Supervisor and the Contractor.
- 45.2. The Special Conditions shall prescribe :
- a) the procedure for the amicable settlement of disputes ;
 - b) the time limits within which the amicable settlement procedure may be invoked after the time that the dispute is notified to the other party and the maximum time limit within which such settlement may be reached, provided that the time limit prescribed for reaching such settlement does not exceed one hundred and twenty days from the commencement of the adopted procedure ;
 - c) the time limits for responding in writing to a request for amicable settlement or to other requests permitted during the course of that procedure and the consequence of failure to comply with those time limits.
- 45.3. The parties may agree to the settlement of the dispute by conciliation within a specific time limit by a third party after the amicable settlement procedure adopted has failed.
- 45.4. The amicable settlement or conciliation procedure adopted shall in all cases involve a procedure in which complaints and responses are notified to the other party.
- 45.5. In the absence of an amicable settlement or settlement by conciliation within the maximum time limits specified, the dispute shall:
- a) in the case of a national contract, be settled in accordance with the national legislation of the State of the Contracting Authority ; and
 - b) in the case of a transnational contract, be settled, either :
 - i) if the parties to the contract so agree, in accordance with the national legislation of the State of the Contracting Authority or its established international practices ; or
 - ii) by arbitration in accordance with the procedural rules adopted in accordance with the Convention.