

VOLUME 2

SECTION 3 SPECIAL CONDITIONS

CONTENTS

These conditions amplify and supplement the general conditions governing the contract. Unless the special conditions provide otherwise, the general conditions remain fully applicable. The numbering of the articles of the special conditions is not consecutive but follows the numbering of the general conditions. Other special conditions should be indicated afterwards.

How to complete these special conditions:

Where you see < ... >, enter the information relevant to the special conditions. Square brackets [] and parts shaded in grey indicate options to choose: they should be deleted when applicable, but should not be modified. All other parts of these standard instructions must be left unchanged. In the final version of the instructions to tenderers, please remember to delete this paragraph, any other text with yellow highlighting and to suppress grey brackets when applicable.

Note that the special conditions provide for allowed deviations from the general conditions. The use of further deviations from the general conditions requires an exception to be granted by the relevant services of the European Commission.

Article 2 Language of the contract

- 2.1 The language used shall be English.

Article 4 Communication

- 4.1 <Indicate here the contact persons, addresses of the parties, their other contact details, the documents to provide and the procedure to be used by the parties for communication.>
- 4.2 An electronic system will be used by the contracting authority and the contractor for all stages of implementation including, inter alia, management of the contract (amendments and administrative orders), reporting (including reporting on results) and payments. The contractor will be required to register in and use the appropriate electronic exchange system to allow for the e-management of the contract.

The electronic management of the contract through the aforementioned system may commence on the date on which implementation of the contract starts, as described in Article 33 of the general conditions to the contract, or at a later date. In the latter case, the contracting authority will inform the contractor in writing that he will be required to use the electronic system for all communications within a maximum period of 3 months.

Article 5 Supervisor and supervisor's representative

- 5.2 <Specify the resources available to the project supervisor and its representative.>
- 5.3 <Specify the powers of the project Supervisor and its representative.>
- 5.4 <Specify the practical arrangements for administrative orders.>

[Article 7 Subcontracting

Only for commitments financed by a basic act under the MFF 2014-2020:

EDF only:

- 7.3 In the selection of subcontractors, the contractor shall give preference to natural persons, companies or firms of ACP States capable of implementing the tasks required on similar terms.]

Article 8 Documents to be provided

- 8.1 <Specify the documents to be provided by the contracting authority and the supervisor to the contractor and the procedure used if necessary for the provision of these documents.>

Article 9 Access to the site

- 9.1 The contractor is reminded that there is a head of delegation of the European Commission in the state of the contracting authority. The contractor is obliged to give the head of delegation free access to its sites, factories, workshops, etc., and generally assist the head of delegation, like the project Supervisor, in the performance of his duties. The same provisions also apply to the appointed representatives of the head of delegation.

All correspondence between the contractor and the contracting authority or project supervisor must be copied, for information, to the head of delegation of the European Commission at the following official address:

<Enter official address.>

Article 12 General obligations

- 12.9 <Specify the specific activities to be put in place by the contractor to comply with its minimum obligation towards visibility and, if applicable, any additional communication activities agreed by the European Commission. These activities must comply with the latest Communication and Visibility Requirements for EU-funded external action, laid down and published by the European Commission .>

Article 15 Performance guarantee

- 15.1 The amount of the performance guarantee will be <specify percentage between 5 and 10 %> of the amount of the contract and any addenda thereto.

For amounts of EUR 345 000 or below, on the basis of objective criteria such as the type and value of the contract, the contracting authority may decide not to require such a guarantee.

[For some specific contracts and on basis of objective criteria such as the type, duration and amount of the contract, this clause can be added:

- 15.8 Within 60 days after the deliverance of the certificate of provisional acceptance according to Article 60.1 and the completion of any outstanding work or reservation, <specify percentage between 0 and 100 %> of the amount of the performance guarantee may be released.]

Article 16 Liabilities and insurance

- 16.1 a) <Specify here the specific requirements – if any – of liability for damage to the works> If you find it necessary to set a limit other than that referred to in the general conditions, add the following clause :

[“By way of derogation from Article 16.1, a) paragraph 2, of the general conditions, compensation for damage to the works resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to <complete with an amount that can be a multiple or fraction of the contract value>.”]

- 16.1 b) <Specify here the specific requirements – if any – of liability for damages to the contracting authority> [If you find it necessary to set a limit other than that referred to in the general conditions, add the following clause :

“By way of derogation from Article 16.1(b), paragraph 2, of the general conditions, compensation for damage resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to <complete with an amount that can be a multiple or fraction of the contract value>.”]

- 16.2 a) first paragraph <Specify here specific requirements – if any – on when the requirements of proof of completion of adequate insurance must be provided> [If you find it necessary to tailor differently when the requirements for proof of insurance must be met, add the following clause:

By derogation from Article 16.2(a) first paragraph of the general conditions, <indicate when>, the contractor shall ensure that itself, its personnel, its subcontractors and any person for which the contractor is answerable, are adequately insured with insurance companies recognized on the international insurance market, unless the contracting authority has given its express written consent on a specific insurance company.]

- 16.2 a) paragraph 2 <Specify here specific requirements – if any – on when the requirements of communication of cover notes and/or insurance certificates must be fulfilled> [If you find it necessary to tailor differently the moment cover notes and/or insurance certificates must be communicated, add the following clause :

By derogation from Article 16.2(a) paragraph 2 of the general conditions it is <state when> that the contractor shall provide the contracting authority and the supervisor with all cover notes and/or insurance certificates showing that the contractor's obligations relating to insurance are fully respected.]

Article 17 Programme of implementation of tasks

<Specify any specific requirements.>

Article 19 Contractor's drawings and execution studies

- 19.1 <Specify any other requirements for detailed drawings to be drawn up by the contractor and submitted for the supervisor's approval, the time limits, the procedures for approving them and requirements relating to any manuals.>

- 19.7 <Specify whether the language of the manuals and drawings can be different than the language of the contract.>

Article 20 Sufficiency of tender prices

<Specify any additional provisions regarding the scope of the contractor's tender.>

Article 21 Exceptional risks

21.4 <Specify any potential exceptional weather conditions.>

Article 24 Interference with traffic

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

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

Article 27 Demolished materials

27.2 <Specify whether demolition materials become the property of the contracting authority.>

27.4 <Specify who is to remove demolition materials if it is not the contractor.>

Article 29 Temporary works

29.2 <Specify whether the design of particular temporary works is the responsibility of the contracting authority.>

Article 30 Soil studies

30.1 <Specify, if necessary, the arrangements for soil studies.>

Article 32 Patents and licenses

32.1 <Specify whether or not there is a derogation from Article 32 of the general conditions.>

Article 34 Period of implementation of tasks

34.1 <Specify the period(s) of implementation of tasks: number of months in figures and words>

Article 36 Delays in the implementation of tasks

36.1 <Specify as required the amount of liquidated damages per day of delay and the maximum aggregate amount of such compensation; 1/1000 of the contract price per day's delay up to a limit of 20 % of the total contract price or EUR 100000 per day's delay up to a limit of EUR 10000000.>

[Otherwise enter the following default provisions:

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 <Specify if a work register is not required. If required, specify the practical details.>

39.2 <Specify the technical rules for drawing up statements.>

Article 40 Origin and quality of works and materials

40.1 [Under the Multiannual Financial Framework 2021-2027: All goods purchased and materials under the contract may originate in any country.]

[Under the Multiannual Financial Framework 2014-2020: All goods purchased under the contract must originate in any eligible source country as defined in < insert relevant instrument financing the project > programme.]

[General budget of the Union for calls under the Multiannual Financial Framework 2014-2020 where the CIR applies + EDF: However, the goods to be purchased may originate in any country, whenever the total price of the estimated quantity of those goods, as reflected in a separate item of the

[for unit price contracts Bill of quantities (Volume 4.3.2)]

[for lump sum contracts Breakdown of the lump-sum price (Volume 4.2.3)]

is below EUR 100 000.

A category of similar goods to be purchased shall not be broken down over more than 1 item of the [for unit price contracts :bill of quantities (Volume 4.3.2)] [for lump sum contracts: breakdown of the lump-sum price (Volume 4.2.3)]

For these purposes, ‘origin’ means the place where the goods are mined, grown, produced or manufactured and/or from which services are provided. The origin of the goods must be determined according to the EU Customs Code or the applicable international agreement.

[EDF: Goods originating in the EU include goods originating in the Overseas Countries and Territories.]

<Specify any authorised derogation from the rules of origin>

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 following specifications < specify the specifications.>

(*) the requirements of < specify the technical document(s) containing these requirements.>

40.3 <Specify whether preliminary technical acceptance is necessary and the conditions governing its implementation.>

Article 41 Inspection and testing

<Specify the places to be inspected and tested in accordance with Article 41 of the general conditions and the practical arrangements for testing.>

Article 43 Ownership of plant and materials

43.2 <Specify whether the equipment, temporary structures, plant and materials on the site belong to the contracting authority under Article 43 of the general conditions and the legal instrument(s) used.>

Article 44: General principles for payments

- 44.1 Payments shall be made in [euro] [<national currency> only for indirect management].
- 44.2 If invoices are submitted to the contracting authority, the contractor shall inform the European Commission thereof by sending a copy to <enter address of the delegation if this option is used>.
- 44.3 [General budget of the Union only
- [Option 1 – Indirect management:
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.]
- [Option 2 – Direct management:
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 60 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 60 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 60 days.]]

Article 46 Pre-financing

- 46.1 <Specify whether pre-financing is possible>
- 46.2 < Specify what the total amount of the pre-financing is. Note that the total amount of the pre-financing must not exceed 10 % of the original contract price for the lump-sum advance and 20 % for all other pre-financing.>
- 46.3(c) [Insert either of the below sentences in the following cases:
[if the total contract price is below or equal to EUR 60 000:]
[By derogation from Article 46.3(c) of the general conditions, no pre-financing guarantee is required.]
- [if the total contract price is above EUR 60 000:]
[When (i) the pre-financing requested is equal or below EUR 300 000 and (ii) the contracting authority does not require a financial guarantee following a risk assessment, by derogation from Article 46.3(c) of the general conditions no pre-financing guarantee is required.]
- 46.8 Repayment of the pre-financing shall take the form of deductions based on monthly claims.
- a) 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:

$$R = \frac{Va \times D}{Vt \times 0.8}$$

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.

- b) 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:

$$R = \frac{Va \times D}{Vt \times 0.9}$$

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 <Specify the practical arrangements for retention monies. Normally, the sum to be retained from interim payments to guarantee implementation of the contractor's obligations during the defects liability period is 10 % of each instalment.>

Article 48 Price revision

Prices must be revised for contracts:

- With a total amount above EUR 5 000 000 (excluding VAT) **and/or**
- With a duration above 1 year

As detailed below, price revision is calculated on basis of weight coefficient of inputs which composed the contract price. These coefficients are set up according to the detailed breakdown of price (Volume 4 of the tender dossier). If the detailed breakdown of price is not requested during the tender procedure, the contracting authority may use its own established price revision formula.

- 48.1 Prices contained in the contractor's tender must be deemed to have been established at the economic conditions in force 30 days prior the latest date fixed for the submission of the tenders (reference date = <specify reference date (mm/yy)>). If there is a variation in the economic conditions during the works, the monthly interim payment certificate will be adjusted by applying the revision formulas in accordance with Article 48.2.
- 48.2 The revision of prices must be calculated by combining the application of (a) mono-material formula and (b) proportional formula as follows:
- a) the mono-material formula will be applied to the following unit prices of the bill of quantities :
- <specify unit price (n°, material to revise)>
 - <specify unit price (n°, material to revise)>

The unit prices to which the mono-material formula applies must be chosen among those including one specific material (or input) or more which :

- have a significant volatility
- represent a significant part of the total contract amount
- is clearly identified in the detailed breakdown of prices.

(For example the mono material formula can be applied to such unit prices of the bill of quantities (but not exclusively):

- reinforced concrete (for materials like cement and steel)
- pavement (for materials like bitumen)

The revision of the above listed unit price(s) will be calculated by revision of the price(s) of their respective material(s) or input(s) in the detailed breakdown of prices according to the following formula:

$$p_n = p_0 \times \frac{Mat_n}{Mat_0} \times \frac{Tx_n}{Tx_0}$$

Where :

p_0 = Material unit price (in the detailed breakdown of prices) at reference date

p_n = Revised material unit price (in the detailed breakdown of prices) at month n

Mat₀= official supply price or relevant index of the concerned material at the reference date

Mat_n= official supply price or relevant index of the concerned material at the month n

Tx₀= exchange rate between the currency of the indicator MAT₀ 'C' and the currency of contract payment 'E' (according to Article 44.1) at the reference date: 1 C = Tx₀ E

The exchange rates shall be those published on the InforEuro website, currently at http://ec.europa.eu/budget/index_en.cfm

Tx_n = same exchange rate at the month n: 1 C = Tx_n E

The special conditions must then define:

- the nature of official supply price or relevant index,
- the reference values of prices, index and currencies exchange rate

For this contract the following index and reference values will be used:

Material	Mat (official supply price or relevant index)	Currency of Mat	Mat ₀	Tx ₀
<Material 1>	<Specify official supply price or relevant index and source of publication>	<currency of the contract/other currency>	<Specify Mat ₀ >	<Specify Tx ₀ >
<Material 2>	<Specify official supply price or relevant index and source of publication>	<currency of the contract/other currency>	<Specify Mat ₀ >	<Specify Tx ₀ >
...		
<Material i>	<Specify official supply price or relevant index and source of publication>	<currency of the contract/other currency>	<Specify Mat ₀ >	<Specify Tx ₀ >

Example:

Inputs	Mat (official supply price or relevant index)	Currency of Mat	Mat ₀	Tx ₀
Cement	Official prices in country Y of one ton of cement published in review X	XOF	150 000 XOF	<Specify Tx ₀ >
Steel	Steel index in country W published in review Z	Currency W	<Specify Mat ₀ >	<Specify Tx ₀ >
...		

- b) the proportional revision shall then be applied to the amount of each interim payment certificate after deduction of any amount due for repayment of pre-financing:

$$P_n = P_0 \left(a + b \frac{E_n}{E_0} \times \frac{Tx_n}{Tx_0} + c \frac{Mt_n}{Mt_0} \times \frac{Tx_n}{Tx_0} + d \frac{G_n}{G_0} \times \frac{Tx_n}{Tx_0} \right)$$

Where:

P_n = amount of the interim payment certificate after deduction of any amount due for repayment of pre-financing after price revision

P_0 = amount of the interim payment certificate after deduction of any amount due for repayment of pre-financing before application of proportional price revision

E_0 = < Specify official price or relevant index of labour cost in at the reference date >

E_n = < Specify official price or relevant index of labour cost in at month n >

Mt_0 = < Specify official price or relevant index for the supply and maintenance of equipment at the reference date >

Mt_n = < Specify official price or relevant index for the supply and maintenance of equipment at month n >

G_0 = < Specify official price or relevant index of petrol, gas or diesel in at the reference date >

G_n = < Specify official price or relevant index of petrol, gas or diesel in at month n >

Tx_0 = exchange rate between the currency of the selected indicator 'C' and the currency of contract payment 'E' at the reference date: 1 C = Tx₀ E

The exchange rates shall be those published on the InforEuro website, currently at http://ec.europa.eu/budget/index_en.cfm

Tx_n = same exchange rate at the month n: 1 C = Tx_n E

The indexes or prices (E Mt and G) shall be selected as the most reliable amongst those available. The indices listed above are understood to be strictly defined as in the source document. The publishing entity and the title of the concerned publication shall be also specified.

The total of the coefficients must be equal to 1.

[As a general rule, the average 'a' coefficient of the proportional formula calculated for road construction projects should exceed 0.35.]

The coefficients a, b, c and d will be calculated on the basis of the detailed breakdown of prices provided by the contractor in its submission. The contractor will have to provide clear arithmetical calculations for the proposed coefficients.

In order to avoid a double price revision, coefficient a must include the weight of inputs or materials for which the mono-material formula is applied.

- c) there will be no revision threshold;
- d) If the contractor modifies the country of origin of the source of its materials or other components to be used for the execution of works, it shall inform by writing within 30 days the supervisor, who will change the formula for the revision of prices by introducing the indices of the new country of origin.

Article 49 Measurement

49.1 [Specify one of the following three methods for measuring the works:

(*) [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 ... >.]

(*) [This is a unit-price contract.

<or, in case of a hybrid contract, for example:> Apart from the amounts qualified as lump sums in the bill of quantities, this is a unit-price contract [<Or another example:>Apart from the items <to be identified>, this is a unit-price contract.]]

(*) [This is a 'cost plus' contract. (Specify the information that the contractor is required to submit to the supervisor and the manner in which it should be submitted).]]

Article 50 Interim payments

50.1 <Specify here the practical arrangements for interim payments.>

Article 51 Final statement of account

51.(1) and (2) [Depending on the practice in the State of the contracting authority, the following provisions may be included:

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.

51.6 <Specify here any derogation.>]

[For direct management, add the following article:

Article 53 Delayed payments

53.1 By derogation from Article 53.1 of the general conditions, once the time-limit referred Article 44.3 has expired, the contractor shall be entitled to late-payment interest at the rate and for the period mentioned in the general conditions.

However, when the interest calculated in accordance with the first subparagraph is lower than or equal to EUR 200, it shall be paid to the creditor only upon a demand submitted within two months of receiving late payment]

[if the defects liability period does not run from the date of partial acceptance add the following article.

Article 59 Partial acceptance

59.3 The defects liability period provided for in Article 61 shall run from < specify here when the defects liability period begins>]

Article 60 Provisional acceptance

60.1 In complement to Article 60.1 of the general conditions <specify any detailed arrangements for provisional acceptance.>

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.

[if necessary you can add additional obligation:

In complement to Article 61.1 of the general conditions <specify any additional obligations under the guarantee.>]

61.6 <Specify whether the defects liability work necessitated by normal wear and tear is to be carried out by the contractor.>

61.7 <Specify whether the duration of the defects liability period is less than the maximum of 365 days. Specify any additional obligations under the warranty, e.g. commercial warranty.>

<Specify when any statutory regulation provides for one or several mandatory period(s) and if applicable the scope of the liability of the contractor for each period.>

Article 68 Dispute settlement

68.4 [Direct management:

Any dispute arising out of or relating to this contract which cannot be settled otherwise shall be referred to the exclusive jurisdiction of the courts of Brussels, Belgium.]

[Indirect management:

[General budget of the Union:

EITHER

Any dispute arising out of or relating to this contract which cannot be settled otherwise shall be referred to the exclusive jurisdiction of <specify> in accordance with the national legislation of the state of the contracting authority.

OR

Any disputes arising out of or relating to this contract which cannot be settled otherwise shall be referred for arbitration to <specify the arbitration body> in accordance with the rules of arbitration of [the International Chamber of Commerce] [the United Nations Commission on International Trade Law] [< other internationally recognised procedure to be specified >]]]

[EDF:

Any dispute arising out of or relating to this contract which cannot be settled otherwise 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 on conciliation and arbitration of contracts financed by the European Development Fund, adopted by Decision No 3/90 of the ACP-EEC Council of Ministers of 29 March 1990 (Official Journal No L 382 of 31.12.1990, Annex A12 of the practical guide.)
<Please attach Annex A12 of the practical guide to the present contract>]]

Article 72 Data protection

[The following text is to be inserted for indirect management]

[1. Processing of personal data related to the implementation of the contract by the contracting authority takes place in accordance with the national legislation of the state of the contracting authority and with the provisions of the respective financing agreement.

2. To the extent that the contract covers an action financed by the European Union, the Contracting Authority may share communications related to the implementation of the contract, with the European Commission. These exchanges shall be made to the Commission, solely for the purpose of allowing the latter to exercise its rights and obligations under the applicable legislative framework and under the financing agreement with the Partner country – contracting authority. The exchanges may involve transfers of personal data (such as names, contact details, signatures and CVs) of natural persons involved in the implementation of the contract (such as contractors, personnel, experts, trainees, subcontractors, insurers, guarantors, auditors and legal counsel). In cases where the contractor is processing personal data in the context of the implementation of the contract, he/she shall accordingly inform the data subjects of the possible transmission of their data to the Commission. When personal data is transmitted to the Commission, the latter processes them in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC¹ and as detailed in the specific privacy statement published at ePRAG.]

Article 73 Further additional clauses

<Add other clauses approved by the competent Commission departments.>

* * *

¹ OJ L 205 of 21.11.2018, p. 39