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General Conditions of Contract

The following Conditions apply to Contracts relating to the supply of Goods to the extent that they are not superseded by provisions in other parts of the Contract, by provisions in the “Regulations on Contract Awards for Public Supplies and Services – VOL/A & VOL/B” or other procurement regulation referred to in the Tender Document.

All suppliers are obliged to observe the highest ethical standards during procurement and execution of the contract.

General Conditions of Contract

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Article 1. Definitions

In this document:

(1) Call for Tender means the request for Tender by the Contracting Authority that was followed by the award of the Contract;

(2) Contract means the contract between the Contractor and the Contracting Authority;

(3) Contract Price means the Price payable to the contractor for the full and proper performance of its contractual obligations;

(4) Contracting Authority means the counterpart of the Contractor in connection with the Contract;

(5) Contractor means the party that is to supply the Goods under the Contract;

(6) General Conditions for Calls for Tender means the general conditions that are applicable to the Call for Tender and the Tendering Process as defined in the aforementioned conditions;

(7) General Conditions of Contract means the general conditions that are the subject of this document;

(8) Goods means the manufacture and/or delivery and/or installation and/or commissioning and/or maintenance and/or after-sales service and/or training, and other such obligations by the Contractor of the goods as described in the Contract;

(9) Bid Bond means the bank guarantee, certified bank cheque or cash deposit as part of the Contract that is to guarantee to the Contracting Authority the (financial) obligations of the Contractor towards the Contracting Authority in order to guarantee fulfilment of his offer if accepted;

(10) Performance Bond means the bank guarantee, certified bank cheque or cash deposit as part of the Contract that is to guarantee to the Contracting Authority the (financial) obligations of the Contractor towards the Contracting Authority connected to or arising from the Contract;

(11) Implementation Period means the period that ends with the latest possible and acceptable day of delivery of the Goods;

(12) Inspection Company means the company instructed by the Contracting Authority to perform and execute the inspections as provided in the General Conditions of Contract.

Article 2. Application & General Principles

2.1 These General Conditions shall apply to the extent that they are not superseded by provisions in other parts of the contract or guiding regulations mentioned therein.

2.2 The Financial Regulation applicable to the general budget of the European Communities or the German Government establishes that when the implementation of a grant agreement requires the award of contracts, irrespective of whether the action is financed in whole or in part from a contribution of the European Community or the German Government, the award procedure must comply with the principles of:

- Transparency in the procurement process;
- Proportionality between the procedures followed for awarding contracts and the value of the contracts;
- Equal treatment of potential contractors;
- Non-discrimination among donors.

Article 3. Goods to be supplied

3.1 Subject of the Contract The subject of the Contract is the manufacture and/or delivery and/or installation and/or commissioning and/or maintenance and/or after-sales service and/or training, and other such obligations by the Contractor of the Goods as described in the Contract.

3.2 Conformity of samples and Goods Where samples have been provided by the Contractor as part of the Tendering Process or another procurement procedure and these have been accepted by the Contracting Authority as being in conformity with the specifications requested, the Goods to be supplied must comply with the specifications set out in the Contract and conform in all respects with the drawings, quantities, models, samples, measurements and other instructions.

3.3 Delivery of product variety. Delivery of product varieties other than those mentioned in the Contract is not allowed.

Article 4. Bid Validity Period

4.1 The Bid including the price shall be bound as a firm offer and valid for a period stipulated in the Contract, after the bidding closing date. The Contracting Authority may request the Contractor to extend the validity period of the Bid, if necessary.

Article 5. Patent Rights

5.1 The contractor shall indemnify and hold the Contracting Authority harmless against all third party claims of infringement of patent, trademark or industrial design rights arising from the use of the Goods or any part thereof.

Article 6. General Principles of eligibility & Origin of the Goods (Definition)

6.1 In accordance with the principles of impartiality and independence of Humanitarian Aid, participation in the award of procurement contracts shall be open to all legal or natural persons not falling under one of the causes of ineligibility or exclusion.

The procurement procedure shall be free of any interference or conditionality due to tied aid such as origin of the supplies and nationality of the tenderers and candidates.

Contracting Authorities shall apply the principle of untying of aid and endeavour to use local human and material resources whenever it is possible and pertinent.

6.2 The Goods must originate in the countr(y)(ies) whenever specified in the Contract. The origin of the Goods is to be understood as the country of production or manufacturing. Local origin means the country of destination of the Goods. Goods already imported into the country of destination and customs-cleared are also acceptable. Such goods must be immediately available for the requested volume in the Contract, from in-country stocks, ready for distribution on the free market of the country. Goods that are still to be imported into the country of destination and/or Goods stored in the country of destination in bonded warehouses are not considered as Goods of local origin and shall be rejected.

6.3 The origin of the Goods as mentioned in the Contract must be supported by a certificate of origin issued by the authorised institution of the country of origin (local Chamber of Commerce) if requested in the Contract.

Article 7. Packaging and Marking of the Goods

7.1 Packaging specifications are mentioned in the Contract. The Contractor is obliged to deliver packaging accordingly, even if the specifications vary from the standard local packaging. The Contracting Authority is not obliged to accept packaging deviating from the specifications in the Contract. Packaging quality below the requested standards shall be rejected and re-packaging in accordance with the specifications in the Contract shall be required at the cost, expense and risk of the Contractor. The time taken and/or needed for such re-packaging shall not be added to the implementation Period.

7.2 Markings on individual items, bags, cans and bottles as well as outer packaging such as cartons, crates and pallets are to be marked as per marking instructions (inclusive of a logo) in the Contract.

7.3 Marking to be in conformity with:

- Dangerous Goods Declaration (DGD)
- UN test marking

Article 8. Delivery and shipment of the Goods

8.1 The Delivery Condition is specified in the Contract. Delivery conditions of INCOTERMS 2015 (meaning the latest version available of these conditions) shall be applied.

8.2 The delivery condition(s) as specified in the Contract may have additional delivery requirements over and above the INCOTERMS 2015 and may specify special performances to be included. The delivery condition(s) mentioned in the Contract must be applied and respected.

8.3 The following requirements apply to the supply of the Goods transported by making use of sea transport or combined sea/(in)land transport in case of DAT/DAP and DDU, prices offered shall be deemed to include: • For delivery in containers - 30 days free of container storage and container rent at destination - Return costs of the container to carriers depot • For delivery as break bulk - 30 days free storage, in the port of discharge.

8.4 Part shipments of the Goods are not allowed without the prior written authorization of the Contracting Authority. Any additional costs, expenses or levies whatsoever resulting from authorised part shipments shall be for the account of the Contractor.

8.5 The publication INCOTERMS 2015 in the latest version available of the international Chamber of Commerce is to be obtained by the Contractor on his own initiative and cost.

8.6 Upon shipment, the Contractor shall notify the Contracting Authority by facsimile or e-mail the full details of the shipment including contract number, description of Goods, quantity, bill of lading number (or equivalent) and date, place of loading, date and means of shipment, place of discharge, etc.

Article 9. Payment and set of documents

9.1 The goods shall be paid for Cash Against Documents (CAD) within a period of 30 days. One-hundred (100) per cent of the contractual value of each individual shipment will be paid against presentation of the documents specified in the Conditions of Contract and presentation of the Final Acceptance Certificate, which shall be issued within thirty (30) days from the arrival of the Goods at the place of discharge in, and/or within thirty (30) days from the receipt of the test results from all tests conducted, and/or within thirty (30) days from the date of fulfilment of all contractual obligations by the Contractor, whichever is later.

9.2 All bank charges in the Federal Republic of Germany are for the account of the Contracting Authority, all other bank charges are for the account of the Contractor.

9.3 Payment shall be made in the currency of the Contract, or in EURO for the counter value of the amount due. Payment shall be made by bank transfer.

9.4 The standard set of documents to be presented for (final) payment shall include:

- Certificate of Origin issued by the Chamber of Commerce or any another authorized institution in the country of origin of the Goods*
- Fumigation Certificate issued by a first class inspection or fumigation company*
- Phyto-sanitary Certificate, also stating fumigation details as per fumigation certificate * or Health Certificate*
- Radiation Certificate*
- GMO – free Certificate*
- Packing list, and Packing list for containerized goods and account details
Three (3) copies – packing and weighing list – should describe accurately and in detail the contents of each package / case included in the shipment and give the net and gross weight.
- Tally list and/or tally sheets for break bulk goods
- Commercial Invoice, inclusive bank account details

All the above-mentioned documents are to be supplied by the Contractor and must, if required by the Import regulations of the country of destination, be legalised. Legalisation costs to be for account of the Contractor.

- Taking Over Certificate (TOC) at the contractual place of delivery issued by the Inspection Company and co-signed by the party taking over the Goods if Inspection Procedure is stipulated
- Certificate of Provisional Conformity (CPC) at the place of loading, issued by the Inspection Company (DEQ/DDU/DDP contracts) if Inspection Procedure is stipulated
- Certificate of Final Conformity (CFC) on quality and quantity at the contractual place of delivery issued by the Inspection Company if Inspection Procedure is stipulated
- Transport documents (CPT/CFR/DAT/DAP/DDP contracts) – if required in the Contract
One (1) Original plus two (2) non-negotiable copies stamped and dated according to original, clean on-board through marked “freight prepaid”. Shipping marks and numbers of the bill of lading or equivalent, packages / cases and commercial invoices should correspond.
- Transport Insurance Certificate (CIP/CIF/DAT/DAP/DDP contracts) – if required in the Contract
- Cargo Receipt Certificate, signed for by the consignee of the Goods/the party taking-over the Goods (DAT/DAP/DDP contracts)

*(Where requested in the Call for Tender)

All the above documents must be obtained in original and necessary copies.

Article 10. Contract terminologies

10.1 Quantities

Quantities expressed in weight must always be the net weight.

10.2 Currency

Prices are to be quoted in the currency stated in the Contract.

10.3 Type of Contract

The type of Contract is on the basis of a lump sum or on the basis of unit-price and is specified in the Contract.

10.4 Pricing

Prices charged by the Contractor for Goods delivered and Services performed under the Contract shall not vary from the prices quoted by the Contractor in its bid.

10.5 Firm prices

The prices in the Contract are fixed and not subject to revision.

10.6 Language of the Contract

The Contract, all correspondence and other documents related to the Contract and exchanged by and in between the Contractor and the Contracting Authority shall be in the language of the Contract. Language used in Contracts is English.

Documents to be presented by Contractor in fulfilment of the Contract may be in another language, provided they are accompanied by a certified translation into the language of the Contract. Other documentation may be accompanied by an accurate translation in the language of the Contract.

Article 11. The Contractor

11.1 By entering into the Contract the Contractor shall be deemed and certifies to:

- (a) have obtained and examined the General Conditions of Contract and any other information available to the Contractor for the purpose of and prior to entering into the Contract, such as but not limited to the Call for Tender and the General Conditions for Calls for Tender;
- (b) have examined all further information relevant to the risks, contingencies and other circumstances having an effect on entering into and performing of the Contract which is obtainable by the making of reasonable enquiries.

(c) agree that, other than in connection with entering into the Contract, there is no Intention on the part of the Contracting Authority to enter into or create any other legal relationship with the Contractor; and
(d) acknowledge that prior to and when entering into the Contract, it has not relied on any information, representation or warranty except as expressly provided in the Contract and in particular but without limitation it has not relied, and may not rely, on any verbal advise, statement, representation or warranty of any officer, employee, agent or contractor of the Contracting Authority.

11.2 Failure by the Contractor to have done all or any of the foregoing paragraph shall not relieve the Contractor of its obligation to perform the Contract in accordance with the terms of the Contract.

11.3 The identity of the Contractor is fundamental to the Contracting Authority. The Contractor shall be the person(s), legal entity or partnership named in the Contract.

11.4 The Contractor shall perform the Contract according to the highest professional standards. The Contractor shall have sole responsibility for complying with the legal obligations incumbent on him, particularly those under labour, tax and social legislation.

11.5 The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or license eventually required for performance of the Contract under the laws and regulations in force at the place(s) where the Contract is to be performed.

11.6 The Contractor shall have in place and maintain management practices and processes that ensure that the Goods are provided in accordance with the requirements of the Contract and the terms and conditions of these General Conditions of Contract and to the complete satisfaction of the Contracting Authority.

11.7 The Contractor may neither represent the Contracting Authority nor behave in any way that could give such an impression. If practicable or necessary the Contractor shall inform third parties that it does not belong to the European public service.

Article 12. Inspection Procedure

12.1 If stipulated in the Contract, the Goods will be inspected at the contractual place of delivery on quality, quantity and packaging by the inspection Company. When the Goods are found to be in conformity with the specifications and conditions of the Contract, the inspection Company shall issue the CFC and the TOC on behalf of the Contracting Authority. The TOC must be co-signed by the party taking over the Goods.

12.2 In case of a DAT/DAP/DDP delivery condition, an additional inspection on quality, quantity and packaging as well as on the suitability of the means of transport of the Goods shall be made prior to and during loading of the Goods by the Inspection Company. Where the Goods and the suitability of the means of transport are found to be in conformity with the specifications and conditions of the Contract and, as regards the means of transport, internationally accepted standards, the Inspection Company shall issue and hand-over the CPC to the Contractor. In case of DAP and DDP conditions, the TOC must to be co-signed by the consignee, in other conditions by the nominated transport company collecting the Goods. Any costs and levies with respect and attached to the Goods up to the moment of issuing of the CPC, inclusive of but not limited to the costs of storage, shall be for account and borne by the Contractor except in the situation as per Article 9.8, hereafter. The hand-over of the CPC by the inspection Company authorizes the Contractor to release the Goods for transport. The Contractor releasing the Goods for transport before having received the CPC shall do so at its own risk, expense and costs, especially but not limited to the risk and costs related to possible rejection of the Goods due to non-conformity.

12.3 The Contractor shall advise the Inspection Company in writing of the date, time and place when and where the Goods are ready for inspection. This moment of notification shall take into account the necessary travel time for the inspectors. A copy of the notification is to be sent at the same time to the Contracting Authority or its local or regional representative. The Inspection Company shall agree the actual date and time with the Contractor in writing, and send a copy of such agreement to the Contracting Authority or its local or regional representative.

12.4 Conformity with the contractual quality specifications shall be established by visual inspection and, where required in the Contract, by a laboratory analysis of samples of the Goods taken by the inspection Company. The choice of the laboratory will be made by the inspection Company. The quantity of the Goods shall be established by the inspection Company by weighing, by the use of a weighbridge and/or by random weighing of single packed units, and or by physical tally at the place of loading and/or the contractual place of delivery.

In case of weighing, the costs for the use of the weigh bridge, which ought to be on the site of the loading place and/or the contractual place of delivery, the costs for the provision of scales and the costs for the provision of labour, transport and handling, required to move the Goods during the weighing process, shall be for the account and borne by the Contractor.

12.5 In the case that (part of) the Goods are rejected, the Contractor is obliged to immediately replace the rejected Goods and/or to take any other necessary step to comply with the requirements of the Contract, such at its own cost, expense and risk.

12.6 Where (part of) the Goods are found not to be available for inspection, the additional inspection days and all of the costs and expenses relating thereto shall be for account of the Contractor. The Implementation Period shall not be extended by the additional inspection days.

12.7 The Minimum volume of the Goods to be available for inspection at the place of loading shall be as follows:

- For goods to be shipped by sea, air or rail transport:
 - the contractual volume, unless agreed otherwise in writing.
- For goods to be delivered by truck
 - minimum 6OMT per day unless agreed otherwise in writing.

12.8 In the case that the Inspection Company is not available on the agreed date, the Contractor shall send a notice of protest to the Inspection Company, with a copy to the Contracting Authority or its local or regional representative.

If substantiated with sufficient proof, such in the Sole discretion of the Contracting Authority, the additional costs for the Contractor shall be compensated by the Contracting Authority.

The Implementation Period shall be extended with the time lost due to the non-availability of the Inspection Company.

12.9 The Inspection Company shall document additional inspection time by daily time sheets, that are to be co-signed by the Contractor, its representative or authorized warehouse manager at the place of loading and/or contractual place of delivery.

12.10 The Contractor shall pay to the Contracting Authority any unnecessary costs for additional inspection and/or analysis that will become payable to the Inspection Company due to extended and/or multiple interventions and/or fruitless visits attributable to the Contractor as well as for calls of inspection and analysis fees for goods inspected, but eventually remained undelivered.

The costs for one inspection followed by release of the CFC shall be for account of the Contracting Authority. Where additional inspections are required, attributable to the Sellers, the additional costs shall be for the account of Sellers. The costs and fees of the Inspection Company that are attributable and payable by the Contractor shall be calculated and fixed on the basis of the fees agreed between the Contracting Authority and the Inspection Company and are not negotiable.

Costs and fees that come for account of the Contractor, may be deducted by the Contracting Authority from the (final) payment to be made by the Contracting Authority and/or be collected against the Performance Bond.

12.11 In case of non-acceptance of an inspection result by the Contracting Authority or the Contractor, a re-inspection by a mutually agreed other inspection company shall be made. The costs for this inspection shall be for account of the losing party. In the event of the losing party being the Contractor, the time taken for the re-inspection shall not be added to the Implementation Period.

Article 13. Changes in delivery schedules, destinations, method of shipment and/or packing

13.1 The Contract Authority has the right to instruct the Contractor to adapt the delivery schedule and/or to deliver the Goods at a destination other than foreseen in the Contract and/or to change the method of shipment as well as to alter the method of packing. In case of such instruction, prior agreement shall be reached between the Contracting Authority and the Contractor on the resulting implementation and cost aspects.

13.2 Agreement with and payment for any cost adaptation shall be based on the documented and realistic real cost reductions or increases to be presented by the Contractor.

Article 14. Contract Amendments

14.1 Subject to clause 13, no variation in or modification of the conditions and terms of the Contract shall be made except by written amendment (letter or facsimile) signed by the parties.

Article 15. Extension of the Implementation Period

15.1 In the case of non(-finalised)delivery at the end of the Implementation Period, the Contractor may request the Contracting Authority for an extension of this period. The Contracting Authority is not obliged to agree to such extension and any decision in this respect shall be in the sole discretion of the Contracting Authority.

Until the Contracting Authority has eventually confirmed an extension of the Implementation Period in writing, the Contract remains unaltered.

15.2 The Contractor is obliged to inform the Contracting Authority in advance and without delay of possible and/or anticipated delays in delivery. The Contracting Authority may take into consideration, but is not obliged to accept or agree to, cases of late delivery caused by circumstances other than force majeure.

15.3 If delivery of the Goods in full has not taken place within the extended Implementation Period, the Contract will be considered unfulfilled for the undelivered quantities of the Goods at the last date of the extended Implementation Period. The Contracting Authority is entitled to collect the Performance Bond on a pro-rata basis as an indemnity for the undelivered quantities notwithstanding and without prejudice to the Contracting Authority's rights with respect to compensation or reimbursement under the applicable law.

Article 16. Calculated allowances and accepted deviations

16.1 In the event of delay in delivery of the Goods, an allowance of 1/1000 (one per thousand) per day of late delivery, of the value of the Goods supplied after the (extended) Implementation Period, will be retained from the payment to made to the Contractor or from the Performance Bond.

16.2 The date that the goods are reported in writing as **“ready for inspection at the contractual place of delivery”** shall be considered the date of delivery, provided that a CFC will have been issued by the inspection company. Where this is not the case, delivery is considered not to be completed and will be subject to the applicable allowance.

16.3 The Contracting Authority may, in its own discretion and subject to a price allowance to be agreed with the Contractor in writing, accept deviations from the specifications of the Contract. The allowance shall be calculated on a linear basis with the extent of the deviation established. If no agreement on the allowance is reached, the Goods shall be rejected and the Contractor shall be obliged to replace the Goods with Goods that conform with the specifications of the Contract.

Article 17. Suspension of the Contract

17.1 The Contracting Authority is entitled to request the Contractor in writing to immediately suspend (further) supply of the Goods or any other performance of the Contract by the Contractor if, in the sole discretion of the Contracting Authority, circumstances (chiefly force majeure) make it impossible or dangerous to proceed or continue. If the Contract is not terminated, the Contracting Authority shall endeavour to minimize the duration of the Suspension and shall inform the Contractor of the date on which performance of the Contract may be resumed.

17.2 The Implementation Period is automatically extended by an amount of time equivalent to the duration of the suspension. This is without prejudice to any amendments to the Contract that may be necessary to adapt performance to the new implementing conditions and that must be argued between the Contracting Parties in writing.

Article 18. Penalties

18.1 All Provisions mentioned herein and in the other Basic Documents (e.g. Annex IV, VOL/A & VOL/B) have to be adhered to strictly. Non compliance with one of the criteria or regulations or false declaration in Pre-Qualification Documents will lead to exclusion from any Tendering Process and/or the Contractor will have to bear a penalty according to the Regulations and will have to pay the compensations of all charges occurred. Furthermore the corresponding German or European Authority will have to be informed by the Tendering Authority accordingly.

18.2 The indications in the Contract will have to be followed strictly. For delays or any other non-compliance the Contractor will be charged with all expenses/charges occurred caused by the infringement.

Article 19. The Bid Bond

19.1 If stipulated in the Contract, the Contractor will obtain the guarantee of a bank in a sum equivalent to ten (10) per cent of the Contract Price for the due performance of the contract, in the form prescribed by the Contracting Authority.

19.2 The Contractor further agrees to abide the Bid for the Bid Validity Period specified and it shall remain binding and may be accepted at any time before the expiration of that period.

19.3 The Bid Bond must be made in the form of a bank guarantee or a certified bank cheque issued by a first class national or international bank (A-rating or higher), or by a cash deposit at the offices of the Contracting Authority. The Bond, if a bank guarantee, shall be in the same format as per the template contained in the Call for Tender.

19.4 No interest will be payable by the Contracting Authority on or in connection with the Bid Bond.

Article 20. The Performance Bond

20.1 If stipulated in the Contract, the Bid Bond issued by the Contractor in the Tendering Process with respect to the Goods is automatically converted into the Performance Bond at the date of entering into force of the Contract. The validity of the Performance Bond shall be for a minimum of 180 days after the date of delivery as stated in the Call for Tender. In case of an (anticipated or expected) extension of the date of delivery - other than by force majeure - the Contractor is obliged to arrange an extension of the Performance Bond at his own cost, if necessary or desired by the Contracting Authority at its first written request.

20.2 If stipulated in the Contract, the Performance Bond must be made in the form of a bank guarantee or a certified bank cheque issued by a first class national or international bank (A-rating or higher), or by a cash deposit at the offices of the Contracting Authority. The Performance Bond, if a bank guarantee, shall be in the same format as per the template contained in the Call for Tender.

20.3 The Performance Bond shall be released after all contractual obligations and liabilities of the Contractor have been concluded and fulfilled.

20.4 No interest will be payable by the Contracting Authority on or in connection with the Performance Bond.

Article 21. Additional Information requested by the Contractor

21.1 Any request for clarification or other information by the Contractor must be received by the Contracting Authority in writing. The Contracting Authority endeavours to reply to such request within 7 working days after receipt of the request.

Article 22. Force majeure

22.1 Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, that was not due to error or negligence on their part and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making them available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.

22.2 If either of the contracting parties is faced with or anticipates force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.

22.3 Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor was unable to perform his contractual obligations owing to force majeure, he shall have the right to payment for the Goods actually supplied only.

22.4 The contracting parties shall take the necessary measures to reduce damage to a minimum. If circumstances of force majeure have occurred and continue for a period of 90 days then, notwithstanding any extension of the Implementation Period that the Contractor may by reason thereof have been granted by the Contracting Authority, either party shall be entitled to serve the other with 30 days notice to terminate the Contract. If, on the expiry of the period of 30 days, the situation of force majeure still applies, the Contract shall be terminated and the parties shall be released from further performance of the Contract.

Article 23. Terms and conditions of the Contractor not applicable

23.1 The Contract does not include and is not subject to the Contractor's standard, general or special conditions of Contract or terms of contract or business, if any, unless specifically incorporated in the Contract by an express term or provision. Conditions of contract or terms of contract or business of the Contractor are rejected by the Contracting Authority.

Article 24. Termination of the Contract

24.1 The Contracting Authority may terminate the Contract in the following circumstances:

- (a) where a change in the Contractor's legal, financial, technical or organisational situation could have a significant effect on the Contract;
- (b) where performance of the Contract has not actually commenced within three months of the date foreseen for the Implementation Period, and the new date proposed, if any, is considered unacceptable by the Contracting Authority;
- (c) where the Contractor is unable, through his own fault, to obtain any permit or license required for performance of the Contract;
- (d) where the Contractor has failed to perform the Contract;
- (e) where the Contractor has been found guilty by the competent bodies of serious professional misconduct;

(f) where the Contractor is declared bankrupt, is wound up, has ceased trading, has been wound up by court order or is in composition with his creditors a entailing Suspension of business, is in receivership or is in any other comparable situation provided for by the laws or regulations of his country of domicile or establishment;

(g) where the Contractor has made false, incomplete or incorrect statements or has failed to provide information in an attempt to obtain the Contract or any benefit resulting therefrom, or where this was the effect of his action;

(h) where the Contractor has, intentionally or through negligence, committed an irregularity in performance of the Contract or in relation to other contracts concluded with the Contracting Authority or an institution, organ or agency of the European Communities and, more generally, in the event of fraud, corruption or any other illegal activity detrimental to the Contracting Authority's interests on the part of the Contractor;

(I) where the laws that govern the Contract provide for or allow termination.

24.2 In case of force majeure, notified in accordance with Article 22, either contracting party may terminate the Contract.

24.3 A registered letter with acknowledgement of receipt or equivalent initiate termination procedure. Where prior notice is not required, termination shall take effect from the day after the day on which the letter terminating the Contract is received.

24.4 In the event of the Contracting Authority terminating the Contract in accordance with this Article, the Contractor shall waive any claim for damages, including but not limited to consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimize costs, prevent damage and cancel or reduce his commitments.

24.5 The Contractor may terminate the Contract if and when a request as provided in Article 12 is made by the Contracting Authority by serving one months notice.

24.6 The Contractor shall be entitled to remuneration for the Goods supplied in accordance and in conformity with the Contract. The Contractor shall accept as the aggregate liability of the Contracting Authority payment of the Contracts price corresponding to the Goods supplied by it in accordance with the Contract as at the effective date of termination. However, in the event of termination on the grounds set-out in point (b), (c), (d), (e), (g) or (h) of the first paragraph of this Article, the Contracting Authority may recover any sums paid to the Contractor under the Contract.

Article 25. Public disclosure of the Contract

25.1 The Contractor will not use the name of the Contracting Authority or refer to any subject of the Contract for promotional purposes or make any public statements or disclosures in relation to the Contract without the prior written permission of the Contracting Authority.

Article 26. Ethics clauses

26.1 During the procurement and the execution of contracts the highest ethical standards have to be observed, especially with regard to the non-exploitation of child labour and the respect of basic social rights and working conditions.

26.2 Without the Contracting Authority's prior written authorization, the Contractor or any person or company that is associated or linked with the Contractor, may not, not even on an ancillary or subcontracting basis, supply other services or goods or carry out works for the project and/or the subject of the Contract. This prohibition also applies to any other projects that could, owing to the nature of the Contract, give rise to a conflict of interest on the part of the Contractor.

26.3 By performing the Contract, the Contractor represents that it is not affected by any potential conflict of interest and has no particular link with other parties possibly involved with the (subject of the) Contract. Should such a situation arise during performance of the Contract, the Contractor must immediately inform the Contracting Authority.

26.4 The Contractor must at all times act impartially and as a faithful adviser in accordance with the code of conduct of his profession. He shall refrain from making public statements about the (subject of the) Contract without the

Contracting Authority's prior written approval. The Contractor may not commit the Contracting Authority in any way without its prior written consent.

26.5 For the duration of the Contract the Contractor and his staff shall respect human rights and undertake not to offend the political, cultural and religious mores of the beneficiary country and/or country of destination.

26.6 The Contractor may accept no payment connected with the Contract other than that provided for therein. The Contractor and his staff must not exercise any activity or receive any advantage inconsistent with their obligations to the Contracting Authority.

26.7 The Contractor and his staff shall be obliged to maintain professional secrecy for the entire duration of the Contract and after its completion. All reports and documents drawn up or received by the Contractor shall be confidential.

26.8 The Contract shall govern the contracting parties use of all reports and documents drawn up, received or presented by them during the execution of the Contract.

26.9 The Contract will be terminated by the Contracting Authority with immediate effect and without prior notice if it emerges that the execution of the Contract has given rise to unusual commercial expenses.

Such unusual commercial expenses are commissions not mentioned in or stemming from the Contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commissions paid to a person or company that has every appearance of being a front (wo)man or company.

The Contractor undertakes to supply the Contracting Authority on its first request with all supporting documents relating to the performance and execution of the Contract. The Contracting Authority may carry out whatever documentary or on-the-spot checks it deems necessary to collect evidence in cases of suspected unusual commercial expenses.

26.10 The Contractor represents and warrants that neither it, nor any of its suppliers is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, particularly Article 32 thereof, which, inter alia, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical mental, spiritual, moral or social development. Any breach of this representation and warranty shall entitle the Contracting Authority to terminate this Contract immediately upon notice to the Contractor, at no cost to or liability of the Contracting Authority.

Article 27. Eligibility Criteria

27.1 The Contractor declares to strictly adhere the following criteria and will acknowledge it in signing the Pre Qualification Documents:

- is not bankrupt or being wound up, is not having its affairs administered by the courts, has not entered into an arrangement with creditors, has not suspended business activities, is not the subject of proceedings concerning those matters, nor is it in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- has not been convicted of an offence concerning professional conduct by a judgment which has the force of *res judicata*;
- has not been guilty of grave professional misconduct proven by any means which the contracting authorities can justify;
- has fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
- has not been the subject of a judgement which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Contracting Authority's or European Community's interests;

- has not been declared to be in serious breach of contract for failure to comply with his/her contractual obligations subsequent to another procurement procedure or grant award procedure financed by budget of the European Community;
- has not been engaged in corrupt, fraudulent, collusive or coercive practices as defined in Annex IV and Article 28;
- has completed the attached Suppliers Registration Form to the best of one's knowledge, gives WEM or any other mandated organisation / European Anti-Fraud Office (OLAF) / Court of Auditors the power of audit / access to its accounts and provide WEM / mandated organisation with every information and document needed.

27.2 The Contractor who has been found guilty by the Contracting Authority of making a false declaration or even does not fulfil one of the above requirements will be excluded from the Tendering Process and/or will have to bear a penalty according to the Regulations and will have to pay the compensations of all charges occurred.

27.3 In addition to the compensation the Contracting Authority will have to inform the corresponding authorities contemporary.

Article 28. Regularity of Tender Procedures

28.1 WEM will reject any proposal put forward by tenderers or candidates, or, where applicable, will terminate the contracts, if it is determined that they have engaged in corrupt, fraudulent, collusive or coercive practices.

- Corrupt practice is defined as is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the activities of the Contracting Authority;
- Fraudulent practice is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, the Contracting Authority to obtain a financial or other benefit or to avoid an obligation;
- Collusive practice is an undisclosed arrangement between two or more tenderers or candidates designed to artificially alter the results of the tender procedure to obtain a financial or other benefit;
- Coercive practice is impairing or harming, or threatening to impair or harm, directly or indirectly, any participant in the tender process to influence improperly its activities.

WEM will inform immediately the European Commission / German Government / Donor in writing in event of being confronted by these practices and provide all the relevant information.

WEM will also inform the European Commission / German Government / Donor under the same terms about any suspected or established breach of the present rules as well as in case of any situation likely to constitute a conflict of interest.

Article 29. Power of Audit

29.1 The Contractor shall give WEM or any Organisation mandated by the European Commission / German Government / Donor, access to its accounts and those of its Sub-Suppliers/Contractors to verify any document, notably financial and accounting documents, relating to the operations financed and/or co-financed by the European Community.

29.2 The Contractor inspected shall enable auditor to obtain any information necessary for the achievement of his tasks. The Auditor defines where the inspection will take place, at the premises of the Contractor or elsewhere.

Article 30. No assignment

30.1 The Contractor shall not assign the rights and obligations under or arising from the Contract, in whole or in part, without the prior written authorization from the Contracting Authority.

30.2 In the absence of the authorisation referred to in this Article, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on the Contracting Authority.

30.3 No (alleged) claims, rights, title or interest whatsoever under the Contract by or of undisclosed participants will be recognized by the Contracting Authority.

Article 31. Precedence of documents

31.1 In the event of any conflict between the terms and conditions in the Contract and the General Conditions for Contract, the terms and conditions appearing in the Contract shall have precedence.

Article 32. Applicable Law

32.1 The Contract and the General Conditions for Contract shall be governed by and interpreted in accordance with the laws of the Federal Republic of Germany.