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PRELIMINARY PROVISIONS

Article 1 Definitions

- 1.1 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.
- 1.2 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.
- 1.3 Words designating persons or parties shall include firms and companies and any organization having legal capacity.

Article 2 Law and language of the Supply Contract

- 2.1 The Special Conditions shall specify the law governing all matters not covered by the contract.
- 2.2 The contract and all written communications between the parties will be drafted in the language of the procedure.

Article 3 Order of precedence of contract documents

- 3.1 Save where otherwise provided in the special conditions, the contract is made up of the following documents, in order of precedence:
 - a) the contract agreement;
 - b) the Special Conditions with the Technical Annex;
 - c) the Contractor's tender, including annexes;
 - d) the financial tender;
 - e) the General Conditions (Section B);
 - f) [*the minutes of the information meeting/site visit*];Addenda have the order of precedence of the document they are modifying.
- 3.2 The different documents constituting the contract shall be deemed mutually explanatory; in case of ambiguity or divergence, they should be read in the order in which they appear above.

Article 4 Communications

- 4.1 Communications between the Contracting Authority and the Contractor shall be exclusively in writing. Unless otherwise specified in the Special Conditions, communications between the Contracting Authority and the Contractor shall be sent by post, cable, telex, fax transmission, or delivered by hand, to the addresses designated by the Parties for that purpose.
- 4.2 If the person sending a communication requires acknowledgement of receipt, he shall indicate this in his communication. Whenever there is a deadline for the receipt of a written communication, the sender should ask for an acknowledgement of receipt of his communication. In any event, the sender shall take all necessary measures to ensure receipt of his communication.
- 4.3 Wherever the contract requires giving or issuing any "notice", "consent", "approval", "certificate" or "decision", unless otherwise specified, such "notice", "consent", "approval", "certificate" or "decision", shall be in written form, and the words "notify", "certify", "approve" or "decide" shall be construed accordingly. Any of such: "consent", "approval", "certificate" or "decision" shall not be unreasonably withheld or delayed.

Article 5 Assignment

- 5.1 An assignment shall be valid only if it is a written agreement by which the Contractor transfers his contract or part thereof to a third party.
- 5.2 The Contractor may not, without the prior written consent of the Contracting Authority, assign the contract or any part thereof, or any benefit or interest therein connected, except in the following cases:
 - a) a charge, in favour of the Contractor's bankers, of any money due or to become due under the contract; or
 - b) the assignment to the Contractor's insurers of the Contractor's right to obtain relief against

any other person liable in cases where the insurers have discharged the Contractor's loss or liability.

- 5.3** For the purpose of Article 5.2, the approval of an assignment 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.
- 5.4** If the Contractor has assigned 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 Article 35.
- 5.5** Assignees must satisfy the eligibility criteria applicable for the award of the contract.

Article 6 Subcontracting

- 6.1** A subcontract 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.
- 6.2** The Contractor shall not subcontract without the prior written authorization of the Contracting Authority. The elements of the contract to be subcontracted and the identity of the subcontractors shall be notified to the Contracting Authority. The Contracting Authority shall notify the Contractor of its decision within 30 days of receiving the notification, stating its reasons if authorization is withheld.
- 6.3** Subcontractors must satisfy the eligibility criteria applicable for the award of the contract.
- 6.4** The Contracting Authority recognises no contractual link between itself and the subcontractors.
- 6.5** The Contractor shall be responsible for the acts, defaults and negligence of his subcontractors 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 subcontracting of any part of the contract or of the subcontractor shall not relieve the Contractor of any of his obligations under the contract.
- 6.6** If a subcontractor has undertaken any continuing obligation, for a period exceeding the warranty period under the contract with the Contractor, and in respect of the supplies provided by the subcontractor, the Contractor must, at any time after the expiration of the warranty period, transfer immediately to the Contracting Authority, at the Contracting Authority's request and cost, the benefit of such obligation for the unexpired duration thereof.
- 6.7** If the Contractor enters into a subcontract without approval, the Contracting Authority, without giving formal notice, may use its right the sanctioning for breaching the contract as provided in Article 35.

OBLIGATIONS OF THE CONTRACTING AUTHORITY

Article 7 Supply of documents

- 7.1** If necessary, within 30 days from contract signing, the Contracting Authority shall provide the Contractor, free of charge, with a copy of the drawings prepared for implementing the contract, a copy of the specifications and any other contractual document. The Contractor may purchase additional copies of these drawings, specifications and other documents, according to availability. Upon issuing the warranty certificate, or upon final acceptance, the Contractor shall return to the Contracting Authority all drawings, specifications and other contract documents.
- 7.2** Unless it is necessary for the purposes of the contract, the drawings, specifications and other documents provided by the Contracting Authority shall not be used or communicated to a third party by the Contractor without the prior consent of the Contracting Authority.
- 7.3** The Contracting Authority shall have authority to issue to the Contractor administrative orders incorporating such supplementary documents and instructions as are necessary for the proper execution of the contract and the remedying of any defects therein.
- 7.4** The special conditions must indicate the procedure used, if necessary, by the Contracting Authority to approve drawings and other documents provided by the Contractor.

Article 8 Assistance with local regulations

- 8.1** The Contractor may request the assistance of the Contracting Authority in obtaining copies of laws, regulations and information on local customs, orders or byelaws of the country where the supplies are to be delivered 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.
- 8.2** If necessary, the Contractor shall duly notify the Contracting Authority of details of the supplies so that the Contracting Authority can obtain the requisite permits or import licences.
- 8.3** If necessary, the Contracting Authority will undertake to obtain, in accordance with the Special Conditions, the requisite permits or import licences within a reasonable period, taking account of the performance dates for the contract.
- 8.4** Subject to the provisions of the laws and regulations on foreign labour of the State in which the supplies have to be delivered, the Contracting Authority shall make every effort to help the Contractor obtaining all the visas and permits required. With reference to the personnel whose services the Contractor, and the Contracting Authority, consider necessary, and residence permits for their families.

OBLIGATIONS OF THE CONTRACTOR

Article 9 General Obligations

- 9.1** The Contractor shall perform the contract with due care and diligence including, where specified, the design, manufacture, delivery to site, erecting, testing and commissioning of the supplies and carrying out of any other work including the remedying of any defects in the supplies. The Contractor shall also provide all necessary equipment, supervision, labour and facilities required for the performance of the contract.
- 9.2** The Contractor shall comply with administrative orders given by the Contracting Authority. Where the Contractor considers that the requirement of an administrative order goes beyond the scope of the contract, he shall, facing a contract's breach, notify the Contracting Authority thereof, giving his reasons, within 30 days of receipt of the order. Execution of the administrative order shall not be suspended because of this notice.
- 9.3** The Contractor shall follow and respect all laws and regulations in force in the State of the Contracting Authority and shall ensure that his personnel, their dependants, and his local employees also respect and attend 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 their dependants of such laws and regulations.
- 9.4** The Contractor shall treat all documents and information received in connection with the contract as private and confidential. He shall not, save in so far as may be necessary for the purposes of the contract's execution, publish or disclose any particulars of the contract without the prior consent in writing of 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.
- 9.5** If the Contractor is a joint venture or consortium of two or more persons, all these 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. They shall also designate, on request of the Contracting Authority, one of them to act as leader, with the authority to bind the joint venture or the consortium. The parts of the joint venture, or consortium, shall not be altered without prior written consent of the Contracting Authority.

Article 10 Origin

The commodities must be manufactured in Italy. The Tenderers, under their own responsibility, shall declare the Italian origin of the offered commodities endorsed by a Certificate of Origin¹⁴ issued by the proper Italian Chamber of Commerce. In case of complex supplies, or compound lots of complementary good, in which are included items or components non-manufactured in Italy, but which are deemed necessary for the overall supply, upon motivated request of the Contracting Authority, the Ministry of Foreign Affairs of Italy, M.A.E. – D.G.C.S., may approve the supply of commodities non-manufactured in Italy for a total value not exceeding the 15% (fifteen percent) of the related contract's amount. In such case, the Tenderer shall attach a Declaration attesting that the components of non-Italian origin are deemed necessary for the overall supply, motivating such statement with solid evidences.

Article 11 Performance guarantee

- 11.1** The Contractor shall provide, within 30 days of receipt of the notification of the award of contract, the Contracting Authority with a guarantee for the full and proper performance of the contract. The amount of the guarantee shall be specified in the Special Conditions. It shall not exceed the provisions of article 24.7 of the Instructions to Tenderers, including any amounts stipulated in addenda to the contract.
- 11.2** The performance guarantee shall be held against payment to the Contracting Authority for any loss resulting from the Contractor's failure to perform his contractual obligations fully and properly.
- 11.3** The performance guarantee shall be in the format given in Annex III and may be provided in the form of a bank guarantee, a banker's draft, a certified cheque, a bond provided by an insurance and/or bonding company or an irrevocable letter of credit. If the performance 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 insurance and/or bonding company in accordance with the eligibility criteria applicable for the award of the contract.
- 11.4** The performance guarantee shall be denominated in EURO. No payments shall be made in favour of the Contractor prior to the provision of the guarantee. The guarantee shall continue to remain valid until the contract has been fully and properly performed.
- 11.5** During the performance of the contract, if the natural or legal person providing the guarantee is not able to attend by his commitments, the guarantee shall cease to be valid. The Contracting Authority shall give formal notice to the Contractor to provide a new guarantee on the same terms as the previous one. Should the Contractor fail to provide a new guarantee, the Contracting Authority may terminate the contract. Before so doing, the Contracting Authority shall send a registered letter with acknowledgement of receipt, which shall set a new deadline of no less than 15 days from the day of delivery of the letter.
- 11.6** The Contracting Authority shall demand payment from the guarantee of all sums for which the guarantor is liable under the guarantee due to the Contractor's default under the contract, in accordance with the terms of the guarantee and up to the value thereof. The guarantor shall, without delay, pay those sums upon demand of the Contracting Authority, and may not raise any objection for any reason whatsoever. Before making any claim under the performance guarantee, the Contracting Authority shall notify the Contractor stating the nature of the default in respect of which the claim is to be made.
- 11.7** Except for such part as may be specified in the Special Conditions in respect of after-sales service, the performance guarantee shall be released within 30 days of the issue of the final acceptance certificate. Such Performance Bond shall be delivered to the Contracting Authority prior the Contract signature.

¹⁴ The assumption of Italian origin of goods comes from the Italian law no. 115 dated 17th of March 1995 which has been issued after the Council Directive "General Product Safety 92/59/EEC, and the Council Regulation "Establishing the Community Customs Code" 2913/92/EEC. According to the provisions of such regulations, the good shall be declared of Italian origin when they are entirely produced in Italy or they are assembled with components entirely produced in Italy. In case one or more manufacturers, proceeding from other Countries other than Italy, provided a contribution in the manufactory, the goods shall be considered of Italian origin only if the last manufactory process has taken place in Italy with the result of creating a new final product.

Article 12 Insurance

- 12.1** An insurance policy may be required to cover the carriage of supplies; the conditions of this insurance policy may be specified in Article 5 of the Special Conditions, which may also specify other types of insurance to be taken out by the Contractor.
- 12.2** Notwithstanding the Contractor's insurance obligations under Article 12.1, the Contractor shall bear sole liability for, and indemnify the Contracting Authority against any claims by third parties for damage to property or personal injuries arising from the execution of the contract by the Contractor, his subcontractors and their employees.

Article 13 Performance programme

- 13.1** If the Special Conditions so require, the Contractor shall submit a programme of performance of the contract for the approval of the Contracting Authority. The programme shall contain at least the following:
- a) the order in which the Contractor proposes to perform the contract including design, manufacture, delivery to place of receipt, installation, testing and commissioning;
 - b) the deadlines for submission and approval of the drawings;
 - c) a general description of the methods which the Contractor proposes to adopt for executing the contract; and
 - d) such further details and information as the Contracting Authority may reasonably require.
- 13.2** The Special Conditions shall specify the time limit within which the programme of performance must be submitted to the Contracting Authority for approval. They may set time limits within which the Contractor must submit all or part of the detailed drawings, documents and items. They shall also state the deadline for the Contracting Authority's approval or acceptance of the programme of performance, detailed drawings, documents and items. The approval of the programme by the Contracting Authority shall not relieve the Contractor of any of his obligations under the contract.
- 13.3** No material alteration to the programme shall be made without the approval of the Contracting Authority. If, however, the progress of the performance of the contract does not conform to the programme, the Contracting Authority may instruct the Contractor to revise the programme and submit the revised programme to him for approval.

Article 14 Contractor's drawings

- 14.1** If the Special Conditions so provide, the Contractor shall submit to the Contracting Authority for approval:
- a) the drawings, documents, samples and/or models, according to the time limits and procedures laid down in the Special Conditions;
 - b) such drawings as the Contracting Authority may reasonably require for the performance of the contract.
- 14.2** If the Contracting Authority fails to notify his decision of approval referred to in Article 14.1 within the deadlines referred to in the contract or the approved programme of performance, such drawings, documents, samples or models shall be deemed to be approved on expiry of the deadlines. If no deadline is specified, they shall be deemed to be approved 30 days after receipt.
- 14.3** Approved drawings, documents, samples and models shall be signed or otherwise identified by the Contracting Authority and may only be departed from on the Contracting Authority's instructions. Any of the Contractor's drawings, documents, samples or models, which the Contracting Authority fails to approve, shall immediately be modified to meet the requirements of the Contracting Authority and resubmitted by the Contractor for approval.
- 14.4** The Contractor shall supply additional copies of approved drawings in the form and numbers stated in the contract or in subsequent administrative orders.
- 14.5** The approval of the drawings, documents, samples or models by the Contracting Authority shall not relieve the Contractor from any of his obligations under the contract.
- 14.6** The Contracting Authority, through the Control and Surveillance Company, shall have the right to inspect all drawings, documents, samples or models relating to the contract at the Contractor's premises at all reasonable times.

14.7 Before provisional acceptance of the supplies, the Contractor shall supply operation and maintenance manuals together with drawings, which shall be in such detail that shall enable the Contracting Authority to operate, maintain, adjust and repair all parts of the supplies. Unless otherwise stated in the Special Conditions, the manuals and drawings shall be in the language of the contract and in such forms and numbers as stated in the contract. The supplies shall not be considered completed for the purpose of provisional acceptance until such manuals and drawings have been supplied to the Contracting Authority.

Article 15 Sufficiency of tender prices

15.1 Beneath any provisions which may be laid down in the Special Conditions, the Contractor shall be deemed to have satisfied himself before submitting his tender, as to the correctness and sufficiency of the tender. And to have taken into account everything which is required for the full and proper performance of the contract, and to have included in his rates and prices all costs related to the supplies, in particular:

- a. the costs of transport;
- b. the costs of handling, packing, loading, unloading, transit, delivery, unpacking, checking, insurance and other administrative costs in connection with the supplies. The packaging shall be the property of the Contracting Authority unless otherwise provided in the Special Conditions;
- c. the cost of documents relating to the supplies where such documents are required by the Contracting Authority;
- d. performance and supervision of on-site assembly and/or commissioning of the delivered supplies;
- e. furnishing of tools required for assembly and/or maintenance of the delivered supplies;
- f. furnishing of detailed operation and maintenance manuals for each unit of the delivered supplies, as specified in the contract;
- g. supervision or maintenance and/or repair of the supplies, for a period of time stated in the contract, with the stipulation that this service shall not release the Contractor from any warranty obligations under the contract;
- h. training of the Contracting Authority's personnel, at the Contractor's factory and/or elsewhere as specified in the contract.

15.2 Since the Contractor is deemed to have determined his prices based on his own calculations, operations and estimates, he shall carry out, at no additional charge, any work that is the subject of any item in his tender, for which he indicates neither a unit price nor a lump sum.

Article 16 Tax and customs arrangements

16.1 For supplies to be imported into the country of the Contracting Authority, all duties and taxes applicable to their importation, including VAT shall be excluded.

16.2 Whatever the origin of the supplies, the contract shall be exempt from stamp and registration duties.

Article 17 Patents and licences

Save where otherwise provided in the Special Conditions, the Contractor shall indemnify the Contracting Authority against any claim resulting from the use as specified in the contract of patents, licences, drawings, models, or brand or trade marks, unless such infringement results from compliance with the design or specification provided by the Contracting Authority.

COMMENCEMENT OF EXECUTION AND DELAYS

Article 18 Commencement order

18.1 The Contracting Authority shall fix the date on which performance of the contract is to commence and advise the Contractor thereof either in the notice of award of the contract or by administrative order issued.

18.2 Save where the Parties agree otherwise, performance of the contract shall begin no later than 90 days after notification of award of contract. After that date, the Contractor shall be entitled not to perform the contract and to obtain its termination or compensation for the damage he has suffered. The Contractor shall forfeit this right unless he exercises it within 30 days of the expiry of the 90-day period.

Article 19 Period of execution of tasks

19.1 The period of execution of tasks shall commence on the date fixed in accordance with Article 18 and shall be as stated in the contract, without prejudice to extensions of the period which may be granted under Article 20.

19.2 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.

Article 20 Extension of period of execution

20.1 The Contractor may request an extension to the period of execution if his performance of the contract is delayed, or expected to be delayed, for any of the following reasons:

- a) extra or additional supplies ordered by the Contracting Authority;
- b) exceptional weather conditions in the country of the Contracting Authority which may affect installation or erection of the supplies;
- c) physical obstructions or conditions which may affect delivery of the supplies, which could not reasonably have been foreseen by a competent contractor;
- d) administrative orders affecting the date of completion other than those arising from the Contractor's default;
- e) failure of the Contracting Authority to fulfil its obligations under the contract;
- f) any suspension of the delivery and/or installation of the supplies which is not due to the Contractor's default;
- g) force majeure;
- h) any other causes referred to in these General Conditions, which are not due to the Contractor's default.

20.2 Within 15 days from the moment he realizes that a delay might occur, the Contractor shall notify the Contracting Authority of his intention to make a request of extension of the contract's period to which he considers himself entitled. Except when otherwise agreed between the Contractor and the Contracting Authority, the Contractor (within 30 days) provides the Contracting Authority with comprehensive details, so that the request can be examined.

20.3 Within 30 days, the Contracting Authority shall grant, by written notice after due consultation if appropriate, the Contractor with the extension of the performance period, if needed with retroactive effect, or inform the Contractor that he is not entitled to an extension. Elapsed the above-mentioned term, the silence of the Contracting Authority shall be interpreted as denial.

Article 21 Delays in execution

21.1 If the Contractor fails under his own responsibility to deliver any or all of the goods or perform the services within the time limit(s) specified in the contract, the Contracting Authority shall be entitled, without formal notice and without prejudice to other remedies under the contract, and for every day which shall elapse between the expiry of the contractual period and the actual date of completion, to liquidated damages equal to 5/1000 of the value of the undelivered supplies to a maximum of 15% of the total value of the contract.

21.2 If the non-delivery of any of the goods prevents the normal use of the supplies as a whole, the liquidated damages provided for in paragraph 21.1 shall be calculated based on the total contract value.

21.3 If the Contracting Authority has become entitled to claim at least 15% of the contract value, it may, after giving written notice to the Contractor:

- a) seize the performance guarantee;
- b) terminate the contract, in which case the Contractor will have no right to compensation; and

- c) enter into a contract with a third party for the provision of the balance of the supplies. The Contractor shall not be paid for this part of the contract. The Contractor shall also be liable for the additional costs and damages caused by his failure.

Article 22 Alterations

- 22.1** The Contracting Authority reserves the right, at the time of contracting, to alter the quantities as stated in the Special Conditions. The total value of the supplies may not rise, or fall as a result of the variation in the quantities, by more than 10% of the contract price. The unit prices used in the tender shall be applicable to the quantities procured under the variation.
- 22.2** The Contracting Authority shall have the power to order any variation to any part of the supplies necessary for the proper completion and/or functioning of the supplies. Such variations may include additions, omissions, substitutions, changes in quality, quantity, form, character, kind, as well as drawings, designs or specifications where the supplies are to be specifically manufactured for the Contracting Authority, method of shipment or packing, place of delivery, and in the specified sequence, method or timing of execution of the supplies. No order for a variation may result in the invalidation of the contract, but the financial effect of any such variation shall be valued in accordance with Article 22.6.
- 22.3** No variation shall be made except by an administrative order, subject to the following provisions:
 - a) if, for whatever reason, the Contracting Authority believes it necessary to give an order orally, he shall confirm the order by an administrative order as soon as possible;
 - b) if the Contractor confirms in writing an oral order given for the purpose of Article 22.3.a and the confirmation is not contradicted in writing forthwith by the Contracting Authority, an administrative order shall be deemed to have been issued for the variation;
 - c) an administrative order for a variation shall not be required when increasing or decreasing the quantity of any work because the estimates in the bill of quantities or budget breakdown were too high or too low.
- 22.4** Save where Article 22.2 provides otherwise, prior to issuing an administrative order for a variation, Contracting Authority shall notify the Contractor of the nature and form of that variation. As soon as possible, after receiving such notice, the Contractor shall submit to the Contracting Authority a proposal containing:
 - a) a description of the tasks, if any, to be performed or the measures to be taken and a performance programme;
 - b) any necessary modifications to the performance programme or to any of the Contractor's obligations under the contract;
 - c) any adjustment to the contract price in accordance with the rules set out in Article 22.
- 22.5** Following the receipt of the Contractor's submission referred to in Article 22.4, the Contracting Authority and, where appropriate, the Contractor, shall decide as soon as possible whether the variation should be carried out. If the Contracting Authority decides that the variation is to be carried out, he shall issue an administrative order stating that the variation is to be made at the prices and under the conditions given in the Contractor's submission referred to in Article 22.4 or as modified by the Contracting Authority in accordance with Article 22.6.
- 22.6** The prices for all variations ordered by the Contracting Authority in accordance with Articles 22.3 and 22.5 shall be ascertained 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 bill of quantities or budget breakdown, it shall be valued at such rates and prices contained therein;
 - b) where the task is not of similar character or is not executed under similar conditions, the rates and prices in the contract shall be used as the basis for valuation in so far as is reasonable, failing which a fair valuation shall be made by the Contracting Authority;
 - c) if the nature or amount of any variation relative to the nature or amount of the whole of the contract or to any part thereof is such that, in the opinion of the Contracting Authority, any rate or price contained in the contract for any item of work is by reason of such variation rendered unreasonable, then the Contracting Authority shall fix such rate or price as he thinks reasonable and proper in the circumstances;

- d) where a variation is necessitated by a default or breach of contract by the Contractor, any additional cost attributable to such variation shall be borne by the Contractor.
- 22.7** On receipt of the administrative order requesting the variation, the Contractor shall proceed to carry out the variation, and he is bounded by that order as if such variation were stated in the contract. The supplies 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 variation precedes the adjustment to the contract price, the Contractor shall keep records of the costs of undertaking the variation and of the time expended thereon. Such records shall be open to inspection by the Control and Surveillance Company at all reasonable times.
- 22.8** Contractual variations not covered by an administrative order must be formalised through an addendum to the contract signed by all parties. Changes of address or bank account may simply be notified in writing by the Contractor to the Contracting Authority.

Article 23 Suspension

- 23.1** The Contracting Authority may instruct, by administrative order, at any time, the Contractor to suspend:
- a) the manufacture of the supplies; or
 - b) the delivery of supplies to the place of acceptance at the time specified for delivery in the performance programme or, if no time specified, at the time appropriate for it to be delivered; or
 - c) the installation of the supplies, which have been delivered to the place of acceptance.
- 23.2** The Contractor shall protect and secure, during suspensions, the concerned supplies at the Contractor's warehouse or elsewhere, against any deterioration, loss or damage to the extent possible and as instructed by the Contracting Authority. So, even if the supplies have been delivered to the place of acceptance in accordance with the contract but their installation has been suspended by the Contracting Authority.
- 23.3** Additional expenses incurred in connection with such protective measure shall be added to the contract price. The Contractor shall not be paid any additional expenses if the suspension is:
- a) dealt with differently in the contract; or
 - b) necessary by reason of normal climatic conditions at the place of acceptance; or
 - c) necessary owing to some default of the Contractor; or
 - d) necessary for the safety or the proper execution of the contract or any part thereof insofar as such necessity does not arise from any act or default by the Contracting Authority.
- 23.4** The Contractor shall not be entitled to such additions to the contract price unless he notifies the Contracting Authority, within 30 days of receiving the order to suspend progress of delivery, of his intention to make a claim for them.
- 23.5** The Contracting Authority, after consultation with the Contractor, shall determine such extra payment and/or extension of the period of performance to be made to the Contractor in respect of such claim as it shall be, in the opinion of the Contracting Authority, fair and reasonable.
- 23.6** If the period of suspension exceeds 180 days, and the suspension is not due to the Contractor's default, the Contractor may, by notice to the Contracting Authority, request to proceed with the supplies within 30 days, or terminate the contract.
- 23.7** Where the award procedure or performance of the contract is vitiated by substantial errors or irregularities or by fraud, the Contracting Authority shall suspend performance of the contract. Where such errors, irregularities or fraud are attributable to the Contractor, the Contracting Authority may also refuse to make payments or may recover monies already paid, in proportion to the seriousness of the errors, irregularities or fraud.
- The purpose of suspending the contract shall be to verify whether presumed substantial errors and irregularities or fraud have actually occurred. If they are not confirmed, performance of the contract shall resume as soon as possible. A substantial error or irregularity shall be any infringement of a contract or regulatory provision resulting from an act or an omission that causes or might cause a loss to the Community budget.

MATERIALS AND WORKMANSHIP

Article 24 Quality of supplies

- 24.1 The commodities to be supplied shall widely match the technical specifications laid down in the “Special Conditions” and shall totally suit drawings, models, samples and other requirements stated in the Supply Contract. Such drawings, models, samples and other requirements shall be at disposal of the Control and Surveillance Company, the Purchaser or the Contracting Authority for identification and for the entire period of the Supply Contract execution.
- 24.2 The Control and Surveillance Company shall give notice to the Contractor of the date and other details of the case, for the preliminary technical Test. Such communication shall specify materials, items and samples to be tested according to the Supply Contract, the lot number and the testing place, case by case. Materials, items and samples mentioned in the aforesaid notice, shall be identified in accordance with the testing requirements before their installation.
- 24.3 In the circumstance that, after a new testing, defects, faults or imperfections are pointed out, even if successfully tested in a previous assessment, such materials or items to be supplied or to be used for manufacturing other equipment can be refused and shall be immediately replaced by the Contractor. The Contractor might be given the possibility to repair or replace the refused materials or items and, on their turn, they might be used for other supplies only in case the Control and Surveillance Company decides they have been repaired or replaced in a satisfactory way.

Article 25 Inspection and testing

- 25.1 The Contractor shall ensure that the supplies are delivered to the testing place in time, in order to allow to the Control and Surveillance Company to perform the test.
- 25.2 By means of the Control and Surveillance Company, the Contracting Authority has the right to control, examine and check periodically items, used materials and execution as well as to control the going on of planning, manufacturing or assembly of what has been planned, manufactured or assembled for delivery according to the Supply Contract. Such control aims to check whether quality and quantity of items and used materials are those required by the Supply Contract. The above-mentioned operations can be carried out at the planning, manufacturing or assembly site, or at the testing site or elsewhere provided it is stated in the Supply Contract.
- 25.3 With reference to the above-mentioned inspection and testing, the Contractor shall:
- a) Provide the Control and Surveillance Company, provisionally and free of charge, with assistance, samples or items, machines, equipment, tools, manpower, materials, drawings and manufacturing data usually required for inspection and testing;
 - b) Decide, together with the Control and Surveillance Company, date and place for testing;
 - c) Assure the Control and Surveillance Company free access to the testing site at any reasonable time.
- 25.4 In case the Control and Surveillance Company fails to attend the testing at the agreed date, the Contractor, unless different instructions, can carry out the aforesaid testing being the Control and Surveillance Company considered as present. The Control and Surveillance Company shall immediately send copies of the testing results, duly certified, to the Contracting Authority and copy to the MAE-DGCS and the Italian Expert.
- 25.5 In case items and materials get successfully through the testing mentioned in the present article, the Control and Surveillance Company shall notify it to the Contractor and shall sign the relevant certificate.

- 25.6 In case of disagreement between the Control and Surveillance Company and the Contractor concerning the testing results, each Party shall notify to the other its own opinion within 15 (fifteen) days from the disagreement admission. Either the Control and Surveillance Company or the Contractor may ask for a new testing to be carried out at the previous conditions or, at of one of the Parties' request, by an expert chosen by mutual consent. All testing reports shall be forwarded to the Contracting Authority and their results are final. The counter test's expenses are at charge of whom the counter test results were unfavourable.
- 25.7 Carrying out their tasks, the Control and Surveillance Company and the personnel entrusted with the job by the same Company shall not disclose to anybody, except for those who have the right to know them, information obtained during the inspection and testing performance and concerning manufacturing procedures and enterprise running.

PAYMENTS

Article 26 General principles

- 26.1** Payments shall be made in Euro. The Special Conditions shall lay down the administrative or technical conditions governing payments of pre-financing, interim and/or final payments made in accordance with the General Conditions.
- 26.2** Payments due by the Contracting Authority shall be made to the bank account mentioned on the financial identification form completed by the Contractor. The same form, annexed to the payment request, must be used to report changes of bank account.
- 26.3** Sums due shall be paid within no more than 45 calendar days from the date on which an admissible payment request is registered by the competent department specified in the Special Conditions. The date of payment shall be the date on which the institution's account is debited. The payment request shall not be admissible if one or more essential requirements are not met.
- 26.4** The 45-day period may be suspended by notifying the Contractor that the payment request cannot be fulfilled because the sum is not due, because appropriate substantiating documents have not been provided or because there is evidence that the expenditure might not be eligible. In the latter case, an inspection may be carried out on the spot for the purpose of further checks. The Contractor shall provide clarifications, modifications or further information within 30 days of being asked to do so. The payment period shall continue to run from the date on which a properly drawn-up payment request is registered.
- 26.5** The Supplier shall have the right to receive and advance payment if desired. In such circumstance, the payments shall be made as follows:
- a) **50% of the contract price** after the signing of the contract, against provision of the performance guarantee and a security guaranteeing repayment in full of this pre-financing;
 - b) **40% of the contract price** following provisional acceptance of the supplies;
 - c) **10% of the contract price**, as payment of the balance outstanding, following final acceptance of the supplies. However, this payment of 10% may, if the Contractor so wishes, be made at the same time as the 40% instalment referred to in paragraph 26.5.b if the Contractor provides a security guaranteeing repayment of the full amount of the 10% balance. The security shall be released within 60 days of the final acceptance of the supplies.

In case the Supplier does not request an advance payment, the payments shall be made as follows respecting the provisions of the Special Conditions:

- a) **90% of the contract price** following provisional acceptance of the supplies;
- b) **10% of the contract price**, as payment of the balance outstanding, following final acceptance of the supplies. However, this payment of 10% may, if the Contractor so wishes, can be carried out at the same time as the 40% instalment referred in previous clause 26.5.b if the Contractor provides a bank guaranteeing repayment of the full amount of the 10% balance. The security shall be released within 60 days of the final acceptance of the supplies.

- 26.6** Where only part of the supplies has been delivered, the 40% payment due following partial provisional acceptance shall be calculated on the value of the supplies, which have actually been accepted, and the security shall be released accordingly.
- 26.7** For supplies not covered by a warranty period, the payments listed above shall be aggregated. The conditions to which the payments of pre-financing, interim and/or final payments, are subject, shall be as stated in the Special Conditions.
- 26.8** The payment obligations of the Contracting Authority under this Contract shall cease at most 18 months after the end of the period of execution of the tasks, unless the Contract is terminated in accordance with these General Conditions¹⁵.
- 26.9** Unless otherwise stipulated in the Special Conditions, contracts shall be at **fixed prices**, which shall not be revised.
- 26.10** The Contractor undertakes to repay any amount paid in excess of the final amount due to the Contracting Authority within 45 days of receiving a request to do so. Should the Contractor fail to make repayment within the deadline set by the Contracting Authority, the Contracting Authority may (unless the Contractor is a government department or public body of a Member State of the Community) increase the amounts due by adding interest:
- 26.11** at the rediscount rate applied by the European Central Bank to member banks. On the first day of the month in which the time limit expired, plus three and a half percentage points. The default interest shall be incurred over the time, which elapses between the date of the payment deadline set by the Contracting Authority (exclusive), and the date on which payment is actually made (inclusive). Any partial payments shall first cover the interest thus established. Amounts to be repaid to the Contracting Authority may be offset against amounts of any kind due to the Contractor. This shall not affect the Parties' right to agree on payment in instalments. Bank charges incurred by the repayment of amounts due to the Contracting Authority shall be borne entirely by the Contractor.

Article 27 Payment to third parties

- 27.1** Orders for payments to third parties may be carried out only after an assignment made in accordance with Article 5. The Contracting Authority shall be notified of the assignment.
- 27.2** Notification of beneficiaries of the assignment shall be the sole responsibility of the Contractor.
- 27.3** In the event of a legal bound attached to the properties of the Contractor, affecting the due payments under the contract, and without prejudice to the time limit laid down in the Special Conditions, the Contracting Authority shall have 30 days, starting from the day on which it receives notification of the definitive lifting of the obstacle to payment, to resume the payments in favour of the Contractor.

¹⁵ The term "execution of the tasks" means "accomplishment of the (reciprocal) obligations" by the parties. The term of 18 months represent a maximum length guarantee for both parties that the payments cannot be delayed more than 18 months after accomplishments of the different tasks by the Contractor and the Contracting Authority. In fact the payments take place a) 50% of the contract price (only if it is requested and advance payment) after the signing of the contract, against provision of the performance guarantee and a security guaranteeing repayment in full of this pre-financing and according to contract's clauses; b) 40% (90% if the Contractor does not request an advance payment of the contract price following provisional acceptance of the supplies; c) 10% of the contract price, as payment of the balance outstanding, following final acceptance of the supplies (alternatively it may be done after provisional acceptance if the Contractor provides a security guaranteeing repayment of the full amount of the 10% balance).

All the payments take place through issuing a Letter of Credit by the National Bank of Egypt in favour of the Italian agent bank for the Contractor's bank, for the full amount of the Contract price. The Letter of Credit must be issued before shipment. After issuing the Letter of Credit the payments by the bank proceed automatically without further authorizations from the Contracting Authority and the funds of the Commodity Aid Programme are already deposited at the Italian agent bank.

Article 28 Delayed payments

- 28.1** The Contracting Authority shall pay the Contractor the sums due within 45 days of the date on which an admissible payment is registered, in accordance with Article 26 of these General Conditions. This period shall begin to run from the approval of these documents by the competent department referred to in Article XXVI of the Special Conditions. These documents shall be approved either expressly or tacitly, in the absence of any written reaction in the 45 days following their receipt accompanied by the requisite documents.
- 28.2** Once the deadline laid down in Article 28.1 has expired, the Contractor may, within two months of late payment, claim late-payment interest:
- a) at the rediscount rate applied by the issuing institution of the country of the Contracting Authority where payments are in national currency;
 - b) at the rate applied by the European Central Bank to its main refinancing transactions in EURO, as published in the Official Journal of the European Union, where payments are in EURO,
- on the first day of the month in which the deadline expired, plus seven percentage points. The late-payment interest shall apply to the time that elapses between the date of the payment deadline (exclusive) and the date on which the Contracting Authority's account is debited (inclusive).
- 28.3** Any default in payment of more than 90 days from the expiry of the period laid down in Article 28.1 shall entitle the Contractor either not to perform the contract or to terminate it, with 30 days' prior notice to the Contracting Authority

ACCEPTANCE AND MAINTENANCE

Article 29 Delivery

- 29.1** The Contractor shall deliver the supplies in conformity to the conditions specified in the Supply Contract. The Contractor shall pack the goods such as to protect them from damages or deterioration during their transport to final destination. Packaging shall be such to withstand, with no limits, rough handling, extreme temperatures, saltiness and precipitation during outdoor transport and storage. Packaging size and weight shall be suited, if necessary, to the distance of the goods' final destination and to the possible lacking of facilities for handling heavy loads during transport.
- 29.2** Packaging, marking and documents inside and outside packages shall meet the particular requirements stated in the Supply Contract, except for any modification due to new instructions of the Purchaser.
- 29.3** The Contractor is responsible for the goods' delivery to the place stated in the Supply Contract.
- 29.4** A special list filled by the Contractor shall accompany each supply. Such list shall particularly state:
- Date of delivery;
 - Reference to the Supply Contract;
 - The Contractor's name and address;
 - Goods specifications.
- 29.5** Each package shall be clearly marked with the serial number corresponding to the same number in the list mentioned in Article 29.4 and the package shall contain the list of its relevant content.
- 29.6** The delivery shall be considered completed when the relevant certificate - issued by the Control and Surveillance Company and attesting that the goods have been supplied according to the Supply Contract and the invoice(s) and all documents listed in the "Special Conditions" have been given to the Purchaser or to the Contracting Authority - is at both Parties' disposal. With reference to the goods delivered at the Purchaser's factory, he shall assume the Consignee's responsibility in the period between the goods storage and the testing.
- 29.7** Materials and goods supplied according to the Supply Contract are totally insured, in favour of the Purchaser, against losses or accidental damages due to manufacturing or acquisition, transport, storage and delivery as laid down in the "Special Conditions".

Article 30 Verification operations

- 30.1 Goods can be tested only after prescribed inspections and preliminary tests have been carried out. Inspections and tests can be carried out at the delivery place and/or at the goods' final destination.
- 30.2 During goods delivery and before they are taken over, the Control and Surveillance Company can:
- a) Within injunction terms, order the removal from the testing place of the goods that, in its opinion, are not in conformity with the Supply Contract;
 - b) Order to replace such goods with new proper equipment;
 - c) Apart from any proceeding testing or advance payment, order to undo and correctly repeat any work which is judged not in compliance with the Supply Contract as far as materials, manufacturing or engineering are concerned and for which the Contractor is responsible;
 - d) Decide that a delivered item or the materials used by the Contractor is or are not in line with the Supply Contract, or that the goods, or part of them, do not satisfy the requirements stated in the Supply Contract.
- 30.3 The Contractor shall immediately repair the indicated defects at his own charge. In case of default, the Purchaser or the Contracting Authority have the right to engage or pay other people for repairing such defects and claim back to the Contractor all the relevant expenses or deduct such expenses from the amounts due to the Contractor.
- 30.4 Goods that do not comply with the required quality are refused and can be marked with a special sign. The sign shall be such not to damage and change their commercial value. The Control and Surveillance Company shall fix a date and settle that, within that same date, the refused goods shall be removed from the testing place at the Contractor care; on the contrary, goods will be officially removed at the Contractor charge and risk. Goods manufactured with refused materials will be refused.
- 30.5 What stated in this article does not compromise the Purchaser's capacity to claim his rights according to Article 21 "Delay in Supply Contract execution" nor does it free in any way the Contractor from the warranty or from any other obligation stated in the Supply Contract.

Article 31 Provisional acceptance

- 31.1 The supplies shall be taken over by the Contracting Authority when they have been delivered in accordance with the contract, and they have satisfactorily passed the required tests, or they have been commissioned as the case may be, and when a certificate of provisional acceptance has been issued or it is deemed to have been issued.
- 31.2 The Contractor may apply, by notice to the Contracting Authority, for a certificate of provisional acceptance when supplies are ready for provisional acceptance. The Contracting Authority shall within 30 days of receipt of the Contractor's application either:
- a) issue the certificate of provisional acceptance to the Contractor with a copy to the Contracting Authority stating, where appropriate, his reservations, and, inter alia, the date on which, in his opinion, the supplies were completed in accordance with the contract and ready for provisional acceptance; or
 - b) reject the application, giving his reasons and specifying the action which, in his opinion, is required of the Contractor for the certificate to be issued.
- 31.3 Should exceptional circumstances make it impossible to proceed with the acceptance of the supplies during the period fixed for provisional or final acceptance, a statement certifying such impossibility shall be drawn up by the Contracting Authority after consultation, where possible, with the Contractor. The certificate of acceptance or rejection shall be drawn up within 30 days following the date on which such impossibility ceases to exist. The Contractor shall not invoke these circumstances in order to avoid the obligation of presenting the supplies in a state suitable for acceptance.

- 31.4** If the Contracting Authority fails either to issue the certificate of provisional acceptance or to reject the supplies within the period of 30 days, it shall be deemed to have issued the certificate on the last day of that period, except where the certificate of provisional acceptance is deemed to constitute a certificate of final acceptance. In this case, Article 31.5 below does not apply. If the supplies are divided by the contract into lots, the Contractor shall be entitled to apply for a separate certificate for each lot.
- 31.5** In case of partial delivery, the Contracting Authority reserves the right to give partial provisional acceptance.
- 31.6** Upon provisional acceptance of the supplies, the Contractor shall dismantle and remove temporary structures and materials no longer required for use in connection with the performance of the contract. He shall also remove any litter or obstruction and redress any change in the condition of the place of acceptance as required by the contract.
- 31.7** Goods are taken over by the Purchaser or the Contracting Authority after they have been delivered in compliance with the Supply Contract, have successfully passed the required tests, have been assembled, if the case, and a certificate of provisional testing has been issued.
- 31.8** The Contractor shall be able to ask the Contracting Authority, in writing, a certificate of provisional testing with a maximum advance of 15 (fifteen) days from the date when, according to the Contractor, the goods will be ready for provisional testing. Within 30 (thirty) days from the receipt of the Contractor's request, the Contracting Authority shall:
- a) Send to the Contractor, and copy to the Purchaser, the certificate of provisional testing, pointing out any possible reservations and the date when, in its opinion, goods were ready for provisional testing in compliance with the Supply Contract, or
 - b) Refuse the request, justifying the decision and stating what, in its opinion, the Contractor shall do for the certificate release.
- 31.9** In case unpredictable circumstances hamper the testing of goods in the period chosen for provisional or final testing, the Contracting Authority, by mutual consent, if possible, with the Contractor, writes down a report about such circumstances. The testing or the refusal certificate shall be issued within 30 (thirty) days from the date obstacles to goods testing cease to exist. The Contractor shall not refer to the aforesaid circumstances to avoid goods availability for testing.
- 31.10** If the Contracting Authority does not issue the certificate of provisional testing or does not reject the supplies within a period of 30 days, it is considered that he has issued the certificate on the deadline of the period and the certification of surveillance Company will be valid. The certificate of provisional testing is not the acknowledgement of the whole delivery of the supplies. If the Supply Contract states that the supplies must be divided in lots, the Contractor has the right to ask for single certificates for every lot.
- 31.11** After the certificate's of provisional testing issue, the Contractor shall dismantle and restore temporary plants and materials that are no more necessary for the Supply Contract's execution. He shall besides remove all obstacles and changes to the testing place.

In case the commodities are delivered according to IncoTerms clause DDU only, they shall be transported from the selected Egyptian seaport to the location indicated in the Tender Document and taken over by the final beneficiary (Consignee) or a representative designated by the Contracting Authority. After the commodities have been delivered according to Contract's clauses, assembled and installed if the case, a proper certificate of conformity is issued by the Control and Surveillance Company, which survey the overall shipping procedures and also issues a Certificate of Conformity at loading and a Certificate of Discharge. After, or normally jointly, the Certificate of conformity at final destination and of delivery has been issued, the Consignee produces a "Declaration of Delivery-location Suitability" attesting that the delivery location agreed in the Contract is ready to receive the commodities and for having them assembled and installed on site. This last certificate allows the Contractor to assemble and install the goods and obtaining the subsequent Certificate of Provisional Acceptance. The Contractor shall pay attention to respect the timing for shipment & delivery to the selected Egyptian seaport. Upon arrival to the Egyptian territory any delay from the arrival date, at the seaport, to the delivery date at the final destination, due to custom, administrative and governmental procedures, shall be borne by the Contracting Authority. The importation shall be considered duty-free and any taxes, custom duties and expenses relevant to the import of goods within the Commodity Aid

Programme, into the Arab Republic of Egypt, as per next Article 3, are at Purchaser's charge. After delivery and onsite installation the Contractor receives the Certificate of Provisional Acceptance by the Consignee through the Contracting Authority.

Article 32 Warranty obligations

- 32.1** The Contractor shall warrant that the supplies are new, unused, of the most recent models and incorporate all recent improvements in design and materials, unless otherwise provided in the contract. The Contractor shall further warrant that all supplies shall have no defect arising from design, materials or workmanship, except insofar as the design or materials are required by the specifications, or from any act or omission, that may develop under use of the supplies in the conditions obtaining in the country of the Contracting Authority. This warranty shall remain valid as specified in the Special Conditions.
- 32.2** The Contractor shall be responsible for repair any defect, or damage, to any part of the supplies, which may appear or occur during the warranty period and which:
- a) results from the use of defective materials, faulty workmanship or design of the Contractor; or
 - b) results from any act or omission of the Contractor during the warranty period; or
 - c) appears in the course of an inspection made by, or on behalf of, the Contracting Authority.
- 32.3** The Contractor shall at his own cost make good the defect or damage as soon as practicable. The warranty period for all items replaced or repaired shall recommence from the date on which the replacement or repair was made to the satisfaction of the Contracting Authority. If the contract provides for partial acceptance, the warranty period shall be extended only for the part of the supplies affected by the replacement or repair.
- 32.4** If any such defect appears or such damage occurs during the warranty period, the Contracting Authority shall notify the Contractor. If the Contractor fails to remedy a defect or damage within the time limit stipulated in the notification, the Contracting Authority may:
- a) remedy the defect or the damage itself, or employ someone else to carry out the work at the Contractor's risk and cost, in which case the costs incurred by the Contracting Authority shall be deducted from monies due to or guarantees held against the Contractor or from both; or
 - b) terminate the contract.
- 32.5** In emergencies, where the Contractor cannot be reached immediately or, having been reached, is unable to take the measures required, the Contracting Authority may have the work carried out at the expense of the Contractor. The Contracting Authority shall as soon as practicable inform the Contractor of the action taken.
- 32.6** The maintenance obligations shall be stipulated in the Special Conditions and technical specifications. If the duration of the warranty period is not specified, it shall be 365 days. The warranty period shall commence on the date of provisional acceptance and may recommence in accordance with Article 32.3.

Article 33 After-sales service

An after-sales service, if required by the contract, shall be provided in accordance with the details stipulated in the **Special Conditions**. The Contractor shall undertake to carry out or have carried out the maintenance and repair of supplies and to provide a rapid supply of spare parts. The Special Conditions may specify that the Contractor must provide any or all of the following materials, notifications and documents pertaining to spare parts manufactured or distributed by the Contractor:

- a) such spare parts as the Contracting Authority may choose to purchase from the Contractor, it being understood that this choice shall not release the Contractor from any warranty obligations under the contract;
- b) in the event of termination of production of the spare parts, advance notification to the Contracting Authority to allow it to procure the parts required and, following such termination, provision at no cost to the Contracting Authority of the blueprints, drawings and specifications of the spare parts, if and when requested.

Article 34 Final acceptance

- 34.1** Upon expiry of the warranty period or, where there is more than one period, upon expiry of the latest period, and when all defects or damage have been repaired, the Contracting Authority shall issue the Contractor a final acceptance certificate, stating the date on which the Contractor completed his obligations under the contract, with the Contracting Authority's satisfaction. The final acceptance certificate shall be issued by the Contracting Authority no later than 90 days from the expiry of the warranty period or as soon as any repairs ordered under Article 32 have been completed to the satisfaction of the Contracting Authority.
- 34.2** The contract shall not be considered to have been performed in full until the final acceptance certificate has been signed or is deemed to have been signed by the Contracting Authority.
- 34.3** Notwithstanding the issue of the final acceptance certificate, the Contractor and the Contracting Authority shall remain liable for the fulfilment of any obligation incurred under the contract prior to the issue of the final acceptance certificate which remains unperformed at the time that final acceptance certificate is issued. The nature and extent of any such obligation shall be determined by reference to the provisions of the contract.

BREACH OF CONTRACT AND TERMINATION

Article 35 Breach of contract

- 35.1** A Party shall be in a breach of contract if it fails to discharge any of its obligations under the contract.
- 35.2** Where a breach of contract occurs, the injured Party shall be entitled to the following remedies:
- a) damages; and/or
 - b) termination of the contract.
- 35.3** In addition to the above-mentioned measures, damages may be awarded. They may be either:
- a) general damages; or
 - b) liquidated damages.
- The amount and procedures for these damages shall be laid down in the Special Conditions.
- 35.4** Recovery of damages, disbursements or expenses resulting from the application of measures provided for in this Article shall be carried out by deduction from the sums due to the Contractor, from the deposit, or by payment under the guarantee.

Article 36 Termination by the Contracting Authority

- 36.1** The Purchaser or the Contracting Authority can at any time and with immediate effect cancel the Supply Contract, remaining valid what stated in clause no. 36.2.
- 36.2** If not rules instructions are established, the Purchaser or the Contracting Authority may cancel the Supply Contract, notifying it to the Contractor upon a 7 days' notice:
- a) In case the Contractor does not supply the goods in perfect compliance with the Supply Contract;
 - b) In case the Contractor does not comply, within a reasonable time, with the Control and Surveillance Company's injunction to remedy negligence or defaults in the Supply Contract's performance within the prescribed terms;
 - c) In case the Contractor refuses or disregards to carry out the Person's in Charge instructions;
 - d) In case the Contractor transfers or sub supplies the Supply Contract, or part of it, without asking for the Purchaser's or the Person's in Charge approval;
 - e) In case the Contractor goes bankrupt or becomes insolvent or is the object of a precautionary attachment or is entering into a composition with creditors or keeps on

carrying out his activity under the direction of a receiver, a trustee or an officer acting on behalf of creditors, or goes into liquidation;

- f) In case a final sentence has been passed for an offence concerning the Contractor professional behaviour;
- g) In case other kinds of legal incapacity hamper the Supply Contract's performance;
- h) In case a corporate structure modification causes a change in the Contractor's legal status;
- i) In case the Contractor fails to submit the required bond or insurance or a new bond or insurance if the person who gave the previous bond or insurance cannot fulfil the undertaken obligations.

36.3 The cancellation of the Supply Contract does not compromise any other right the Supply Contract grants the Purchaser and the Contractor. Afterwards, the Purchaser may sign other purchase contracts with a third party. The Contractor responsibility concerning any delays in the Supply Contract performance ceases to exist immediately after the Supply Contract's cancellation but any other previous responsibility linked to the Supply Contract stands.

36.4 After having notified that the Supply Contract has been cancelled, the Contracting Authority shall order the Contractor to take immediate measures to settle in a prompt and correct way the Supply Contract at minimum cost.

36.5 The Contracting Authority shall certify, as soon as the Supply Contract cancellation is occurred, the value of the goods and all the amounts due to the Contractor at the cancellation date.

36.6 In case of cancellation:

- a) In the Contractor's presence or of his representatives or after due convocation of all of them, the Contracting Authority shall write out as soon as possible a report on the delivered goods and draw up an inventory of the supplied materials which have not been used. Besides, it is drawn up a list of the amounts the Contractor shall pay to the Purchaser;
- b) The Purchaser may buy, at market price, materials and items supplied or ordered by the Contractor and still to be paid by the Purchaser himself at the conditions deemed advisable by the Contracting Authority.

36.7 The Purchaser is not obliged to effect other payments in favour of the Contractor until goods have been entirely delivered. The Purchaser is neither obliged to effect other payments in favour of the Contractor before the Contractor reimburses to the Purchaser the eventual additional expenses due to the supplies' execution, or else the Purchaser shall settle the outstanding to the Contractor before the Supply Contract cancellation.

36.8 In case the Purchaser cancels the Supply Contract because of the Contractor's default, the Contractor shall reimburse him for the suffered damages to a maximum amount fixed in the Supply Contract. If no maximum amount has been fixed, the Purchaser will receive only the share of the Supply Contract's price corresponding to the amount of that part of the goods that, because of the Contractor's default, do not comply with their intended use.

36.9 Where the Supply Contract cancellation is not caused by the Contractor's actions or omissions, the Contractor himself has the right to demand not only the amount due for the already supplied goods as well as a compensation for the suffered damages.

Article 37 Termination by the Contractor

37.1 The Contractor, upon a 14 days' notice to the Purchaser, may cancel the Supply Contract in case the Purchaser:

- a) Omits to effect the payments due to the Contractor;

- b) Keeps on failing to fulfil the obligations laid down in this Supply Contract despite repeated reminders;
- c) Stops goods delivery, or part of them, for more than 180 (one hundred and eighty) days, for reason not mentioned in the Supply Contract or not due to the Contractor.

Such cancellation does not compromise any other right the Supply Contract grants the Purchaser or the Contractor.

In case of cancellation, the Purchaser shall compensate the Contractor for any possible loss or damage he has suffered. Such additional payments must not exceed a maximum fixed in the Supply Contract.

- 37.2** The Contractor may, after giving 14 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 issued by the Control and Surveillance Company after the expiry of the deadline stated in the Special Conditions;
 - b) consistently fails to meet its obligations after repeated reminders; or
 - c) suspends the delivery of the supplies, or any part thereof, for more than 180 days, for reasons not specified in the contract or not attributable to the Contractor.
- 37.3** Termination shall be without prejudice to any other rights or powers under the contract of the Contracting Authority and the Contractor.
- 37.4** In the event of such termination, the Contracting Authority shall pay the Contractor for any loss or damage the Contractor may have suffered.

Article 38 Force majeure

- 38.1** Neither Party shall be considered to be in default or in breach of its obligations under the contract if the performance of such obligations is prevented by any event of force majeure, arising after the date of notification of award or the date when the contract becomes effective, whichever is the earlier.
- 38.2** For the purposes of this Article, the term "force majeure" means acts of God, 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, washouts, civil disturbances, explosions and any other similar unforeseeable events which are beyond the Parties' control and cannot be overcome by due diligence.
- 38.3** Notwithstanding the provisions of Articles 21 and 36, the Contractor shall not be liable to forfeiture of his performance guarantee, 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. Nor, notwithstanding the provisions of Articles 28 and 37, shall the Contracting Authority be liable for the payment of interest on delayed payments, for non-performance or for 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.
- 38.4** If either Party considers that any circumstances of force majeure have occurred which may affect performance of its obligations, it shall promptly notify the other Party, giving details of the nature, the probable duration and the likely effect of the circumstances. Unless otherwise directed by the Contracting Authority in writing, the Contractor shall continue to perform his obligations under the contract as far as is reasonably practicable, and shall employ every reasonable alternative means to perform any obligations that the event of force majeure does not prevent him from performing. The Contractor shall not employ such alternative means unless directed to do so by the Contracting Authority.
- 38.5** If the Contractor incurs additional costs in complying with the Contracting Authority's directions or using alternative means under Article 38.4, the amount thereof shall be certified by the Contracting Authority.
- 38.6** If circumstances of force majeure have occurred and continue for a period of 180 days then,

notwithstanding any extension of time for completion of the contract that the Contractor may by reason thereof have been granted, 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, by virtue of the law governing the contract, the Parties shall be released from further performance of the contract.

Article 39 Death

- 39.1** 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 30 days of receipt of such proposal.
- 39.2** Where the Contractor consists of a number of natural persons and one or more of them die, a report shall be agreed between the Parties on the progress of the contract, 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.
- 39.3** In the cases provided for in Articles 39.1 and 39.2, persons offering to continue to perform the contract shall notify the Contracting Authority thereof within 15 days of the date of decease.
- 39.4** Such persons shall be jointly and severally liable for the proper performance of the contract to the same extent as the original Contractor. Continuation of the contract shall be subject to the rules relating to establishment of the guarantee provided for in Article 11.

DISPUTE SETTLEMENT

Article 40 Amicable dispute settlement

- 40.1** The Parties shall make every effort to settle amicably any dispute, which may arise between them. Once a dispute has arisen, the Parties shall notify each other in writing of their positions on the dispute and any solution, which they consider possible. If either Party deems it useful, the Parties shall meet, try, and settle the dispute. A Party shall respond to a request for amicable settlement within 30 days of such a request. The maximum period laid down for reaching such a settlement shall be 120 days from the commencement of the procedure. Should the attempt to reach an amicable settlement fail or a Party fail to respond in time to requests for a settlement, either Party shall be free to proceed to the next stage of the dispute-settlement procedure by notifying the other.

Article 41 Dispute settlement by litigation

If no settlement is reached within 120 days of the start of the amicable dispute-settlement procedure, each Party may seek a ruling from a national court in accordance with the Special Conditions of this contract.