

C SPECIAL CONDITIONS¹⁶

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¹⁶ These Special Conditions override the correspondent articles in the General conditions. The numbering of the Articles of the Special Conditions is not consecutive and follows the numbering of the Articles of the General Conditions in Roman numerals. In exceptional cases, and with the authorization of Person in Charge, other clauses may be introduced to cover specific situations.

Article II Law applicable and language of the contract

For all matters not covered by the provisions of this Tender document, after signing the contract, and after the shipment of the commodities, the jurisdiction for any controversy arising from the interpretation or application of the contract, is the Egyptian one. The language used shall be English.

Article V Assignment

The Contractor may not assign the contract or any part thereof, or any benefit or interest.

Article VI Subcontracting

Subcontracting is allowed up to an amount of 30% of the total contract amount. Upon submitting their tenders, Tenderers must declare which supplies they intend to subcontract. Contractors must deposit subcontracts with the contracting authority at least 20 days before commencing the execution of the subcontracts. Subcontractors must be eligible for the supplies they are assigned

Article XI Performance guarantee

The amount of the performance guarantee shall be **10%** of the contract price including any amounts stipulated in riders to the contract.

The performance guarantee shall be released within 30 days of the issue of the final acceptance certificate.

Such Performance guarantee shall be delivered to the Contracting Authority prior the Supply Contract signature. In case of changes for whatsoever reason in the delivery scheduled, the Supplier commits itself to instruct the Bank to extend the validity of the guarantee and the relevant expiring date.

Article XII Insurances

The Supplier shall also provide an "All risks" policy for the 110% of the contract value excluding the following costs in the value of the supply:

- Warranty costs.
- Preliminary visit in Italy
- Training course in Egypt

Insurance shall be made in the name of the Contracting Authority.

Article XIII Performance programme (time table)

The time limit for delivery is set according to article 1 of Section A-Instructions to Tenderers and considering also the timetable in Section E (Technical Specifications).

The Supplier must provide a project time schedule indicating the delivery and, if required, of the installation of all goods.

Article XIV Supplier's drawings

As indicated in Section E (Technical specifications).

Article XVIII Commencement order

The commencement order will be issued within the contract signature.

Article XXI Delays in execution and penalties

For each day of delay, in the delivery on site of the goods as indicated in the agreed time schedule, the Contracting Authority shall apply a penalty equal to 0,03% and up to a maximum of 10% of the contract price and up to a 30 days of delay.

Delays in execution exceeding **30 days**, may result in breach of the contract, in accordance to Articles 35 and 36 of the General Conditions.

Article XXII Alterations

The contract may only be modified in the following cases:

- a) modifications of applicable laws and regulations;
- b) unforeseen and unforeseeable circumstances, including the implementation of new materials, components or technology not existing when the award procedure was commenced, provided that the modifications may only ameliorate the quality of the performance, without increasing the contract total amount and without quality of other goods inside the Supply;
- c) events related to the nature or the quality of the goods or places where the contract activities take place, which occur during the contract execution and were unforeseeable when the contract was made;
- d) unless otherwise provided, the above-mentioned modifications may not increase or reduce the total contract amount beyond 20%;
- e) modifications, which, in the interest of the Contracting Authority, increase or reduce the total contract amount, necessary to improve the quality and performance of the project are allowed up to 5%, provided that the funding is available and no substantial modification is made; the modifications shall be only due to overt reasons, unforeseeable when the contract was made;
- f) contractors cannot refuse the above-mentioned modifications and the Contracting Authority has the right to be such modifications executed at the same contractual conditions;
- g) contractors shall execute any non-substantial modification that the Contracting Authority may see fit, provided that the nature of the activity is not fundamentally altered and no additional costs are imposed.

Article XXV Inspection and testing

The Inspections and Monitoring activities will be effected by the **Control and Surveillance Company** as follows:

Quantity and quality inspections of the supply, inspection of the palling and packing, certifications concerning shipping at the Supplier's factory, loading and discharging port.

For the above-mentioned operations will be issued the following certificates by the **Control and Surveillance Company**:

§ **Certificate of Conformity at loading;**

§ **Certificate of Discharge;**

§ **Certificate of Conformity at final destination and of delivery.**

Before the expected shipment date from the factory, the **Control and Surveillance Company** Viglienzona Adriatica S.p.A. - Circonvallazione P.za d'Armi 130 – 48100 Ravenna – ph. 0544/422242 – fax 0544/590765 will inspect the supply, in order to ascertain and to certify the conformity with the tender terms.

Article XXVI Payments procedures

Payments shall be made by means of irrevocable confirmed **Letters of Credit**, in currency Euro, to be issued by the National Bank of Egypt through the **Banca Intesa-Sanpaolo SpA**, as Italian Agent Bank, within 30 days from the receiving date of the Contract from the *Contracting Authority* according to the following terms and conditions.

The letter of credit shall be operated only against presentation of the Antimafia Certificate by the Contractor.

An **Advance Payment** for an amount up to 50% of the contract price may be recognised against the following documents:

- **Advance Payment** Guarantee (as per Annex IV only issued by a first bank and not by an insurance company nor by a minor bank) for the same amount in favour of The Government of the Arab Republic of Egypt, Ministry of Planning and International Cooperation. Such guarantee shall be released within 45 (forty-five) days from the date of the “**Certificate of Conformity at final destination and of delivery**” issued by the Control and Surveillance Company. In case of failure in issuing the “**Certificate of Conformity at final destination and of delivery**” by the Control and Surveillance Company, the Contracting Authority shall have the right to have extended the advance payment guarantee for a period of minimum six months to allow the provider to remedy. In case such request is not fulfilled by the Provider, passed 30 additional days from the date of such request, the Person in Charge shall have the right to ask the Guarantor Bank to pay on behalf of the Provider the amount requested. In this last circumstance the Contracting Authority shall have the right to decide to wait for a new **Advance Payment** Guarantee from the same provider or to claim the rightful withdraw from the contract and proceed by contracting a new Tenderer according to the scoring list or launching a new Tender. It is understood that the Advance Payment Guarantee shall remain valid for a period of at least 60 days after delivery.
- Certificate of full receipt of the above mentioned sum signed by the Supplier
- **Pro-forma invoice** in 5 (five) copies.

A payment equal to 40% of the contract value which, including the above mentioned advance payment, covering up to 90% of the contract value, will be recognised against the following documents:

- Certificate of full receipt of the above mentioned sum signed by the Contractor;
- All risk insurance Policy /Certificate for the agreed Incoterm Clause value excluding costs for: preliminary visit – training in Italy and training course in Egypt, according to what requested and indicated in the Special Conditions.
- Commercial Invoice in 5 (five) copies issued by the Supplier
- Packing list in 5 (five) copies
- **Certificate of Origin** issued by the local Chamber of Commerce certifying the *Italian origin of the commodities*
- Supplier declaration of liability stating the Italian origin of the commodities;
- “**Certificate of Conformity at final destination and of delivery**” issued by the Control and Surveillance Company
- 2/3 of Bill of Lading issued to the order and blank endorsed clean on board - “Freight Prepaid”.
- Copy of the express courier receipt evidencing the dispatch of one original of the Bill of Lading with the Control and Surveillance Company visa and 1 copy of the Certificate of origin issued by the local Chamber of Commerce directed to the Contracting Authority through the Italian Expert at the Embassy of Italy

The residual value equal to 10% of the total amount of the supply contract shall be paid upon presentation of the “**Certificate of Final Testing**” of the supply, issued and signed by the Consignee and signed for confirmation by the Contracting Authority, after the expiring of the Warranty Period.

Alternatively, the residual value equal to 10% of the total amount of the supply may be paid to the Supplier after **45 days** from the date of the “**Certificate of Conformity at final destination and of delivery**” issued by the Control and Surveillance Company and against presentation of the following documents:

- Certificate of full receipt of the above mentioned sum signed by the Supplier;
- **Retention Money Guarantee** (as per Annex VI) for the same amount in favour of the Government of the Arab Republic of Egypt.

The 10% Retention Money Guarantee will be released upon presentation of the “Certificate of Final Testing”, issued and signed by the Consignee and signed for confirmation by the Contracting Authority, after the expiring of the Warranty Period.

In case the “Certificate of Final Testing” is not issued for reasons not due to the Contractor, the Retention Money Bond shall be considered implicitly released after a number of days from the date of *Certificate of Conformity at final destination and of delivery calculated as follows*: date of Certificate of Conformity at Final Destination and of Delivery + 730 warranty days + 90 days for the issuing of Certificate of Final Testing + 90 banking days) and after proper notice to the Contracting Authority.

All Bank commissions and fees charged outside the Egyptian boundaries shall be born by the Contractor:

The expiring date of validity of the letter of credit shall consent the Contractor to be able to present all documents for the payment of the balance.

Article XXIX Packaging for delivery

- XXIX.1 The Supplier shall bear all risks concerning the goods until provisional acceptance at destination according to the IncoTerms clause agreed in this contract. The supplies shall be packaged so as to prevent their damage or deterioration in transit to their destination.
- XXIX.2 The packaging shall become the property of the recipient subject to respect for the environment.
- XXIX.3 Sticker with the Logo of the Donor (see Pattern) dim 12x9 cm must be placed on each of the equipment described in Article 1.1 of the Instructions to the Tenderers.



The colours are precisely defined with RGB palette:

	R	G	B
Green	0	128	1
White	255	255	255
Red	255	0	1

The Supplier shall mail to the Contracting Authority, with a copy to the Insurance Company all the documents necessary to the delivery of the goods (the list of these documents will be defined at the moment of the contract signature).

Article XXX Consignee preliminary visit and training - Verification operations

XXX.1 Consignee Preliminary Visit and Training in Italy: The Supplier will organize and manage, at its own complete cost, a trip of not more than one (1) week in Italy, at least 20 days before the shipment of the supplies from the factory, for 4 representatives of the Consignee, appointed by the Beneficiary, for a training on the commodities to be supplied, effected at the Supplier’s Factory, with the assistance of high qualified Arabic speaking trainer.

On the training session the consignee shall have the right to examine the commodities to be provided. In

this occasion, in case the Consignee assesses any alteration between the Tender Technical Specification approved and the Final product, or if he finds out such alteration in any other occasion, the consignee shall have the right to inform the Contracting Authority through an Assessment Report. In no circumstance the Consignee shall have the right to propose any alteration, requested directly to the supplier or to the Control and Surveillance Company, neither interfere in any other way with the supply process or the surveillance procedures. The Inspection and Surveillance activities on the Commodities to be provided, remain the sole prerogative and responsibility of the Control and Surveillance Company.

XXX.2 Training in Egypt: The Supplier will organize, at his own total cost, a 2 weeks training course in Egypt, in the location indicated by the Consignee, on the use and general maintenance of the commodities provided.

The staff to be trained will be composed by:

- No. from the to be trained on the ;

XXX.3 The training will be called by the Consignee with 2 weeks advance-notice.

Article XXXI Provisional Acceptance

XXXI.1. A “Certificate of Conformity at final destination and of delivery” shall be issued by the Control and Surveillance Company upon correct delivery of the supply, at final destination according to the Incoterm clause agreed;

XXXI.2. Starting from the date of such “Certificate of Conformity at final destination and of delivery”, the commodities shall be considered delivered to the Consignee, which will be responsible of its good care.

XXXI.3. The Supplier, at the Consignee premises, will test the supply, at the presence of the qualified personnel appointed by the Beneficiary. The Beneficiary, after checking the correct performance of the goods as specified in the tender terms, will issue the "Certificate of Provisional Acceptance". Starting from the date of such Certificate, the Warranty Period of 36 months will start.

XXXI.4. In the circumstance the final destination of the commodities is not a sea Port but another location in Egypt, the following clauses shall apply:

After the “Certificate of Conformity at final destination and of delivery” has been issued by the Control and Surveillance Company, the Consignee shall produce, through the Person in Charge, within 2 (two) weeks, a “Declaration of Delivery-location Suitability” attesting that the delivery location agreed in the Contract is ready to receive the commodities and, if the case, for having them assembled and installed on site.

- a) If the Consignee fails providing such Declaration or provides an untruthful Declaration, and such failure is not due to fault or negligence of the Supplier, the Supplier shall have the right to proceed with the delivery of the commodities in the agreed location without, if the case, assembling and installing them. In such circumstance the Supplier shall have the right to receive the "Certificate of Provisional Acceptance" and if the Consignee refuses, it shall be deemed to have issued the certificate on the first day after the 2-week period. In the same circumstances the Consignee shall still have the right to have the commodities assembled and installed, and to receive the onsite training and all the other services according to the contract. In such case the costs arising from the delay (storage, maintenance, security etc. in Egypt) shall be born by the Consignee and the warranty period of 36 months will start on the first day after the time of the above-mentioned two weeks has elapsed. If the Consignee does not issue the “Declaration of Delivery-location Suitability” within 36 months from the date of the "Certificate of Provisional Acceptance" the right of having the commodities assembled and installed, and to receive the onsite training, shall be considered lost.
- b) If the Consignee fails providing such Declaration or provides an untruthful Declaration, and such failure is not due to fault or negligence of the Supplier, the Supplier shall have the right to proceed with the delivery of the commodities in the agreed location without, if the case, assembling and installing them. In case of hampering elements, not due to fault or negligence of the Supplier, which prevents the delivery to the final destination, the commodities will be considered delivered at the seaport to which they arrive from Italy. In such circumstance the Supplier shall have the right to receive, after the due inspections, the “Certificate of Conformity at final destination and of

delivery” and the "Certificate of Provisional Acceptance”. If the Consignee refuses to issue the "Certificate of Provisional Acceptance”, it shall be deemed to have issued the certificate on the first day after the 2-week period. In the same circumstances the Consignee shall still have the right to have the commodities delivered to the final destination, assembled and installed, and to receive the onsite training and all the other services according to the contract. In such case the costs arising from the delay (storage, maintenance, security etc. in Egypt) shall be born by the Consignee and the warranty period of 36 months will start on the first day after the time of the above-mentioned two weeks has elapsed. If the Consignee does not issue the “Declaration of Delivery-location Suitability” within 36 months from the date of the "Certificate of Provisional Acceptance” the right of having the commodities assembled and installed on-site, and to receive the on-site training, shall be considered lost.

Article XXXII Warranty

XXXII.1. The supplies must have a full technical warranty for a period of 36 (thirty-six) months from the date of the “**Certificate of Provisional Acceptance**” issued by the Consignee.

XXXII.2. The Supplier shall warrant that the supplies are new, unused, of the most recent models and incorporate all recent improvements in design and materials. The Supplier shall further warrant that all commodities have no defects arising from design, materials or manufactory.

Article XXXIII After-sales service

XXXIII.1 The Tenderer shall appoint a local Agent and Service Centre in Egypt for post sale assistance and availability of consumables, spare parts/materials and will provide their name and address, informing also about:

- Their experience, organization and reliability to carry out the post sale assistance
- Post sale assistance’s intervention time;
- Spare part’s availability time.

XXXIII.2 If a local Agent, or Service Centre in Egypt in charge of the after-sales and maintenance service does not provide its services, by the deadline established in the Technical Specifications, the Contracting Authority shall be entitled to claim a delay charge. In such circumstance the Contracting Authority shall be entitle to charge and deduct for every day of delay, the 0.001% of the contract price up to a 5% of the same contract price.

XXXIII.3 The amount corresponding of the total delays will be deducted from the Performance Guarantee.

Article XXXIV Final Acceptance

After 36 months of warranty period starting from the “Certificate Provisional Acceptance” date, as per article no. 20 without reserve about the Supplier’s performance made from the Consignee, the commodities will be finally accepted and the retention Money Bond released. In order to proceed as above mentioned, a “**Certificate of Final Testing**”, stating the date when the Supplier has fulfilled his supply-contract’s obligations, shall be issued and signed by the Consignee and signed for confirmation by the Contracting Authority, within 90 (ninety) days from the date of expiry of the 24 months warranty period (see clause no. 32 of the General Conditions);

Article XL Amicable settlement of disputes

The contracting parties shall make every effort to settle amicably any dispute, which may arise between them (as per Article 40 of the General Conditions).

If an agreement is not reached within 120 days of the start of the amicable dispute-settlement procedure, all disputes shall be finally settled in accordance to Article 24.

Article XLI Dispute settlement by legal action

If no settlement is reached within 120 days from the moment the amicable-dispute-settlement procedure has started, each Party may seek a ruling from a national court in accordance with the National Legislation of the Country of the Contracting Authority, if the Supply contract has been signed and according to the Italian law, after signing the Contract the international law may be applicable during the shipment. Arbitration ruling is excluded.

Extra clauses:

XLII Technical documentation

XLII.1 With reference to the characteristics of the commodities to be provided, the Contractor has to provide a Manufacturer's certificate indicating that the equipments so provided are being prepared for scope of the final destination and use by the purchaser. The document shall be inserted in the envelope containing the Technical offer.

XLII.2 Hand books, in **English language** and covering in detail all necessary information about operations, trouble shoots, repair and maintenance, for a correct use, *shall be delivered together with the commodities.*

XLIII Carriers

Shipping of the Commodities, object of this contract, to the selected sea Port, Tenderers shall use exclusively Italian carriers. To be noticed that the ship used to transport in Egypt the goods, object of this Tender, must be Italian, namely, must flies Italian flag only.