

GENERAL CONDITIONS OF CONTRACT
PROCUREMENT OF WORKS

1. Definitions

1.1

The **contract** is the contract between the procuring entity and the contractor to execute, to complete and maintain the works. The name of the contract is defined in the contract data.

The **bid form** is the form that the Bidder shall fill and submit with the Bid to The Procuring Entity.

The **contract price** is the price stated in the Letter of Acceptance sent by the procuring entity to the contractor, which the completion of the contract form will be based on.

The **completion date** is the date of completion of the works as certified by the procuring entity.

The **bill of quantities** means the priced bill of quantities forming part of the bid.

The **compensations events** are those defined in the clause 19.1 thereunder.

The **contractor** is a person or a company whose bid to carry out the works has been accepted by the procuring entity.

Days are calendar days; **months** are calendar months.

A **defect** is any part of the works not completed in accordance with the contract.

The **defect liability period** is the period named in the contract data and calculated from the completion date.

Drawings include calculations and other information provided or approved by the procuring entity for the execution of the contract.

The **employer** is a central or local body to whom funds are allocated to perform the contract.

The **procuring entity**, as defined in the contract data, is the part who employs the contractor to carry out the works.

The name of the person authorised to act as a representative of the procuring entity, is included in the contract data.

The **project manager** is a competent person appointed by the procuring entity and notified to the contractor, who is responsible for supervising and execution of the works and administering the contract.

The **engineer** is the person, representative of the contractor and approved by the procuring entity, responsible for the execution and the completion of the works.

Equipment is the contractor's machinery brought temporarily to the site to construct the works.

The **Intended Completion Date** is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is specified in the Contract Data. The Intended Completion Date may be revised only by the Procuring Entity by issuing an extension of time or an acceleration order.

Materials are all supplies, including consumable, used by the Contractor for incorporation in the Works.

Specifications means the Specifications of the Works included in the Contract and any modification or addition made or approved by the Procuring Entity and the Investor.

The **Start Date** is included in the Contract Data. It is the date when the Contractor shall commence execution of the Works. If it is not possible for the Contractor to commence the Works, the date of receiving of the advance payment will be considered as the Start Date.

Temporary Works are works designed, constructed, installed and removed by the Contractor that are needed for construction or installation of the Works.

The **Works** are what the Contractor has to perform in conformity with the Contract.

1.2 This shall be a "Unit Price Contract based on Priced Bill of Quantities", as specified in the Contract Data.

2. Language

2.1 The language of the Contract is stated in the Contract Data.

3. Communications.

3.1 Communications between parties shall be effective only in writing. A notice shall be effective when it is delivered.

4. Personnel.

4.1 The Contractor shall employ the key personnel as prescribed in the offer, to carry out the functions stated in the Schedule approved by the Project Manager. The Project Manager will approve any proposed replacement of the

key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Schedule.

- 4.2 If the Project Manager asks to the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the site within 72 hours and has no further connections with the works in the Contract.

5. Contractor's Risks.

- 5.1 From the Starting Date until the Defects Correction Certificate has been issued, the risks of personal injury, death and loss of or damage to property (including without limitation, the Works, Materials and Equipment) are Contractor's risks.

6. Insurance.

- 6.1 The Contractor shall provide all insurance in conformity with the Albanian laws, which are due to the Contractor's risks according to the point 5 of this GCC, covering the period from the Start Date to the end of Defects Liability Period for the following events:

- (a) damages to the Works;
- (b) loss and/or damages to Materials and Equipment;
- (c) personal injury or death.

7. Contractor to Construct the Works.

- 7.1 The Contractor shall construct the Works in accordance with Specifications and Drawings.

8. Program.

- 8.1 Within the time stated in the Contract Data, the Contractor shall submit to the Project Manager for approval a Program showing the general methods and a time schedule according to the proposed period for all the activities in the Works. The Contractor shall implement the Program according to this schedule.

9. The works to be completed by the Intended Completion Date.

9.1 The Contractor shall carry out the Works in accordance with the Program submitted by the him and complete them by the Intended Completion Date.

10. Safety.

10.1 The Contractor shall be responsible for the safety of all activities on the Site.

11. Correction of Defects.

11.1 The Project Manager shall give notice to the Contractor of any defect before the end of Defect Liability Period. The Defect Liability Period shall be extended for as long as Defects remain to be corrected.

11.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.

13. Uncorrected Defects.

13.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice, the Project Manager will assess the cost of Defect's correction and the Contractor will pay this amount or the Procuring Entity shall withhold this amount from statements of the estimated value of the works to be performed.

14. Bill of Quantities.

14.1 The Bill of Quantities shall contain items for the construction, installation, testing to be done by the Contractor.

14.2 The Bill of Quantities is used to calculate the Contract Price. The Contract Price is fixed. If the Project Manager will accept any variation, the payment for the relevant additional amount will be made using the fund for contingencies included in the items of Bill of Quantities. The Contractor is paid for the quantity of the work done at the rate in the Bill of Quantities for each item.

15. Changes in Quantities.

15.1 Ordered changes. Each change in the quantity of the works, ordered by the Procuring Entity, which will increase the Contract Price, shall be subject to a written Minute (Order) signed by the Procuring Entity. Such kind of orders will be prepared based on Procuring Entity's technical proposal and relevant calculations made by the Contractor based on unit rates of the Bill of Quantities for each item.

15.2 Changes in Quantities. If the final quantity of the work done differs from the quantity in the Bill of Quantities and the estimated value does not exceed the Provisional Sum included in the Bill of Quantities, the Procuring Entity shall adjust the rates to allow for the change.

16. Payment Certificates.

16.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously, the relevant amount of the advance payment, the retention for defects corrections, as specified in Contract Data.

16.2 The Project Manager shall check the works executed by the Contractor and shall certify the amount to be paid to the Contractor within 20 days from the date of payment certificate submission. The value of the work executed shall be determined by the Project Manager and shall comprise the value of the quantities of the items in the Bill of Quantities.

15.3 The value of work executed shall include the valuation of Variations and Compensation Events.

16. Payments.

16.1 The Procuring Entity shall pay the Contractor the amounts certified by the Project Manager within 8 days of the date of each certificate. If the Employer makes a late payment, this will be considered a compensation event.

16.2 Items if the Works for which no rate or price has been entered in the submitted offer, will not be paid for by the Procuring Entity and shall be deemed covered by other rates and prices in the Contract.

17. Compensation Events.

17.1 The following shall be Compensation Events:

- (a) The Procuring Entity does not give access to the Site possession in the date stated in the Contract Data.
- (b) The Project Manager orders a delay or does not issue Drawings, Specifications or instructions required for execution of the Works on time.
- (c) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have Defects.
- (d) Public authorities, Procuring Entity or the Investor cause delays and additional costs for the Contractor.
- (e) The delayed advance payment or late payment of certificates.
- (f) The Procuring Entity unreasonably delays issuing of Certificate of Completion.

17.2 The above mentioned events will be compensated as follows:

- (a) Regarding to the events prescribed in points 17.1 (a), (b), (c), (d) the Procuring Entity will postpone the Completion Date foreseen in the Contract Data.

Also for the events prescribed in points 17.1 (c) and (d) the Procuring Entity will accept the additional costs.

- (b) Regarding to the delays mentioned in points 17.1 (e) and (f) the Procuring Entity shall pay to the Contractor the interest on the late payment for day of delay, as stated in the Contract Data.

18. Tax

18.1 The Contractor is obliged to pay all tax duties in accordance with the Albanian laws.

18.2 The Contractor shall include in the Contract Price all taxes and duties governing 28 days before the bid opening date. No other additional payment shall be done by the Procuring Entity.

19. Liquidated damages.

19.1 The Contractor shall pay liquidated damages to the Procuring Entity at the rate per day stated in the Contract Data for each day that the Completion

Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the Contract Data. The Procuring Entity may deduct liquidated damages from payment due to the Contractor.

20. Advance Payment.

20.1 The Procuring Entity shall make an advance payment to the Contractor of the amount stated in the Contract Data after transferring on Site by the Contractor of machineries and equipment necessary for works' commencement.

20.2 The Contractor is to use the advance payment only to pay for materials and mobilisation expenses required specifically for execution of the Contract.

20.3 The advance payment shall be repaid monthly by deducting proportionate amounts from the Certificate of Payment submitted by the Contractor.

21. Security.

21.1 The Procuring Entity shall deduct from each payment due to the Contractor an amount calculated at the rate stated in the Contract Data as a guarantee for the quality of the works completed. These amounts will be paid to the Contractor after the Defects Liability Period is expired.

22. Cost of Repairs.

22.1 Loss or damage of the Works and Materials to be incorporated in the Works between the Start Date and the Completion Date shall be remedied by the Contractor at the Contractor's costs if the loss or damage arises from the Contractor's acts or omissions.

22.2 The works not satisfactorily completed shall be remedied by the Contractor during the Defects Liability Period, at the Contractor's costs.

22.3 The Contractor shall not be responsible for repairing of damages caused by a force major during the execution of the Works.

23. Taking Over.

23.1 After the Completion Date the Contractor shall supply to the Project Manager with a detailed account of the total amount for the works executed. The Project Manager shall certify that this account is correct and complete and

submit it to the Procuring Entity within 30 days of receiving the Contractor's account. The Procuring Entity shall check the Contractor's work and notify the Contractor by a written note for any defects that are found asking the repair of the defect within 15 days of issuing this note. After the correction of the defect, if any, and the relevant corrections have been made in the final account, the Procuring Entity shall issue the Taking Over Certificate, discharging also the Contractor's performance security.

24. Termination.

24.1 The Employer, the Procuring Entity or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.

24.2 Fundamental breaches of the Contract shall include, but shall not be limited to, the following:

- (a) the Contractor stops the work for 15 days when no stoppage of works is shown on the current program and the stoppage has not been authorised by the Project Manager;
- (b) the Project Manager instructs the Contractor to stop the process of the work and this instruction is not withdrawn within 15 days or the Contractor does not agree to pay for the relevant cost of this stoppage;
- (c) the Procuring Entity is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (d) the Project Manager gives notice that failure to correct a particular defect is a fundamental breach of Contract and the Contractor fails to correct it within 30 days;
- (e) the Contractor has delayed the completion of Works by the number of days for which the maximum amount for liquidated damages can be paid, as defined in Contract Data.

24.3 When either party to the Contract gives notice of a breach of Contract to the Employer for a cause other than those listed under sub-clause 24.2, the Employer shall decide whether the breach is fundamental or not.

24.4 Notwithstanding the above, the Procuring Entity may terminate the Contract for convenience and shall send to the Contractor a written notice within 30 days from the Contract termination.

24.5 If the Contract is terminated, the Contractor shall stop the work immediately, make the Site safe and secure, and leave the Site within 15 days from receiving of the notice.

25. Payment Upon Termination.

25.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a payment certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as indicated in the Contract Data. Additional Liquidated Damages shall not apply.

25.2 If the Contract is terminated for the Procuring Entity's convenience or because of a fundamental breach of Contract by the Procuring Entity, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of protecting and securing the Works and less payments received up to the date of the certificate.

26. Property

26.1 All Works executed shall be deemed to be the property of the Procuring Entity if the Contract is terminated because of the Contractor's default.

27. Release from Performance.

27.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Procuring Entity or the Contractor, the Procuring Entity shall certify that the Contract has been frustrated. The Contractor shall make Site safe and stop the work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.

28. Resolution of Disputes.

28.1 The Procuring Entity and the Contractor shall make every effort to resolve amicably by direct informal negotiation any disagreement and dispute arising between them under or in connection with the Contract. If after thirty (30) days from the commencement of such informal negotiations, the Procuring Entity and the contractor have been unable to resolve amicably a Contract

dispute, either party may require that the dispute be referred for resolution to three independent qualified contractors, one chosen by the Procuring Entity and one chosen by the Contractor and the third chosen by an appropriate professional body. The three should arrive at a solution satisfactory to the Procuring Entity and the Contractor. In case of further disagreement, either party can take the matter to arbitration in accordance with the Law governing the Contract. The place of arbitration will take place will be stated in the Contract Data.

29. Costs Changes.

29.1 In case of any change in the governing legislation after the fixed date 28 days before the bid opening date, that might cause to the Contractor additional costs, these costs will be defined by the Project Manager and the contract price will be adjusted. The Contractor shall be notified by the Project Manager for the above mentioned changes.

30. Contract Validity.

30.1 This Contract along with each or all annexes to the contract will be considered as valid documentation only after their approval by the Employer.

Note. In case of Lump Sum contracts (as specified in the Contract Data):

- Clause 1.2 will be replaced as follows:

This is a Lump Sum Contract based on Priced Activity Schedule, as specified in the Contract Data.

- Clause 13.2 will be replaced as follows:

The Bill of Quantities is used to calculate the Contract Price. The Contractor is paid for the quantity of the work done at the rate in the Bill of Quantities for each item.

- Clause 14.2 will be deleted.

- Clause 16.2 will be replaced as follows:

Items for which no rate and price is entered the Bidder, shall be deemed covered by the other rates and prices in the Activity Schedule.