



European Bank
for Reconstruction and Development

CONDITIONS OF CONTRACT
FOR
SUPPLY OF GOODS AND RELATED SERVICES

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General Conditions of Contract

Preamble

This publication represents the General Conditions of Contract for supply of goods and related services, modelled upon United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980).

These General Conditions of Contract, read in conjunction with the Particular Conditions and other documents listed therein, should constitute a complete document expressing all the rights and obligations of the parties.

Any changes and complementary information, which may be needed, shall be introduced through the Particular Conditions of Contract, which shall complement the General Conditions, specifying contractual requirements linked to the special circumstances of the Purchaser, the Purchaser's country, the sector, the project and the goods and services being procured.

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GENERAL CONDITIONS OF CONTRACT

1. GENERAL PROVISIONS

1.1 Definitions

In the Conditions of Contract ("these Conditions"), which include the Particular Conditions and these General Conditions, the following words and expressions shall have the meanings stated below. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

1.1.1 The Contract

- 1.1.1.1 "Contract" means the Contract Agreement, the Letter of Acceptance, the Letter of Tender, these Conditions, the Requirements, the Schedules, and the further documents (if any) which are listed in the Contract Agreement or in the Letter of Acceptance.
- 1.1.1.2 "Contract Agreement" means the Contract agreement referred to in Sub-Clause 1.6, Contract Agreement.
- 1.1.1.3 "Contract Documents" means the documents listed in the Contract Agreement, including any amendments thereto.
- 1.1.1.4 "Contract Price" means the price payable to the Supplier as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
- 1.1.1.5 "Drawings" means the drawings of the Goods, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Purchaser in accordance with the Contract.
- 1.1.1.6 "GCC" means the General Conditions of Contract.
- 1.1.1.7 "Letter of Acceptance" means the letter of formal acceptance, signed by the Purchaser, of the Letter of Tender, including any annexed memoranda comprising agreements between and signed by both Parties. If there is no such letter of acceptance, the expression "Letter of Acceptance" means the Contract Agreement and the date of issuing or receiving of the Letter of Acceptance means the date of signing the Contract Agreement.
- 1.1.1.8 "Letter of Tender" means the document entitled Letter of Tender, which was completed by the Supplier and includes the signed offer to the Purchaser for the Goods.
- 1.1.1.9 "PCC" means the Particular Conditions of Contract.
- 1.1.1.10 "Requirements" means the document entitled requirements, as included in the Contract, and any additions and modifications to them in accordance with the Contract.
- 1.1.1.11 "Schedule" means the document(s) entitled schedules, completed by the Supplier and submitted with the Tender, as included in the Contract. Such document(s) may include the Price Schedules, data, lists, and schedules of rates and/or prices.
- 1.1.1.12 "Tender" means the Letter of Tender, the Supplier's proposal and all other documents, which the Supplier submitted with the Letter of Tender, as included in the Contract.

1.1.2 Parties and Persons

- 1.1.2.1 “Party” means the Purchaser or the Supplier, as the context requires.
- 1.1.2.2 “Purchaser” means the person named in the Contract Agreement and the legal successors in title to this person.
- 1.1.2.3 “Subcontractor” means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Goods or the Related Services; and the legal successors in title to each of these persons.
- 1.1.2.4 “Supplier” means the person(s) named as Supplier in the Letter of Tender accepted by the Purchaser and the legal successors in title to this person(s).

1.1.3 Dates and Periods

- 1.1.3.1 “Base Date” means the date 28 days prior to the latest date for submission of the Tender.
- 1.1.3.2 “Commencement Date” means the date specified in the PCC, from which the time period for fulfilling the Supplier’s obligations under the Contract is calculated.
- 1.1.3.3 “day” means a calendar day and “year” means 365 days.

1.1.4 Goods

- 1.1.4.1 “Goods” means all of the commodities, raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to the Purchaser under the Contract.
- 1.1.4.2 “Related Services” means the services incidental to the supply of the Goods, such as insurance, transportation, installation, commissioning, training and initial maintenance and other such obligations of the Supplier under the Contract.

1.1.5 Other Definitions

- 1.1.5.1 “Acceptance Certificate” is a document issued upon successful completion of the final acceptance tests, carried out in accordance with the Requirements.
- 1.1.5.2 “Change Order” or “Change” is defined in Clause 24, Change Orders and Contract Amendments.
- 1.1.5.3 “Force Majeure” is defined in Clause 23, Force Majeure.
- 1.1.5.4 “Laws” means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.
- 1.1.5.5 “Performance Security” means the security (or securities, if any) under Clause 11, Performance Security.
- 1.1.5.6 “Purchaser’s Country” is the country specified in the PCC.
- 1.1.5.7 “Site,” where applicable, means the place named in the PCC.
- 1.1.5.8 “Unforeseeable” or “Unforeseen” means not reasonably foreseeable by an experienced Supplier by the Base Date.

1.2 Interpretation

1.2.1 Words and Expressions

Interpretation of the Contract, except where the context requires otherwise:

- (a) words indicating one gender include all genders;

- (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing; and
- (d) “written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record.

The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

1.2.2 Incoterms

Unless inconsistent with any provisions in the Contract, the meaning of any trade term and the rights and obligations of Parties thereunder shall be as prescribed by Incoterms.

The Incoterms, when used, shall be governed by the rules prescribed in the current edition of Incoterms, specified in the PCC, and published by the International Chamber of Commerce, Paris, France.

1.2.3 Entire Agreement

The Contract constitutes the entire agreement between the Purchaser and the Supplier and supersedes all communications, negotiations and agreements (whether written or oral) of the Parties with respect thereto made prior to the date of Contract.

1.2.4 Amendment

No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorised representative of each Party thereto.

1.2.5 Non-waiver

Subject to the conditions stipulated in this Sub-Clause, no relaxation, forbearance, delay, or indulgence by either Party in enforcing any of the terms and conditions of the Contract or the granting of time by either Party to the other shall prejudice, affect, or restrict the rights of that Party under the Contract, neither shall any waiver by either Party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

Any waiver of a Party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorised representative of the Party granting such waiver, and must specify the right and the extent to which it is being waived.

1.2.6 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

1.3 Communications

Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, notices, requests and discharges, these communications shall be:

- (a) in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission as stated in the PCC; and

- (b) delivered, sent or transmitted to the address for the recipient's communications as stated in the PCC. However:
 - (i) if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and
 - (ii) if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued

Approvals, certificates and consents shall not be unreasonably withheld or delayed. When a certificate is issued to a Party, the certifier shall send a copy to the other Party.

1.4 Law and Language

The Contract shall be governed by the Laws of the country or other jurisdiction stated in the PCC.

The ruling language of the Contract shall be that stated in the PCC.

The language for communications shall be that stated in the PCC. If no language is stated there, the language for communications shall be the ruling language of the Contract.

Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified, in which case, for the purposes of interpretation of the Contract, this translation shall govern.

The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Supplier.

1.5 Priority of Documents

Unless otherwise stated in the Contract Agreement, the documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

- (a) the Contract Agreement;
- (b) the Letter of Acceptance;
- (c) the Letter of Tender;
- (d) the Particular Conditions;
- (e) these General Conditions;
- (f) the Requirements;
- (g) the Schedules; and
- (h) the Supplier's proposal.

If an ambiguity or discrepancy is found in the documents, the Purchaser shall issue any necessary clarification or instruction.

1.6 Contract Agreement

Unless the Party agree otherwise in writing, they shall enter into a Contract Agreement within the period of time, specified in the documents, governing the procurement process, under which the Tender was submitted. The Contract Agreement shall be based upon the form annexed to these terms and conditions. The costs of stamp duties and similar charges (if any) imposed by Laws in connection with entry into the Contract Agreement shall be borne by the Purchaser.

1.7 Assignment

Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, either Party:

- (a) may assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party, and
- (b) may, as security in favour of a bank or financial institution, assign its right to any moneys due, or to become due, under the Contract.

1.8 Copyright

The copyright in all drawings, documents, and other materials containing data and information furnished to the Purchaser by the Supplier herein shall remain vested in the Supplier, or, if they are furnished to the Purchaser directly or through the Supplier by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.

1.9 Confidential Details

The Supplier's and the Purchaser's Personnel shall disclose all such confidential and other information as may be reasonably required in order to verify the Supplier's compliance with the Contract and allow its proper implementation.

Each of them shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out their respective obligations under the Contract or to comply with the governing Laws. Each of them shall not publish or disclose any particulars of the Goods prepared by the other Party without the prior agreement of the other Party. However, the Supplier shall be permitted to disclose any publicly available information, or information otherwise required to establish his qualifications to compete for other projects.

Notwithstanding the above, the Supplier may furnish to its Subcontractor(s) such documents, data and other information it receives from the Purchaser to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Supplier shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Supplier under this Clause.

1.10 Compliance with Laws

The Supplier shall, in performing the Contract, comply with the governing Laws.

Unless otherwise stated in the Particular Conditions:

- (a) the Purchaser shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the Purchaser's Country which
 - (i) such authorities or undertakings require the Purchaser to obtain in the Purchaser's name, and
 - (ii) are necessary for the execution of the Contract, including those required for the performance by both the Supplier and the Purchaser of their respective obligations under the Contract;
- (b) the Supplier shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the Purchaser's Country which such authorities or undertakings require the Supplier to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas for the Supplier's and Subcontractor's personnel and entry permits for all imported Supplier's Equipment. The Supplier shall acquire all other permits, approvals and/or licenses that are not the responsibility of the Purchaser under

Sub-Clause 1.10 (a) hereof and that are necessary for the performance of the Contract. The Supplier shall indemnify and hold harmless the Purchaser from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such Laws by the Supplier or its personnel, including the Subcontractors and their personnel.

1.11 Joint and Several Liability

If the Supplier is a joint venture, consortium, or association (the "JVCA") of two or more persons, all such persons shall be jointly and severally bound to the Purchaser for the fulfilment of the provisions of the Contract, and shall designate one of such persons to act as a leader with authority to bind the JVCA. The composition or the constitution of the JVCA shall not be altered without the prior consent of the Purchaser.

2. CONTRACT DOCUMENTS

Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.

3. NOTICES

Any notice given by one Party to the other, pursuant to the Contract shall be in writing to the address specified in Sub-Clause 1.3 hereof. The term "in writing" means communicated in written form with proof of receipt.

A notice shall be effective when delivered or on the notice's effective date, whichever is later.

4. SETTLEMENT OF DISPUTES

The Purchaser and the Supplier shall make every effort to resolve amicably by direct informal negotiation any dispute arising between them under or in connection with the Contract.

If, after twenty eight (28) days from the commencement of such consultation, the Parties have failed to resolve their dispute by such mutual consultation, then either Party may give notice to the other Party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration proceedings shall be conducted in accordance with the rules of procedure specified in the PCC.

Notwithstanding any reference to arbitration herein, the Parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and the Purchaser shall pay the Supplier any monies due the Supplier.

5. SCOPE OF SUPPLY

The Goods and Related Services to be supplied shall be as specified in the Requirements.

6. DELIVERY

Subject to Clause 25, the delivery of the Goods and provision of the Related Services shall be in accordance with the Requirements within the period of time stated in the respective Schedule and calculated from the Commencement Date. The shipping and other documents to be furnished by the Supplier are specified in the PCC. The documents specified therein shall be received by the Purchaser within the time period specified in the PCC before arrival of the Goods and, if not received, the Supplier shall be responsible for any consequent expenses.

7. SUPPLIER'S RESPONSIBILITIES

The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with Clauses 5 and 6.

8. CONTRACT PRICE

Unless otherwise prescribed in the PCC, the Contract Price shall be fixed throughout the duration of Contract performance.

9. TERMS OF PAYMENT

The Contract Price shall be paid as specified in the PCC.

The Supplier's request for payment shall be made to the Purchaser in writing, accompanied by invoices describing, as appropriate, the Goods delivered and Related Services performed, and by the documents submitted pursuant to Clause 6.

Payments shall be made promptly by the Purchaser within the time period specified in the PCC.

Unless otherwise stated in the PCC, the currencies in which payments shall be made to the Supplier under this Contract shall be those in which the Tender price is expressed. Payments of the amount due in each currency shall be made into the bank accounts, nominated by the Supplier and explicitly stated in the Contract Agreement.

In the event that the Purchaser fails to pay the Supplier any payment within the period stated above, the Purchaser shall pay to the Supplier interest on the amount of such delayed payment, at the rate stated in the PCC, for the period of delay, until payment has been made in full, whether before or after judgment, or arbitration award.

10. TAXES AND DUTIES

For Goods manufactured outside the Purchaser's Country the Supplier shall be entirely responsible for all taxes, duties, license fees, and other such levies imposed outside the Purchaser's Country.

For Goods manufactured within the Purchaser's Country the Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods to the Purchaser.

If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in the Purchaser's Country, the Purchaser shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

11. PERFORMANCE SECURITY

If so required in the PCC, the Supplier shall, within twenty eight (28) days of receiving the Letter of Acceptance, provide a performance security for the performance of the Contract of the amount specified in the PCC.

The performance security shall be issued by an entity and from within a country (or other jurisdiction) approved by the Purchaser.

The performance security shall be denominated in the currency of the Contract, or in other currency acceptable to the Purchaser, and shall be in the form stipulated by the Purchaser in the PCC, or in another form acceptable to the Purchaser.

The proceeds of the performance security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.

The performance security shall be discharged by the Purchaser and returned to the Supplier upon expiration of its validity, but in any case, not later than twenty eight (28) days following the date of completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the PCC.

12. SUBCONTRACTING

The Supplier shall notify the Purchaser in writing of all subcontracts awarded under the Contract, if not already specified in the Tender. Such notification, in the original Tender or later, shall not relieve the Supplier from any of its obligations, duties, responsibilities, or liability under the Contract.

13. SPECIFICATIONS AND STANDARDS

The Supplier shall ensure that the Goods and Related Services comply with technical requirements, as specified in the Requirements.

The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Purchaser, by giving a notice of such disclaimer to the Purchaser.

Wherever references are made in the Contract to codes and standards, in accordance with which it shall be executed, the addition or the revised version of such codes and standards shall be those specified in the Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Purchaser and shall be treated in accordance with Clause 24.

14. PACKING AND DOCUMENTS

The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Goods' final destination and the absence of heavy handling facilities at all points in transit.

The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the PCC, and in any other instructions ordered by the Purchaser.

15. INSURANCE

Unless otherwise specified in the PCC, the Goods supplied under the Contract shall be fully insured, in the currency of the Contract, against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms, or in the manner specified in the PCC.

16. TRANSPORTATION

Unless otherwise specified in the PCC, responsibility for arranging transportation of the Goods shall be in accordance with the specified Incoterms.

17. INSPECTIONS AND TESTS

The Supplier shall at its own expense and at no cost to the Purchaser carry out all such tests and/or inspections of the Goods and Related Services as specified in the PCC.

The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, at point of delivery, and/or at the Goods' final destination, or in another place in the Purchaser's Country as specified in the PCC. If conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.

The Purchaser or its designated representative shall be entitled to attend the tests and/or inspections, provided that, unless otherwise agreed by the Parties in writing, the Purchaser bears all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.

Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Purchaser. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Purchaser or its designated representative to attend the test and/or inspection.

The Purchaser may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications codes and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in the respective Schedule and the other obligations so affected.

The Supplier shall provide the Purchaser with a report of the results of any such test and/or inspection.

The Purchaser may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the Requirements. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the Requirements at no cost to the Purchaser, and shall repeat the test and/or inspection, at no cost to the Purchaser, upon giving a notice as specified above.

The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Purchaser or its representative, nor the issue of any report pursuant to this Clause, shall release the Supplier from any warranties or other obligations under the Contract.

18. LIQUIDATED DAMAGES

Except as provided under Clause 25, if the Supplier fails to deliver any or all of the Goods, by the date(s) of delivery, or perform the Related Services within the period specified in the Contract, the Purchaser may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the amount specified in the PCC of the Contract Price for each day or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in the PCC. Once the maximum is reached, the Purchaser may terminate the Contract pursuant to Clause 26.

19. WARRANTY

The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.

Subject to Clause 13, the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the Purchaser's Country.

Unless otherwise specified in the PCC, the warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the PCC, or for eighteen (18) months after the date of delivery, whichever period concludes earlier.

The Purchaser shall give notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the Supplier to inspect such defects.

Upon receipt of such notice, the Supplier shall, within the period specified in the PCC, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Purchaser.

If having been notified, the Supplier fails to remedy the defect within the period specified above, the Purchaser may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.

20. PATENT INDEMNITY

The Supplier shall, subject to the Purchaser's compliance with the provisions of this Clause, indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Purchaser may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:

- (a) the installation of the Goods by the Supplier or the use of the Goods in the Purchaser's Country; and
- (b) the sale in any country of the products produced by the Goods.

Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Supplier, pursuant to the Contract.

If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in this Clause, the Purchaser shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Supplier fails to notify the Purchaser within twenty eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf.

The Purchaser shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.

The Purchaser shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's

fees and expenses, which the Supplier may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Purchaser.

21. LIMITATION OF LIABILITY

Except in cases of gross negligence or wilful misconduct:

- (a) the Supplier shall not be liable to the Purchaser, whether in Contract, in tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser; and
- (b) the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort, or otherwise, shall not exceed the Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Supplier to indemnify the Purchaser with respect to patent infringement.

22. CHANGE IN LAWS AND REGULATIONS

If after the latest date for submission of the Tender any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in the place of the Purchaser's Country (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the respective Schedule and/or the Contract Price, then such Schedule and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with Clause 8.

23. FORCE MAJEURE

A Party's failure or delay in performing any of its obligations under this Contract will not be deemed a breach of this Contract to the extent that such failure or delay is directly due to any Force Majeure Event.

For the purposes of this Clause, "Force Majeure Event" means an event or situation beyond the control of a Party that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of a Party. Such events may include, but are not limited to, acts of a Party in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

If a Force Majeure Event arises, the affected Party shall promptly notify the other Party in writing of such condition and the cause thereof. Unless otherwise directed by the other party in writing, the affected Party shall continue to perform its obligations under the Contract as far as is reasonably practicable, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure Event.

24. CHANGE ORDERS AND CONTRACT AMENDMENTS

The Purchaser may at any time order the Supplier through notice in accordance with Clause 5, to make changes within the general scope of the Contract in any one or more of the following:

- (a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
- (b) the method of shipment or packing;

- (c) the place of delivery; and
- (d) the Related Services to be provided by the Supplier.

If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price and/or in the respective Schedule, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within twenty eight (28) days from the date of the Supplier's receipt of the Purchaser's change order.

Prices to be charged by the Supplier for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the Parties and shall not exceed the prevailing rates charged to other Parties by the Supplier for similar services.

Subject to the above, no variation in, or modification of, the terms of the Contract shall be made except by written agreement signed by the Parties.

25. EXTENSIONS OF TIME

If at any time during performance of the Contract, the Supplier or its Subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to Clause 6, the Supplier shall promptly notify the Purchaser in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, in which case the extension shall be ratified by the Parties by amendment of the Contract.

Except in case of Force Majeure, as provided under Clause 23, a delay by the Supplier in the performance of its obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to Clause 18, unless an extension of time is agreed upon, pursuant to the provisions above.

26. TERMINATION

26.1 Notice to Correct

If the Supplier fails to carry out any obligation under the Contract, the Purchaser may by notice require the Supplier to make good the failure within a specified reasonable time.

26.2 Termination for Default

The Purchaser, without prejudice to any other remedy for breach of Contract may, by written notice of default sent to the Supplier, terminate the Contract in whole or in part:

- (a) if the Supplier has failed to comply with a notice under Sub-Clause 26.1; and
- (b) if the Supplier has failed to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to Clause 25.

In the event the Purchaser terminates the Contract in whole or in part, pursuant to this Sub-Clause, the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Purchaser for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

26.3 Termination for Insolvency

The Purchaser may at any time terminate the Contract by giving notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Purchaser.

26.4 Termination for Convenience

The Purchaser, by notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective. The effective date of the termination notice shall be as specified in the PCC.

The Goods that are complete and ready for shipment within twenty eight (28) days after the effective date of the notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:

- (a) to have any portion completed and delivered at the Contract terms and prices; and/or
- (b) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.

27. EXPORT RESTRICTIONS

Notwithstanding any obligation under the Contract to complete all export formalities, any export restrictions attributable to the Purchaser, to the Purchaser's Country, or to the use of the Goods or Related Services, which arise from trade regulations from a country supplying those goods, or services, and which substantially impede the Supplier from meeting its obligations under the Contract, shall release the Supplier from the obligation to provide deliveries or services, always provided however, that the Supplier can demonstrate to the satisfaction of the Purchaser that it has completed all formalities in a timely manner, including applying for permits, authorisations, and licenses necessary for the delivery of the Goods or completion of the Related Services under the terms of the Contract.