**VOLUME 2**

**SECTION 2**

**PARTICULAR CONDITIONS OF CONTRACT**

These Particular Conditions amend and complete the General Conditions governing the contract. Unless the Particular Conditions provide otherwise, those General Conditions remain fully applicable. The numbering of the Clauses of the Particular Conditions is not consecutive but follows the numbering of the Clauses of the General Conditions. Other Particular Conditions should be indicated afterwards.

| **Sub-Clause** |  |
| --- | --- |
| **1** | GENERAL PROVISIONS |
| **1.1** | Definitions |
| 1.1.1 | *Replace Sub-Clause 1.1.1 with*:  **“Contract”** means the Contract Agreement and the documents listed therein. |
|  |  |
| 1.1.1.3 | *Add at the end of Sub-Clause 1.1.1.3*:  **“Letter of Acceptance”** means the Contract Agreement and the date of issuing or receiving the Letter of Acceptance means the date of signing the Contract Agreement by the last of the parties to sign the contract. |
| 1.1.1.4 | *Replace Sub-Clause 1.1.1.4 with*:  “**Letter of Tender”** means the document entitled **“Tender Form”**, which was completed by the Contractor at the time of tendering and includes the signed offer to the Employer for the Works. |
|  |  |
| 1.1.1.5 | *Replace Sub-Clause 1.1.1.5 with:*  “**Specifications”** means the document entitled “Technical descriptions, reports and specifications”, as included in the contract, and any additions and modifications to the Specifications in accordance with the Contract. |
| 1.1.1.11 | *Add new sub-clause 1.1.1.11:*  **“Construction permit”**means the official document required to approve the construction in accordance with the Montenegrin Construction Act (Law on spatial planning and construction of structures/Zakon o planiranju prostora i izgradnji objekata, Official Gazette of Montenegro, No. 64/17, 44/18, 63/18, 11/19, 82/20, with addenda, if any). |
|  |  |
| 1.1.1.12 | *Add new sub-clause 1.1.1.12:*  **“Addendum to Contract”** and **”Administrative Order”** mean documents prepared according to PRAG section 5.7.  This requirement does not relieve the parties from their responsibilities under the Contract. |
|  |  |
| 1.1.2.2 | *Add at the end of Sub-Clause 1.1.2.2*:  **“Employer”** is synonymous to “Contracting Authority” as used under PRAG and tender documents. |
|  |  |
| 1.1.2.6 | *At the end of Sub-Clause 1.1.2.6 insert:*  “Subject to notification, Employer’s Personnel may include persons acting for the End Recipient. |
|  |  |
| 1.1.2.11  **End Recipient** | *Add new Sub-Clause 1.1.2.11:*  **“End Recipient”** means the owner of the Works after the Period of Implementation and it is the organisation named as such in the Appendix to Tender and the legal successor/s in title to this legal person/s. |
| 1.1.3.1  **Base Date** | In Sub-Clause 1.1.3.1 replace ”28 days” with ”11 days”. |
|  |  |
| 1.1.4.1 | *Add at the end of the Sub-Clause* |
|  | “**Total Contract Amount”** means “Accepted Contract Amount” plus “Contingencies”. |
|  |  |
| 1.1.4.13  **Advance Payment** | *Add new Sub-Clause 1.1.4.13:*  “**Advance Payment**” as referred to in Sub-Clause 14.2 is synonymous to “Pre-financing Payment” as used in PRAG and in the tender documents. |
| 1.1.6.6 | *Add as last sentence to Sub-Clause 1.1.6.6:*  “**Performance Security**” is synonymous to “Performance Guarantee” as used under PRAG and in the tender and contract documents. |
| 1.1.6.9. | Add at the end of Sub-Clause 1.1.6.9:  This shall be read and interpreted in the relation with Sub-Clause 1.1.1.12. |
| 1.1.6.10  **Eligible Country** | *Add new Sub-Clause 1.1.6.10:*  "**Eligible Country**" means the Member States of the European Union and/or candidate countries for membership to the European Union. |
|  |  |
| 1.1.6.11  **Log Book** | *Add new Sub-Clause 1.1.6.11.*  **“Log Book (Works Dairy)"** means the document set out in the Montenegrin Construction Act (Rulebook on the method of keeping and contents of the Building Log Book and Works Register/Pravilnik o načinu vođenja i sadržini građevinskog dnevnika i građevinske knjige, Official Gazette of Montenegro, No. 68/18, including addenda, if any) that the Contractor shall establish and maintain daily at the construction site. All entries in the Log Book must be signed by the Contractor and the Engineer. |
| 1.1.6.12  **Works Register** | *Add new Sub-Clause 1.1.6.12:*  **“Works Register”** or Measurement (Survey) Book means the document set out in the Construction Act (Rulebook on the method of keeping and contents of the Building Log Book and Works Register/Pravilnik o načinu vođenja i sadržini građevinskog dnevnika i građevinske knjige, Official Gazette of Montenegro, No. 68/18, including addenda, if any), in which the measured and determined quantity of works will be recorded and will be the basis for preparation of Interim and Final payment certificates. |
| 1.1.6.13  **Use Permit** | *Add new Sub-Clause 1.1.6.14:*  *“***Use Permit***"* means an official document that allows the startup, commissioning and use of the facility, all in accordance with the Montenegrin Construction Act (Law on spatial planning and construction of structures/Zakon o planiranju prostora i izgradnji objekata, Official Gazette of Montenegro, No. 64/17, 44/18, 63/18, 11/19, 82/20, with addenda, if any), in relation with Works taking over and Sub-Clause 10. |
| 1.1.6.14. | *Add new Sub-Clause 1.1.6.15:*  “Notice of Dissatisfaction” means the notice given by either Party to the other under Sub-Clause 20.4 [Obtaining Dispute Adjudication Board's Decision] idicating its dissatisfacation and intention to commence arbritation. |
| 1.2 | **Interpretation**  *In Sub-Clause 1.2, after sub-paragraph (d), insert the following paragraphs:*  “(e) Wherever these Conditions require the Contractor to indemnify the Employer from any matter, the Contractor shall also indemnify the Engineer from the same matter.”  “(f) In these Conditions, provisions including the expression “*Cost plus reasonable profit*” require this profit to be one twentieth (5%) of the related Cost.” |
| 1.5.  **Priority of Documents** | *Replace list from (a) to (h) of Sub-Clause 1.5 with:*  The Priority of Documents shell be as set in the Contract Agreement |
| 1.6  1.7 | **Contract Agreement**  *Replace Sub-Clause 1.6 with:*  *“The Parties shall enter into a Contract Agreement as agreed during tendering. The Employer shall sign, date and send all the originals of the Contract Agreement to the Contractor The Contractor shall countersign and return Contract Agreement together with all its forms and schedules to the Employer within 30 days of the date of the receipt of the Contract Agreement signed by the Employer*”*.*  The Contract Agreement signed by the Contractor shall not be valid if it is not submitted by the Contractor with the Performance Security as described in Sub-Clause 4.2 **”Performance Security**” of these Particular Conditions.”  **Assignment**  *In Sub-Clause 1.7, add to the end of paragraph (b):*  “only with prior consent of the other Party” |
| 1.10 | **Employer’s Use of Contractor’s Documents**  *after "Contractor’s Documents", insert:*  *“and other design documents made by (or on behalf of) the Contractor.”*  *Add the following paragraph at the end of point c):*  “Where any documents, programmes, graphics or the like are provided in electronic format then software necessary for the reading of such documents shall be provided to the Employer and the Engineer together with a hard copy of such document.” |
| 1.12 | **Confidential Details**  *Add the following paragraph to Sub-Clause 1.12:*  “The Contractor shall treat the details of the Contract as private and confidential, save insofar as may be necessary for the purposes thereof, and shall not publish or disclose the same or any particulars thereof in any trade or technical paper or elsewhere without the previous consent in writing of the Employer. If any dispute arises as to the necessity of any publication or disclosure for the purpose of the Contract the same shall be referred to the Employer, whose decision shall be final.” |
|  |  |
| 1.16 | Audit  *Add new Sub-Clause 1.16:*  “The Contractor shall afford full access and co-operation to representatives of the Auditors to enable them to inspect and audit any aspect of the Contract.  Throughout the performance of the Contract and for a period of seven years following the date of the Taking-Over Certificate for the whole of the Works, the Contractor shall ensure that the services of the Auditors and the authorities of the recipient countries are given access (including by any Subcontractors) to all supporting documents required for carrying out the necessary checks. To this end, the Contractor shall undertake, having been given a notice of eight working days, to authorise access to his premises to all persons authorised to carry out these checks”. |
| **2** | **THE EMPLOYER** |
|  |  |
| 2.2 | **Permits, Licences or Approvals**  *Add at the end of the Sub-clause:*  “It is the sole responsibility of the Contractor to obtain, in due time, all other necessary permissions, licences or approvals for construction and operation than the above mentioned (i), (ii) and (iii). Delay in obtaining these permissions, licences or approvals shall not entitle the Contractor neither to an extension of time, nor to any additional payment”. |
|  |  |
| 2.6 | **The End Recipient (ref to Sub-Clause 1.1.2.11)**  *Add new Sub-Clause 2.6:*  “The Employer may assign any of his rights or duties under the Contract to the End Recipient. The Employer shall notify, in accordance with Sub-Clause 1.3 [Communications] of Conditions of Contract, the Contractor and the Engineer of the powers delegated. |
| **3** | **THE ENGINEER** |
| 3.1 | **Engineer’s Duties and Authority**  *At the end of Sub-Clause 3.1, insert:*  “The Engineer shall obtain the specific approval of the Employer before taking action under the following Sub-Clauses of these Conditions:   1. Sub-Clause 3.5: agreeing or determining any matter, which will increase the Total Contract Amount; 2. Sub-Clause 4.4(b): giving consent to a subcontractor for a subcontract for which a different subcontractor is named in the Contract; 3. Sub-Clause 8.4: instructing, agreeing or determining an extension of the Time for Completion;   g) Sub-Clause 8.8: Suspension of the Work;  (h) Sub-Clause 10.1: Before issuing any Taking-Over Certificate  (i) Sub-Clause 11.9: Before issuing the Performance Certificate  (j) Clause 13: Instructing a Variation which is expected to increase the Total Contract Amount or in any substantial way change the scope, character or quality of the Works.  Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Engineer, an emergency occurs affecting the safety of life or of the Works or of adjoining property, he may, without relieving the Contractor of any of his duties and responsibilities under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Engineer, be necessary to abate or reduce the risk. The Contractor shall forthwith comply, despite the absence of approval of the Employer, with any such instruction of the Engineer. The Engineer shall determine an addition to the Contract Price, in respect of such instruction, in accordance with Clause 13.3 [Variation Procedure] and shall notify the Contractor accordingly, with a copy to the Employer  The Engineer is required to continuously monitor the Contractor's compliance with the proposed and approved Safety Methodology, and he shall ensure certification of compliance.” |
|  |  |
| 3.5 | **Determinations**  *Replace second phrase of first paragraph as follows:*  “If agreement is not achieved, the Engineer shall, within 28 days after failure to reach agreement, make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances”. |
| 3.6 | **Management Meetings**  *Add new Sub-Clause 3.6:*  “The Engineer or the Contractor’s Representative may require the other to attend a management meeting in order to review the arrangements for future work. The Engineer shall record the business of management meetings and shall supply copies of the records to those attending the meeting and to the Employer for review and comments within 2 working days.  Progress meetings shall be held at regular intervals but not exceeding once a month. These meetings shall be attended by the Contractor’s Project Manager and other key personnel, site agents of Sub-Contractors and the Engineer. The Employer may but is not obliged to attend the progress meetings.  The minutes of meetings signed by the Contractor, the Engineer and the Employer (if attending) shall constitute an official record of matters discussed, but shall not replace any requirement in the Contract for approvals, instructions, decisions or notices to be submitted in writing.  “The Contractor’s Representative shall attend Management Meetings and Progress Meetings at dates and times agreed with the Engineer throughout the continuance of the Contract.” |
| **3.7** | **Waste Management Plan**  *Add new Sub-Clause 3.7:*  “The Engineer shall review the Waste Management Plan proposed by the Contractor and provide comments within 21 days or approve the Contractor’s Waste Management Plan. Waste Management Plan is requested in the EIA decisions and that in addition a formal approval from the relevant Montenegrin Authorities is required.” |
| **4** | **THE CONTRACTOR** |
| 4.1 | **Contractor’s General Obligations**  *Add at the end of 4th paragraph:*  “The Contractor shall prepare the workshop drawings for the Permanent Works, based on the design documents provided by the Employer with the Tender Documents, detailed enough to facilitate assembly of each part of the permanent works.  The Contractor shall prepare and submitted: As-Built Design in three printed copies which should be packed in electronic version too.  As-Built Design should contain:  -Design for maintenance of structures (As-Built Design/Projekat odrzavanja objekta) made by licensed designing company.  -Design of original terrain data (survey study) made by licensed surveying company”.  *Add at the and of Sub-Clause:*  “The Contractor shall provide on Site at his own expense water, electricity, telephone and all other plant and fees required to execute the works.“ |
| 4.2 | **Performance Security**  *After the first paragraph add:*  “The performance Security, submitted by the Contractor, shall be in the format given in Volume 2 of the Tender Dossier and shall be furnished by a bank registered in one of the Member States of the European Community or the state in which the Contractor is established or licensed to do business”.  *Add final paragraphs as follows:*  Whenever the Engineer determines an addition or a reduction to the Contract Price as a result of a change in cost and/or legislation, or as a result of a Variation amounting to more than 10 percent of the portion of the Contract Price, the Contractor shall, at the Engineer’s written request promptly increase, or decrease, as the case may be, the value of the Performance Security by a corresponding percentage.  Where the Contractor is a Joint Venture/consortium, the Performance Security shall be in the form of a single security, and shall be either in the name of the joint venture/ consortium or in the name of the leader. |
| 4.4 | **Subcontractors**  *Insert at the beginning of the sub clause:*  “The Contractor shall not subcontract any part of the works without the prior consent of the Engineer and afterwards the written authorization of the Contracting Authority/Employer. The elements of the Contract to be subcontracted and the identity of the subcontractors should be notified to the Contracting Authority/Employer and the Engineer by the Contractor. After getting the approval of the Contracting Authority/Employer, the Engineer shall notify the Contractor of its decision within 14 days of receiving the Contractor’s request, stating its reasons if authorization is withheld.  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/Employer of the subcontracting of any part of the contract or of the subcontractor to perform any part of the works, after consent of the Engineer, shall not relieve the Contractor of any of his obligations under the contract”.  *Replace first sentence with:*  “The Contractor shall not subcontract above percentage stated in the Appendix to tender.” |
|  |  |
| 4.8 | Safety Procedures *In Sub-Clause 4.8, add the following sub-paragraphs at the end of the Sub-Clause*:  “(f) Safety issues shall be on the agenda of all site meetings and plans shall be jointly agreed between the Engineer and the Contractor’s Representative for minimising the risk of unsafe events and working practices in forthcoming work, The Site shall be a “hard hat” Site and safety vests/ jackets shall be worn at all times,  (g) Comply with all applicable current legislation, regulations and specifications, with respect to all measures, operations and administrative steps required for the full protection and safeguarding of the environment”. |
| 4.10 | **Site Data** |
|  | *Add at the end of Sub-Clause:*  Certain information from the Employer may be available in Montenegrin language only, and the Contractor shall provide the necessary translation for his interpretation and use of such information. |
| 4.14 | **Avoidance of Interference**  *Add the following final paragraphs:*  “The Contractor shall acquaint himself by whatever means necessary with the position of all existing, roads and services of any kind including drains, telephone, electricity lines and poles, water pipes, sewers and the like, before any excavation or other work likely to affect the existing services is commenced.  The Contractor will be liable for all damage to roads and services of any kind caused by him or his Sub-contractors in the execution of the Works. He shall make good any such damage at his own expense and to the complete satisfaction of the Engineer as soon as possible, and in any event within the Time for Completion.  The Contractor shall make all necessary arrangements with the relevant local bodies and owners for the removal and reinstatement of all services as agreed with or instructed by the Engineer. The Contractor shall bear the cost of these works.” |
| 4.15 | ***Access Route***  *Add the following paragraph:*  The Employer shall provide, free of charge access to the site for the Contractor in accordance with Sub-Clause 2.1 [Right access to the site]. All others are responsibility of the Contractor. |
|  |  |
| 4.18 | **Protection of the Environment**  *Add at the end of first paragraph of this Sub-Clause:*  Where the Contractor’s activity is subject to regulation under applicable environmental Laws, the Engineer will require the Contractor to submit evidence of his compliance with such Laws, including but not limited to, the submission of any required permits, payment of fees, or compliance with any obligatory administrative procedures. |
| 4.21 | **Progress Reports**  *Add at the end of the sub-clause:*  “(i) Records of personnel and Contractor's equipment on site (Monthly Summary based on the weekly submissions set in Sub-Clause 6.10)”.  (j) Details of planned and actual payments to the Contractor concerning the contract sum, together with projected future payments in quarterly periods.  Progress reports shall be submitted in English with translation into Montenegrin language. |
|  |  |
| 4.24 | **Fossils**  *Replace 1st phrase of 1st paragraph with:*  “All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site are the property of State of Montenegro, as per Montenegro legislation and The Contractor shall place any such item under the care and authority of the relevant Montenegrin Authorities as directed by the Engineer”. |
| 4.25  **Breakdown of Prices and Rates** | **Breakdown of Prices and Rates**  *Add new Clause as follows:*  Where appropriate and within a period of not more than 21 days following the Engineer’s reasoned request, the Contractor shall provide a detailed breakdown of all his rates and prices. |
|  |  |
| 4.26  **Log Book** | **Log Book**  *Add new Sub-Clause as follows:*  “Log Book and technical rules drawing up the statements shall be as set out in the Rulebook on the method of keeping and contents of the Building Log Book and Works Register/Pravilnik o načinu vođenja i sadržini građevinskog dnevnika i građevinske knjige, Official Gazette of Montenegro, No. 68/18, including addenda, if any.  The Contractor shall draw up a daily log book in duplicate for contemporary records, in a format agreed by the Engineer. The log book shall be held on Site and the Contractor’s Representative shall daily record the site information.  At the Engineer’s request, the Contractor has to provide all necessary information for the daily completion of the log book and attachments.  The information provided is noted in the log book and attachments, signed by the Contractor’s Representative and countersigned by the Engineer or his representative. The Engineer shall keep one of the signed copies and the Contractor the other.  In case of disagreement on a subject noted in the log book or attachments, the Contractor has to inform in writing the Engineer about his remarks within 14 days from the date when the notice has been recorded in the works diary or attachments.  The Contractor shall prepare a weekly report in a format to be agreed with the Engineer. Copies of this report shall be faxed or otherwise transmitted weekly to the Engineer one day before the weekly site meeting or as otherwise agreed. The Contractor shall sign the original of the report and the Engineer shall retain the original.  The Contractor shall maintain and keep up to date all official records and reports required according to local requirements.” |
| 4.27. | **Training**  *Add new Sub-Clause as follows:*  “The Contractor shall carry out the training of End Recipient’s Personnel in the operation and maintenance of the Eco Efficent Building. Until this training has been completed, the Works shall not be considered to be completed for the purposes of taking over under Sub-Clause 10.1 [Taking Over of the Works and Sections].  The End Recipient shall provide his personnel for training and operational assistance under the Contractor’s responsibility, whereas it has to be noted that the responsibility for the operation and performance itself is with the End Recipient. The End Recipient shall bear costs of the personnel.” |
| 4.28. | **Operation and Maintenance Manuals**  *Add new Sub-Clause as follows:*  “Prior to commencement of the Tests on Completion, the Contractor shall supply to the Engineer operation and maintenance manuals in sufficient detail for the Employer to operate, maintain, adjust and repair.  The Works shall not be considered to be completed for the purposes of taking over under Sub-Clause 10.1 [Taking Over of the Works and Sections] until the Engineer has received final operation and maintenance manuals in such detail.” |
| 6 | **STAFF AND LABOUR** |
| 6.1 | **Engagement of Staff and Labour**  *Add at the end of Sub-Clause 6.1:*  “The Contractor shall document and communicate to all workers their working conditions and terms of employment, including their entitlement to wages, hours of work, overtime arrangements and overtime compensation, and any benefits (such as leave for illness, maternity / paternity or holiday).  The employment of foreign personnel and labour shall be subject to the applicable Statutes, Ordinances, Regulations and by-laws and no personnel or labour shall be employed by the Contractor without first obtaining the necessary permits or passports in sufficient time to ensure that all formalities are cleared before the permits are required.  The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labour with appropriate qualifications and experience from sources within the Employer Country.” |
|  |  |
| 6.6 | **Facilities for Staff and Labour**  *At the end of Sub-Clause 6.6 delete*:  ”within the structures forming part of the Permanent Works”  *and replace with*:  ”within the Site”. |
| 6.7 | **Health and Safety**  *At the end paragraph 3 insert:*  “The Contractor shall also report such accident to the relevant authority, as may be required under local rules and regulations”.  *At the beginning of Sub-Clause 6.7 insert*:  “Within 21 days after the Commencement Date, the Contractor shall submit document entitled “Health, Safety Plan” giving a detailed description of his proposed methods to ensure safety of the Works during all stages of construction and commissioning, as required by local laws and regulations.  The Plan shall be presented in sufficient detail to ensure that there can be no ambiguity in its interpretation at a later date. The Plans shall be subject to the approval of the Engineer, who will not allow any work on Site to proceed until such time as it has been fully and formally approved.  Approval of the Plan shall not relieve the Contractor of any of his responsibilities with regard to safety”.  “The Contractor shall provide his personnel with individual or team safety equipment and instruction in their use. The Contractor shall ensure the use of the safety equipment is made obligatory so that the entire Works can be carried out in a safe manner.  The Contractor shall provide regular safety instruction sessions in the form of short lectures or films with the purpose of developing a safety culture at the sites under the Contractor’s control. Attendance at the instruction shall be compulsory for all Contractor’s, sub-Contractors and Employer’s staff at the site.  The Contractor shall fulfil requirements of the applicable local rules and regulations concerning safety on the construction site“. |
| 6.10 | **Records of Contractor’s Personnel and Equipment**  *Replace 2nd phrase as follows:*  “Details shall be submitted each week, in a form agreed with the Engineer within 28 days after Notice to Commence, but in any event, prior to any notice under Sub-Clause 20.1 [Contractor’s Claims], until the Contractor has completed all work which is known to be outstanding at the completion date, stated in the Taking-Over Certificate for the Works.  The actual contemporary records, items/ format, shall be agreed in advance with the Engineer”. |
| 6.11 | **Disorderly Conduct**  *Add as separate paragraphs at the end of Sub-Clause 6.11:*  “With respect to the Contractor and all their respective employees:   1. The Contractor shall not allow the bringing, selling or consumption of alcoholic drinks or drugs on Site; 2. The Contractor shall not allow the bringing, selling or illegal carrying of weapons and ammunition on Site; 3. The Contractor shall bear any additional cost and expenses (taxes, duties, penalties, insurance, overtime, etc.) arising as a consequence of contravention of this Clause by the Contractor’s personnel”. |
|  | ***Add new Sub-Clauses 6.12 through 6.17 as follows*** |
| 6.12  **Festivals and Religious Customs** | **Festivals and Religious Customs**  “In dealing with his staff and labour, the Contractor shall respect the local recognised festivals, days of rest and religious or other customs”. |
| 6.13  **Measures against Insect and Pest Nuisance**  6.14  **Burial of the Dead**  6.15  **Rates of Wages and Conditions of Labour** | **Measures against Insect and Pest Nuisance**  “The Contractor shall at all times take necessary precautions to protect all staff and labour employed on the Site from insect nuisance, rats and other pests and reduce the dangers to health and the general nuisance by the same. The Contractor shall provide suitable prophylactics for the Contractor's Personnel and shall comply with all regulations and the local health authorities, including use of appropriate insecticide”.  **Burial of the Dead**  “The Contractor shall make the necessary arrangements for the transport, to any place as required for burial, of any of his expatriate employees or members of their families who may die in Montenegro. The Contractor shall also be responsible, to the extent required by local regulations, for making any arrangement with regard to burial of any of his local employees who may die while engaged upon the Works”.  **Rates of Wages and Conditions of Labour**  “The Contractor shall pay rates of wages and observe conditions of labour not less favourable than those established for the trade or industry where the work is carried out. In the absence of any rates of wages or conditions of labour so established, the Contractor shall pay rates of wages and observe conditions of labour which are not less favourable than the general level of wages and conditions observed by other employers whose general circumstances in the trade or industry in which the Contractor is engaged are similar”. |
| 6.16 | **Supply of Water and electricity**  “The Contractor shall, so far as is reasonably practicable, considering the local conditions, provide on the Site an adequate supply of drinking and other water and electricity for the use of his staff and labour”. |
| 6.17. | **Foreign Personnel**  “The Contractor may bring in to the Country any foreign personnel who are necessary for the execution of the Works to the extent allowed by the applicable Laws. The Contractor shall ensure that these personnel are provided with the required residence visas and work permits.” |
| **7** | **PLANT, MATERIALS AND WORKMANSHIP** |
| 7.4 | Testing *Insert after 2nd Paragraph:*  “All Materials shall be tested at the place of manufacture prior to shipment. Upon successful completion of such testing, a certificate of compliance shall be issued by the manufacturer and a copy shall be provided to the Engineer. The Employer or their representative(s) may attend such testing at their discretion and cost”. |
| 7.9 | **Origin of Equipment, Materials and Services**  *Add new Sub-Clause 7.9:*  “Any Equipment and Materials which will be incorporated in the Works, or Services used for the execution of the Works, shall comply with the rules of origin published in the PRAG current at the Base Date and shall have their origin in an Eligible Country including the areas.   * The origin of Goods is distinct from nationality of the Supplier. * The origin is to be determined according to the Community Customs Code.   A product can not originate in a country in which no production process has taken place. On the other hand, the country of production is not necessarily the country of origin but only when the relevant provisions of Council Regulation (EEC) 2913/92 and its implementing regulation are fulfilled. Furthermore, the country of origin is not necessarily the country from which the goods have been shipped and supplied. Where there is only one country of production, the origin of the finished product is easily established. However, in cases where more than one country is involved in the production of Goods it is necessary to determine which of those countries confers origin on the finished goods. The country of origin is deemed to be the country in which the Goods have undergone their last, economically justified, substantial transformation and the provisions of Article 24 of the Community Customs Code must therefore be applied on a case by case basis to those goods.  The Contractor must certify that the Goods tendered comply with the origin requirement specifying the country or countries of origin. To this end, the Contractor shall provide “Certificate of Origin”, which must be made out by the competent authorities of the supplies’ or supplier’s country of origin and comply with the international agreements to which that country is a signatory.  The official Certificates of Origin must be submitted latest before Taking‐Over.” |
| **8** | **COMMENCEMENT, DELAYS AND SUSPENSION** |
| 8.1 | **Commencement of Works**  *In the first sentence of this Sub-clause delete:*  receives the Letter of Acceptance  *and substitute with:*  “Returns the countersigned Contract Agreement and submits the Performance Security to the Employer”. |
| 8.3 | **Programme**  *After sub-paragraph (d) add:*  *e)* an updated cash-flow estimate  *f)* Any further information requested by the Engineer and deemed necessary for implementation of the Works  *Add final paragraphs:*  “The revised programme shall be submitted within 21 days from the date of the Engineer’s notice.  Should the Contractor fail in submitting a revised programme, within stipulated time, the Employer may withhold an amount, as stated in the Appendix to Tender, until such programme is submitted. Any withheld money shall be paid with the payment following the next Payment Certificate after receipt of requested up-dated programme.” |
| 8.4. | **Extension of Time for Completion**  *Add at the end of Sub-Clause 8.4.:*  “Extension of Time for Completion does not by itself entitle the Contractor to additional payment.  The Contractor shall not be entitled to a separate Extension of Time for Completion for each one of several causes of delay running concurrently but only for the actual period of delay determined by the Engineer irrespective of the causes contributing to produce such delay. If one of several causes of delay operating concurrently is due to the fault of the Contractor and would in itself, irrespective of the concurrent causes, have delayed the completion of the Works, or Section or part thereof, no Extension of Time for Completion shall be granted for the period of such delay.  An extension of Time for Completion recommended by the Engineer, or by the Dispute Adjudication Board shall be formalised as an Addendum to Contract.” |
| **9** | **TESTS ON COMPLETION** |
| 9.1 | **Contractor’s Obligations**  *Insert after the 1st paragraph:*  “Prior to the commencement of the Test on Completion, and prior to issue of Taking Over Certificate.  The Works shall not be considered to be completed for the purposes of Taking Over under Sub-Clause 10.1 (Taking Over of the Works) until the Engineer has received and accepted these documents.” |
|  |  |
| **10** | **EMPLOYER’S TAKING OVER** |
| 10.1 | **Taking over of the Works and Sections**  *Insert after 1st paragraph:*  “The Taking Over shall take place in a first step in accordance with related legislation of Montenegro, including issuance of Use Permit, based on which, the Engineer shall issue the Taking Over Certificate, in a second step. The Contractor will take all the measures to coordinate the issuance of the Taking Over certificate with the "Use Permit" to be issued by the relevant Authorities according with the End Recipient's Country legislation (Law on spatial planning and construction of structures/Zakon o planiranju prostora i izgradnji objekata, Official Gazette of Montenegro, No. 64/17, 44/18, 63/18, 11/19, 82/20, with addenda, if any, or any other relevant legislation). If the "Taking Over Certificate" and "Use Permit" will be issued at different calendar dates, then, the last of the two dates will be considered in sub-clause 11 of Special Conditions and will be considered the starting date for the Defects Liability Period.”  *Delete phrase “The Engineer shall, within 28 days after receiving the Contractor’s application:” at the beginning of the third paragraph of Sub-Clause 10.1 and substitute with:*  “The Contractor shall fulfil the related procedure provided for in the Montenegrin legislation (which includes issuance of “Final Engineer’s Report”/Use Permit by relevant authorities) and subsequently the Engineer shall, within 28 days after receiving the Contractor’s application”. |
| 10.2 | **Taking Over of Parts of the Works**  *In Sub-Clause 10.2, 2nd paragraph, line 1, delete:*  “The Employer shall not”  *and replace with:*  “Neither the Employer nor the End Recipient shall” |
|  |  |
| **11** | **DEFECTS LIABILITY** |

|  |  |
| --- | --- |
| 11.1 | **Completion of Outstanding Works and Remedying Defects**  *Add the following at the end of the Sub-Clause:*  “Failure to meet any of the requirements set in the Technical Specifications shall be considered a defect under these conditions of contract.” |

|  |  |  |
| --- | --- | --- |
| **13** | **VARIATIONS AND ADJUSTMENTS** | |
| 13.5 | **Provisonal Sums**  *Add the following at the end of the Sub-Clause:*  “The provisions of this Sub-Clause shall also apply for expenditure of contingencies included in the Bill of Quantities.” | |
| 13.8 | **Adjustment for Changes in Cost**  *This Sub-Clause shall not apply.* | |
| **14** | **CONTRACT PRICE AND PAYMENT** | |
| 14.1 | **The Contract Price**  *Add the following after sub-paragraph 14.1.(d):*  “(e) The Contract Price shall exclude all taxes, including VAT, customs and import duties and any other charges that may be levied in accordance with the local rules and regulations in force in the areas on the Base Date, due account being taken of Clause 21 [Taxes and Customs issues] of these Particular Conditions.  (f) The Contract Price shall be deemed to include all taxes, duties and other charges required to be paid by the Contractor under the Contract outside the End Recipient Country”. | |
| 14.5 | **Plant and materials Intended for the Works**  *This Sub-Clause shall not apply.* | |
| 14.7 | Payment *Replace sub-paragraphs (a), (b) and (c) and add sub-paragraphs (d) and (e):*   1. the first instalment of the advance payment within 42 days after the Employer receives the documents in accordance with Sub-Clause 4.2 *[Performance Security]* and Sub-Clause 14.2 *[Advance Payment]*, whichever is later, and in line with the provisions of this Sub-Clause, last paragraph below. 2. the amount certified in each interim Payment Certificate (passed for payment), within no more than 56 calendar days from the date on which the Engineer’s Certificate is received by the Employer, and in line with the provisions of this Sub-Clause, last paragraph below. 3. the amount certified in the Final Payment Certificate within 56 days after the Employer receives this Final Statement 4. the interim Payment Certificate for the month in which the cumulative amount of the cost of performed works of EUR 7,638,000.00 (donor funds) will be reached must not contain the amount for the performed works which exceeds the cumulative amount of EUR 7,638,000.00. All interim Payment Certificates for which the cumulative sum of the payment amounts is less than EUR 7,638,000.00 are exempt from the obligation to calculate and pay VAT. 5. after reaching the cumulative amount of costs of performed works of EUR 7,638,000.00 (donor funds), VAT will be calculated and paid for all subsequent interim Payment Certificates.   *At the end of Sub-Clause 14.7,insert:*  “The bank account shall be the one 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.  The Employer shall not be held liable for reimbursement to the Contractor of any fees, charges or costs levied by the Contractor’s bank in connection with the transfer of any amount paid to the Contractor by the Employer under the Contract.“ | |
| 14.8 | **Delayed Payment**  *Replace Sub-Clause 14.8 in its entirety with:*  If the period laid down for payment in Sub-Clause 14.7 has been exceeded, the Contractor shall qualify for interest calculated pro-rata on the basis of the number of days delay at the rate applied by the European Central Bank to its main refinancing transactions in euro on the first day of the month in which the deadline expired, plus 3,5 percentage points. The late-payment interest shall apply to the time which elapses between the date of the payment deadline, and the date on which the Employer’s account is debited. By way of exception, when the interest calculated in accordance with this provision is lower than or equal to EUR 200, it shall be paid to the Contractor only upon a demand submitted within two months of receiving late payment. The Member States are not entitled to late-payment interest. The Contractor shall be entitled to such payment without prejudice to any other right or remedy under the Contract. In the case of the Final Payment Certificate, the interest for the delayed payment shall be calculated on a daily basis at the rate specified above. | |
| 14.9 | **Payment of Retention Money**  *At the end of Sub-Clause 14.9, add:*  “Alternatively, the second half of the Retention Money will be certified for payment after:   1. the Engineer has issued a Taking-Over certificate for the whole of the Works, and 2. the Employer has received a Retention Money Bank Guarantee in a form (see Volume 2, Section 6), and from a Bank, approved by the Employer.   The Retention Money Guarantee shall provide a surety for the second half of the Retention Money for the whole of the Works held for the rectification of defects arising during the remainder of the Contract Period and the completion of any remaining work to be executed under Clause 11 *[Defects Liability]* or Clause 12 [*Measurement and Evaluation*]. The terms and conditions for the Retention Money Guarantee shall be the same as those stated in Sub-Clause 4.2 for a Performance Security.  Within 45 days at the latest of receipt by the Employer of the Performance Certificate, the Employer shall return the Retention Money Guarantee to the Contractor”. | |
| 14.13 | **Issue of Final Payment Certificate**  *Add in 1st paragraph after “Final Payment Certificates”,” in* in three copies in English*”*. | |
| 14.16  **Repayment** | **Repayment**  *Add new Sub-Clause 14.16:*  “The Contractor undertakes to repay any amounts paid in excess of the final amount due to the Employer before the deadline indicated in the debit note, which is 42 days from the issuing of that note. Should the Contractor fail to make repayment within the deadline set by the Employer, the Employer may increase the amounts due by adding interest at the rate applied by the European Central Bank to its main refinancing transactions in Euro 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 Employer, and the date on which payment is actually made. Any partial payments shall first cover the interest thus established.  Amounts to be repaid to the Employer 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 involved in the repayment of amounts due to the Employer shall be borne entirely by the Contractor”. | |
| **15** | **TERMINATION BY EMPLOYER** | |
| 15.2 | **Termination by Employer**  *In Sub-Clause 15.2, paragraph (f), before* ‘gives or offers’, *insert:*  “is shown to have given or offered or”  *In paragraph (f), sub-paragraph (i), after* ‘Contract’, *insert:*  ”including the award of this Contract”.  *After sub-paragraph (f)(ii) insert new sub-paragraph:*  “g) in the judgement of the Employer has engaged in corrupt or fraudulent practices in competing for, or in executing, the Contract. For the purpose of this sub-paragraph:  - “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official, or the threatening of injury to person, property or reputation, in connection with the procurement process or in contract execution in order to obtain or retain business or other improper advantage in the conduct of business; and  - “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the End-Recipient, and includes collusive practices among tenderers (prior to or after Tender submission) designed to establish Tender prices at artificial, non-competitive levels and to deprive the End-Recipient of the benefits of free and open competition.”  *In the first paragraph after new sub-paragraph (g), at the end of the first sentence, add:*  “or, in the judgment of the Employer, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract, as described in sub-paragraph (g)”  *Insert the following sentence within the last paragraph, after the second sentence:*  “If the Contractor fails to remove his equipment and temporary works within 21 days after receiving the notice, the Employer is entitled to use so much of the Contractor’s Equipment and temporary Works which have been deemed to be reserved exclusively for the execution of the Works, under the provisions of the Contract, as he may consider proper”. | |
|  |  | |
| 15.6  **Anti-Corruption** | **Anti-Corruption**  *Add new Sub-Clause 15.6:*  “No offer, payment, consideration, or benefit of any kind, which constitutes illegal or corrupt practices, shall be made, either directly or indirectly, as an inducement or reward in relation to the tendering, award and execution of the Contract.  Any such practice will be grounds for immediate termination under Sub-Clause 15.2 and for such additional actions (civil and/or criminal) as may be appropriate”. | |
|  | |
| **18** | INSURANCE | |
| 18.2 | **Insurance for Works and Contractor's Equipment**  *Add the following paragraph*:  “It shall be the responsibility of the Contractor to notify the insurance company of any change in the nature, extent or programme for the execution of the Works and to ensure adequacy of the insurance coverage at all times during the period of the Contract”. | |
| 18.3 | **Insurance against Injury to Persons and Damage to Property**  *Insert at end of first paragraph*  “This insurance cover shall extend to third parties arising from incidents in Montenegro involving vehicles in use by the Contractor.” | |
| 18.4 | **Insurance for Contractor’s Personnel**  *At the end of the Sub-Clause, add:*  “The minimum amount for insurances is as stated in the Appendix to Tender”. | |
| 18.5  **Currency of Insurance** | *Add new Sub-Clause:*  **Currency of Insurance**  “The currency of all insurances under Clause 18 shall be the Euro.” | |
|  |  | |
| 20 | CLAIMS, DISPUTES AND ARBITRATION | |
|  |  | |
| 20.6 | **Arbitration** | |
|  |  | |
|  | ***Replace the 1st paragraph of the Sub-clause 20.6 with:*** | |
|  |  | |
|  | “Unless settled amicably, and subject to Sub-Clause 20.7 (Failure to Comply with Dispute Adjudication Boards Decision), any dispute in respect of which the DAB’s decision (if any) has not become final and binding shall be finally settled by arbitration. Unless otherwise agreed by both Parties:   1. the dispute shall be finally settled under the Arbitration Rules of the Arbitration Court at the Chamber of Economy of Montenegro, 2. the dispute shall be settled by one arbitrator appointed in accordance with these Rules, and   the arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4 [Law and Language]. | |
|  |  | |
|  | ***At the end of the Sub-Clause 20.6, add:*** | |
|  |  | |
|  | “The Place of Arbitration shall be as specified in the Appendix to Tender.” | |
| **21** | **TAXES AND CUSTOMS ISSUES** | |
| 21.1  **Taxes and Customs Issues** | *Add new Clause 21,”Taxes and Custom Issues” as follows:*  “The Employer understands that the prevailing situation in the areas is the following:  The Contractor will not be requested to pay custom duties, import taxes, fees and VAT or any other similar taxes on goods worth up to EUR 7,638,000.00 (donor funds) entering the areas for the contract ("the Contract") and will receive the necessary documents to that effect. All imported goods, which are not incorporated in or expended in connection with the Contract, should be exported on completion of the Contract. The Employer understands that the Contractor will not be requested to pay VAT for the contract value up to EUR 7,638,000.00 (donor funds) and will receive the necessary documents to that effect.  The Employer will not be involved in the preparation or presentation of any documentation that the Contractor may need in order to bring the goods to the place where they are supposed to be installed or used. The Contractor shall be deemed to have checked the locally applying technical and administrative conditions before submitting the Tender”. | |
| **22** | **ETHICS CLAUSES**  *Add a new Clause 22, “Ethics Clauses” and Sub-Clauses, as follows:* | |
| 22.1  **Inclusion into subcontracts** | **Inclusion into subcontracts** “This Clause 22 shall be included by the Contractor, *mutatis mutandi*, in all subcontracts that the Contractor enters into under this Contract”. | |
| 22.2  **Conflict of Interest** | **Conflict of Interest**  “Without the Employer’s prior written authorisation, a Contractor and his staff or any other company with which the Contractor is associated or linked shall not, even on an ancillary or subcontracting basis, perform other services, carry out works or supply equipment for the project of which the Works form a part. This prohibition also applies to any other programmes or projects that could, owing to the nature of the contract, give rise to a conflict of interest on the part of the Contractor”. | |
| 22.3  **Code of Conduct** | **Code of Conduct**  “The Contractor shall at all times act honourably and impartially and as a faithful adviser in accordance with the code of conduct of his profession. He shall refrain from making public statements about the Works without the Employer’s prior approval. He may not commit the Employer in any way without its prior written consent”. | |
| 22.4  **Human Rights** | **Human Rights**  “For the duration of the contract, the Contractor and his staff must respect human rights and undertake not to violate the political, cultural and religious mores of any person/s in Montenegro”. | |
| 22.5  **No Other Payments** | **No Other Payments**  “The Contractor shall not accept any payment connected with the Contract other than that provided for therein. The Contractor and his staff shall not exercise any activity or receive any advantage inconsistent with their obligations to the Employer”. | |
| 22.6  **Professional Secrecy** | **Professional Secrecy**  “The Contractor and his staff shall be obliged to maintain professional secrecy for the entire duration of the Contract and after its completion. The Contract and all reports and documents drawn up or received by the Contractor in respect of the Contract shall be confidential. .  The Contract shall govern the Parties’ use of all reports and documents drawn up, received or presented by them during the execution of the Contract”. | |
| 22.7  **Independence** | **Independence**  “The Contractor shall refrain from any relationship likely to compromise his independence or that of his staff. If the Contractor ceases to be independent, the Employer may, regardless of injury, terminate the contract without further notice and without the Contractor having any claim to compensation”. | |
| 22.8  **Corrupt Practices** | **Corrupt Practices**  “The Employer reserves the right to suspend or cancel project financing if corrupt practices of any kind are discovered at any stage of the award process or contract implementation and if the Employer fails to take all appropriate measures to remedy the situation. For the purposes of this provision, “corrupt practices” are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or implementation of a contract already concluded with the Employer”. | |
| 22.9  **Unusual Commercial Expenses** | **Unusual Commercial Expenses**  “For the purposes of this Sub-Clause, ‘unusual commercial expenses’ are commissions not mentioned in the Contract or not stemming from a properly concluded contract relating to the Contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commissions paid to a company which has every appearance of being a front company”. | |
| 22.10  **Supporting Evidence** | **Supporting Evidence**  “The Contractor undertakes to provide the European Commission on request with all supporting documents relating to the conditions of the contract’s execution. The European Commission may carry out whatever documentary or on-the-spot checks it deems necessary to find evidence in cases of suspected unusual commercial expenses”. | |
| **23** | **ADMINISTRATIVE AND FINANCIAL PENALTIES**  *Add new Clause 23, “Administrative and Financial penalties”, as follows:* | |
|  | 1. “Without prejudice to the application of penalties laid down in the contract, a Contractor who has been guilty of making false declarations, has made substantial errors or committed irregularities and fraud, or has been found in serious breach of its contractual obligations, may be excluded from all contracts and grants financed by the European Union budget for a maximum of five years from the time when the infringement is established, as confirmed after an adversarial procedure with the Contractor. The Contractor may present his arguments against this penalty within 30 days of notification of the penalty by registered letter with acknowledgement of receipt or any equivalent means. In the absence of any reaction on the part of the Contractor, or of withdrawal of the penalty by the European Commission within 30 days of receipt of the Contractor's arguments against it, the decision imposing the penalty shall become enforceable. That period may be increased to ten years in the event of a repeat offence within five years of the first infringement”. | |
|  | (b) “If the Contractor is found to have seriously failed to meet its contractual obligations, it shall incur financial penalties representing 10% of the total value of the contract in question. That rate may be increased to 20% in the event of a repeat offence within five years of the first infringement”. | |
| **24**  **Checks and Audits by European Union Bodies** | **CHECKS AND AUDITS BY COMMUNITY BODIES**  *Add new Clause 24, “Checks and Audits by Community Bodies”, as follows:* | |
| (a) “The Contractor will allow the European Commission, the European Anti-Fraud Office and the European Court of Auditors to verify, by examining the documents or by means of on-the-spot checks, the implementation of the project and conduct a full audit, if necessary, on the basis of supporting documents for the accounts, accounting documents and any other document relevant to the financing of the project. These inspections may take place up to 7 years after the final payment”. | |
| (b) “Furthermore, the Contractor will allow the European Anti-Fraud Office to carry out checks and verification on the spot in accordance with the procedures set out in the European Community legislation for the protection of the financial interests of the European Communities against fraud and other irregularities”. | |
|  | (c) “To this end, the Contractor undertakes to give appropriate access to staff or agents of the European Commission, of the European Anti-Fraud Office and of the European Court of Auditors to the sites and locations at which the Contract is carried out, including its information systems, as well as all documents and databases concerning the technical and financial management of the project and to take all steps to facilitate their work. Access given to agents of the European Commission, European Anti-Fraud Office and the European Court of Auditors shall be on the basis of confidentiality with respect to third parties, without prejudice to the obligations of public law to which they are subject. Documents must be easily accessible and filed so as to facilitate their examination and the Consultant must inform the Employer of their precise location”. | |
|  | (d) “The Contractor guaranties that the rights of the European Commission, of the European Anti-Fraud Office and of the European Court of Auditors to carry out audits, checks and verification will be equally applicable, under the same conditions and according to the same rules as those set out in this Clause, to any sub-contractor or any other party benefiting from EC funds”. | |