

## ***SPECIAL CONDITIONS***

### **CONTENTS**

These conditions amplify and supplement, if necessary, the general conditions governing the contract. Unless the special conditions provide otherwise, those general conditions remain fully applicable. The numbering of the articles of the special conditions is not consecutive but follows the numbering of the articles of the general conditions. In exceptional cases, and with the authorisation of the appropriate Commission departments, other clauses may be added to cover specific situations.

#### **Article 2 Language of the contract**

- 2.1 The language used shall be English.

#### **Article 4 Communications**

- 4.1 Any written communication relating to this Contract between the Contracting Authority and/or the Project Manager, on the one hand, and the Contractor on the other must state the Contract title and identification number, and must be sent by post, e-mail or by hand.

For the Contracting Authority:

<b>Name:</b>	Public Works Administration
<b>Address:</b>	Arsenija Boljevića 2a Str., floor III, 81000 Podgorica, Montenegro
<b>E-mail:</b>	
<b>Fax:</b>	+382 20 230 228

For the Contractor:

<b>Name:</b>	
<b>Address:</b>	
<b>E-mail:</b>	
<b>Fax:</b>	

- 4.2 An electronic system will be used by the contracting authority and the contractor for all stages of implementation including, inter alia, management of the contract (amendments and administrative orders), reporting (including reporting on results) and payments. The contractor will be required to register in and use the appropriate electronic exchange system to allow for the e-management of the contract.

The electronic management of the contract through the aforementioned system may commence on the date on which implementation of the contract starts, as described in Article 18 below, or at a later date. In the latter case, the contracting authority will inform the contractor in writing that he will be required to use the electronic system for all communications within a maximum period of 3 months.

#### **Article 7 Supply of documents**

User and installation manuals, maintenance and operation instructions specified in Annex II + III: Technical Specifications, shall be submitted together with the goods, if not otherwise provided therein.

## **Article 9 General obligations**

- 9.9 These activities must comply with the rules lay down in the Communication and Visibility Manual for EU External Actions published on the website of DG International Cooperation and Development:  
[https://ec.europa.eu/europeaid/funding/communication-and-visibility-manual-eu-external-actions\\_en](https://ec.europa.eu/europeaid/funding/communication-and-visibility-manual-eu-external-actions_en).

## **Article 10 Origin**

- 10.1 All goods purchased must originate from an eligible source country as defined in IPA II programme under the Regulation (EU) N°236/2014. For these purposes, `origin` means the place where the goods are mined, grown, produced or manufactured. The origin of the goods must be determined according to the EU Customs Code or to the relevant international agreement applicable.

## **Article 11 Performance guarantee**

- 11.1 The amount of the performance guarantee shall be 10 % of the total contract price, including any amounts stipulated in addenda to the contract.

## **Article 12 Liabilities and insurance**

- 12.1(a) 'By way of derogation from Article 12.1(a), paragraph 2, of the general conditions, compensation for damage to the supplies resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to the contract value.'
- 12.1(b) 'By way of derogation from Article 12.1(b), paragraph 2, of the general conditions, compensation for damage resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to the contract value.'
- 12.2(a), paragraph 1 By derogation from Article 12.2(a), paragraph 1, of the general conditions, within 30 days after the signature of the contract, the contractor shall ensure that itself, its staff, its subcontractors and any person for which the contractor is answerable, are adequately insured with insurance companies recognized on the international insurance market, unless the contracting authority has given its express written consent on a specific insurance company.
- 12.2(a), paragraph 2 By derogation from Article 12.2(a), paragraph 2, of the general conditions it is within 30 days after the signature of the contract that the contractor shall provide the contracting authority with all cover notes and/or insurance certificates showing that the contractor's obligations relating to insurance are fully respected.
- 12.2(b), paragraph 2 In the case of use of Incoterms, the contractor shall provide transport insurance to the extent that it assumes transportation risks. The question of the extent of the risks assumed by the contractor (seller) depends in particular on the Incoterms used:

- **DDP - Delivered Duty Paid:** Incoterm which imposes on the seller maximum obligations vis-à-vis transportation and loss risks and damage associated with the goods:  
*'the seller delivers the goods when the goods are placed at the disposal of the buyer, cleared for import on the arriving means of transport ready for unloading at the named place of destination. The seller bears all the costs and risks involved in bringing the goods to the place of destination and has an obligation to clear the goods not only for export but also for import, to pay any duty for both export and import and to carry out all customs formalities.'*<sup>1</sup>  
 The transfer of risks and costs occurs at the place of unloading of the goods at the agreed place of destination.

### **Article 13 Programme of implementation of tasks**

- 13.2 Programme of implementation of tasks shall be in accordance with article 13 of the General conditions of the contract. The programme shall be issued by the contractor within 14 days after the date of awarding the contract. The project manager's approval of the programme of implementation shall be within one week the submission of the final version.

### **Article 18 Commencement order**

- 18.1 The contracting authority shall inform the contractor by administrative order of the date on which implementation of the tasks shall begin.

### **Article 19 Period of implementation of the tasks**

- 19.1 The implementation period is: 270 calendar days from the date stipulated in the commencement order to the date of issuance of the certificate of provisional acceptance.

### **Article 25 Inspection and testing**

#### **25.2 Factory Acceptance Test (FAT)**

The tests of the main considered equipment (at least for items 1, 2, 5, 6, 7, 8, 9, 17 and 20 must be taken place in factory, with the aim to reproduce the more faithful possible conditions of future functionalities.

These tests will be subject of a specific planning having in attention that the description of the tests will be deliver with 3 months in advance in relation to the accomplishment of the same ones;

The FAT will not invalidate nor substitutes the tests after delivery in Bar.

Provider must include the travel costs (airfare, accommodation and local transport) for two (2) technical person of Maritime Safety Department MSD (Beneficiary).

#### **Site Acceptance Test (SAT)**

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<sup>1</sup> See <http://www.iccwbo.org/incoterms/>

The Site Acceptance Test will be performed after the delivery of equipment in Bar.

## **Article 26 General principles for payments**

26.1 Payments shall be made in euros.

Payments shall be authorised and made by Contracting Authority – Public Works Administration, Postal address: Arsenija Boljevića 2A, City Mall 3<sup>rd</sup> floor, 81000 Podgorica, Montenegro.

26.3 By derogation, the final payment to the contractor of the amounts due shall be made within 90 days after receipt by the contracting authority of an invoice and of the application for the certificate of provisional acceptance.

26.5 In order to obtain payments, the contractor must forward to the authority referred to in paragraph 26.1 above:

a) The pre-financing payment will be made fully in accordance with the General Conditions.

b) For the 60 % balance, the invoice(s) in triplicate together with the request for provisional acceptance of the supplies.

26.9 The contract doesn't include a price revision clause.

## **Article 28 Delayed payments**

28.2 By derogation from Article 28.2 of the general conditions, once the deadline laid down in Article 26.3 has expired, the contractor shall, upon demand, be entitled to late-payment interest at the rate and for the period mentioned in the general conditions. The demand must be submitted within two months of receiving late payment.

## **Article 29 Delivery**

29.3 The packaging shall become the property of the recipient subject to environmental considerations.

29.5 A delivery statement drawn up by the Contractor shall include list of items to be delivered, amount of items to be delivered, indication that the goods delivered have been in perfect condition when packed at manufacturing site.

29.6 Delivery shall be deemed to have been made when there is written evidence available to both Parties that delivery of the supplies has taken place in accordance with the terms of the contract. The documentation requested to prove this are invoice(s), delivery statements, and acceptance of delivery statement.

Each package must be clearly marked with the delivery destination address pursuant to the Technical Specification (if any) and the content of each package. In addition, all packages should be marked as follows:



**Financed by the European Union  
EuropeAid/140774/IH/SUP/ME  
Supply of equipment for response to marine pollution incidents**

Plastic stickers of the EU logo (pattern and design to be agreed after contract signature with contracting authority) must be fixed on each item supplied.

**Article 31 Provisional acceptance**

The certificate of provisional acceptance must be issued using the template in Annex C11.

The Contractor shall submit to the representative of the Contracting Authority (3) three signed copies of the Provisional Acceptance Certificate, together with the request for provisional acceptance.

The Provisional Acceptance Certificate shall be:

- issued by the Contracting Authority as stipulated in Article 31 of the General Conditions;
- signed by representatives of both the Contracting Authority and Final Beneficiary.

The supplies shall be taken over by the Contracting Authority when they have been delivered in accordance with the Contract, have satisfactorily passed the required inspection and tests, and a certificate of provisional acceptance has been issued or is deemed to have been issued.

The Contracting Authority shall prepare official hand-over document with which ownership will pass to the Final Beneficiary over the goods supplied as well as the right to make full and unimpaired use of it.

**Article 32 Warranty obligations**

- 32.6 The Contractor's response time is maximum 48 hours at the invitation (telephone and/or e-mail) by the Contracting Authority.

The Contractor is obliged to begin the repair operations not later than 48 hours following receipt of the notification (by telephone or e-mail) about failure of the equipment. In case of major defects, the Contractor is obliged to repair defects within 30 calendar days following receipt of the notification about the failure of the equipment or to provide a new item at his own expense if the defect cannot be repaired.

In case the defect on any item of equipment was caused by mistake of the beneficiary, the Contractor is obliged to make a commercial offer to the Contracting Authority for response.

Supplier shall provide the Commercial Warranty as required: For item 22 it is required 5 years warranty period.

- 32.7 The warranty must remain valid minimum 1 (one) year after provisional acceptance, unless differently defined in Annex II+III Technical Specification.

**Article 40 Settlement of disputes**

- 40.4 Any disputes arising out of or relating to this contract which cannot be settled otherwise shall be referred to the exclusive jurisdiction of courts of Montenegro

in accordance with the national legislation of the state of the contracting authority.

#### **Article 44 Data protection**

1. Processing of personal data related to the implementation of the contract by the contracting authority takes place in accordance with the national legislation of the state of the contracting authority and with the provisions of the respective financing agreement.

2. To the extent that the contract covers an action financed by the European Union, the Contracting Authority may share communications related to the implementation of the contract, with the European Commission. These exchanges shall be made to the Commission, solely for the purpose of allowing the latter to exercise its rights and obligations under the applicable legislative framework and under the financing agreement with the Partner country – contracting authority. The exchanges may involve transfers of personal data (such as names, contact details, signatures and CVs) of natural persons involved in the implementation of the contract (such as contractors, staff, experts, trainees, subcontractors, insurers, guarantors, auditors and legal counsel). In cases where the contractor is processing personal data in the context of the implementation of the contract, he/she shall accordingly inform the data subjects of the possible transmission of their data to the Commission. When personal data is transmitted to the Commission, the latter processes them in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC<sup>1</sup> and as detailed in the specific privacy statement published at ePRAG.

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<sup>1</sup> OJ L 205 of 21.11.2018, p. 39