

## ANNEX III

GENERAL CONDITIONS FOR SUPPLY CONTRACTS FINANCED BY THE EUROPEAN  
DEVELOPMENT FUND (EDF)

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## PRELIMINARY PROVISIONS

## Article 1

## Definitions

- 1.1. The following definitions apply to these general conditions and to the contract:

*EEC*: the European Economic Community,

*ACP States*: the African, Caribbean and Pacific States which are signatories to the Convention,

*Convention*: the relevant Convention between the ACP States and the EEC,

*contract*: the signed agreement entered into by the parties for the supplies, including all attachments thereto and all documents incorporated therein,

*supplier*: the party with whom the contracting authority concludes the contract,

*contracting authority*: the State or the legal person governed by public or private law which concludes the contract, or on behalf of which the contract is concluded, with the supplier,

*the State of the contracting authority*: the ACP State on whose territory the supply contract is to be executed,

*supervisor*: the government department, legal person governed by public law, or the natural or legal person designated by the contracting authority in accordance with the law of the State of the contracting authority, who is responsible for directing and/or monitoring the execution of the supply contract, or to whom the contracting authority may delegate rights and/or powers, under the contract,

*supervisor's representative*: any natural or legal person, designated by the supervisor as such under the contract, and empowered to represent the supervisor in the performance of his functions, and in exercising such rights and/or powers as have been delegated to him. Accordingly, where functions, rights and/or powers of the supervisor have been delegated to the supervisor's representative, references to the supervisor include the supervisor's representative,

*supplies*: all items which the supplier is required to supply to the contracting authority, including where necessary, service such as installation, testing, commissioning, provision of expertise, supervision, maintenance, repair, training and other such obligations connected with the items to be provided under the contract,

*bill of quantities*: the document containing an itemized breakdown of the supplies to be provided in a

unit price contract, indicating a quantity for each item and the corresponding unit price,

*price schedule*: the completed schedule of prices including the breakdown of the overall price submitted by the supplier with his tender modified as necessary, and forming part of the unit price contract,

*breakdown of the overall price*: the itemized list of rates and prices showing the build-up of the price in a lump sum contract, but not forming part of the contract,

*contract price*: the sum stated in the contract representing the initial estimate payable for the provision of the supplies or such other sum as ascertained by the final statement of account as due to the supplier under the contract,

*drawings*: drawings provided by the contracting authority and/or the supervisor, and/or drawings provided by the supplier and approved by the supervisor, for the provision of the supplies,

*communications*: certificates, notices, orders and instructions issued under the contract,

*writing*: any handwritten, typewritten or printed communication, including telex, cable and facsimile transmission,

*warranty period*: the period stated in the contract immediately following the date of provisional acceptance, during which the supplier is required to complete the contract and to remedy defects or faults as instructed by the supervisor,

*final acceptance certificate*: certificate(s) issued by the supervisor to the supplier at the end of the warranty period stating that the supplier has completed his obligations under the contract,

*day*: calendar day,

*time limits*: those periods in the contract which shall begin to run from the day following the act or event which serves as the starting point for those periods. Should the last day of the period fall upon a non-working day, the period shall expire at the end of the first working day following the last day of the period,

*administrative order*: any instruction or order issued by the supervisor to the supplier in writing regarding the provision of the supplies,

*national currency*: the currency of the State of the contracting authority,

*foreign currency*: any permissible currency which is not the national currency and which is indicated in the contract,

*provisional sum*: a sum included in the contract and so designated for the supply of goods, materials, plant or services, or for contingencies, which sum may be used in whole or in part, or not at all, as instructed by the supervisor,

*liquidated damages*: the sum stated in the contract as compensation payable by the supplier to the contracting authority for failure to complete the contract or part thereof within the periods under the contract, or as payable by either party to the other for any other specific breach identified in the contract,

*general damages*: the sum, not stated beforehand in the contract, which is awarded by a court or an arbitration tribunal, or agreed between the parties, as compensation payable to an injured party for a breach of the contract by the other party,

*special conditions*: the special conditions issued by the contracting authority as part of the invitation to tender, as amended where necessary, and incorporated into the contract, consisting of:

- (a) amendments to these general conditions;
- (b) special contractual clauses;
- (c) technical specifications; and
- (d) any other matter related to the contract.

- 1.2. The headings and titles in these general conditions shall not be taken as part thereof or be taken into consideration in the interpretation of the contract.
- 1.3. Where the context so permits, words importing the singular shall be deemed to include the plural and vice versa and words importing the masculine shall be deemed to include the feminine and vice versa.
- 1.4. Words importing persons or parties shall include firms and companies and any organization having legal capacity.

## Article 2

### Law and language of the contract

- 2.1. The law of the contract shall be the law of the State of the contracting authority unless otherwise stated in the special conditions.
- 2.2. In all matters which are not covered by these general conditions, the law of the contract shall apply.

- 2.3. The language of the contract and of all communications between the supplier, contracting authority and supervisor or their representatives shall be as stated in the special conditions.

## Article 3

### Order of precedence of contract documents

Unless otherwise stipulated in the contract, the order of precedence of the contract documents shall be as stated in the special conditions.

## Article 4

### Notices and written communications

- 4.1. Unless otherwise specified in the special conditions, communications between the contracting authority and/or the supervisor, on the one hand, and the supplier on the other hand, shall be sent by post, cable, telex, facsimile transmission, or personal delivery, to the appropriate addresses designated by those parties for that purpose.
- 4.2. If the sender requires evidence of receipt, he shall state such requirement in the communication and shall demand such evidence of receipt whenever there is a deadline for the receipt of the communication. In any event, the sender shall take all the necessary measures to ensure receipt of his communication.
- 4.3. Wherever in the contract provision is made for the giving or issue of any notice, consent, approval, certificate or decision, unless otherwise specified such notice, consent, approval, certificate or decision shall be in writing and the words 'notify', 'certify', 'approve' or 'decide' shall be construed accordingly. Any such consent, approval, certificate or decision shall not unreasonably be withheld or delayed.

## Article 5

### Supervisor and supervisor's representative

- 5.1. The supervisor shall carry out the duties specified in the contract. Except as expressly stated in the contract, the supervisor shall not have authority to relieve the supplier of any of his obligations under the contract.
- 5.2. The supervisor may, from time to time, while retaining ultimate responsibility, delegate to the supervisor's representative any of the duties and authority vested in the supervisor and he may at any time revoke such delegation or replace the

representative. Any such delegation, revocation or replacement shall be in writing and shall not take effect until a copy thereof has been delivered to the supplier.

5.3. Any communication given by the supervisor's representative to the supplier in accordance with the terms of such delegation shall have the same effect as though it had been given by the supervisor, provided that:

- (a) any failure on the part of the supervisor's representative to disapprove any supplies shall not prejudice the authority of the supervisor to disapprove such supplies and to give the instructions necessary for the rectification thereof;
- (b) the supervisor shall be at liberty to reverse or vary the content of such communication.

5.4. Instructions and/or orders issued by the supervisor shall be by way of administrative orders. Where applicable, such orders shall be dated, numbered and entered in a register and copies thereof delivered by hand, where appropriate, to the supplier's representative.

#### Article 6

##### Assignment

6.1. An assignment shall be valid only if it is a written agreement by which the supplier transfers his contract or part thereof to a third party.

6.2. The supplier shall not, without the prior written consent of the contracting authority, assign the contract or any part thereof, or any benefit or interest thereunder, except in the following cases:

- (a) a charge, in favour of the supplier's bankers, of any monies due or to become due under the contract; or
- (b) assignment to the supplier's insurers, of the supplier's right to obtain relief against any other person liable in cases where the insurers have discharged the supplier's loss or liability.

6.3. For the purpose of Article 6 (2), the approval of an assignment by the contracting authority shall not relieve the supplier of his obligations for the part of the contract already performed or the part not assigned.

6.4. If the supplier has assigned his contract without authorization, the contracting authority may, without giving formal notice thereof, apply as of right the sanctions for breach of contract provided for in Articles 43 and 44.

6.5. Assignees must satisfy the eligibility criteria applicable for the award of the contract.

#### Article 7

##### Sub-contracting

7.1. A sub-contract shall be valid only if it is a written agreement by which the supplier entrusts performance of a part of his contract to a third party.

7.2. The supplier shall not sub-contract without the prior written authorization of the contracting authority. The elements of the contract to be sub-contracted and the identity of the sub-contractors shall be notified to the contracting authority. The contracting authority shall, with due regard to the provisions of Article 4 (3), within 30 days of receipt of the notification, notify the supplier of his decision, stating reasons should he withhold such authorization.

7.3. In the selection of sub-contractors preference shall be given by the supplier to natural persons, companies or firms of the State of the contracting authority capable of providing the supplies required on similar terms.

7.4. Sub-contractors must satisfy the eligibility criteria applicable for the award of the contract.

7.5. The contracting authority shall have no contractual relations with the sub-contractors.

7.6. The supplier shall be responsible for the acts, defaults and negligence of his sub-contractors and their agents or employees, as if they were the acts, defaults or negligence of the supplier, his agents or employees. The approval by the contracting authority of the sub-contracting of any part of the contract or of the sub-contractor shall not relieve the supplier of any of his obligations under the contract.

7.7. If a sub-contractor has undertaken any continuing obligation extending for a period exceeding that of the warranty period under the contract towards the supplier in respect of the supplies provided by the sub-contractor, the supplier shall, at any time after the expiration of the warranty period, transfer immediately to the contracting authority, at the contracting authority's request and cost, the benefit of such obligation for the unexpired duration thereof.

7.8. If the supplier enters into a sub-contract without approval, the contracting authority may, without giving formal notice thereof, apply as of right the sanctions for breach of contract provided for in Articles 43 and 44.

**OBLIGATIONS OF THE CONTRACTING AUTHORITY***Article 8***Supply of documents**

- 8.1. Within 30 days of the establishment of the performance guarantee provided for in Article 11, the supervisor shall provide to the supplier, free of charge, a copy of the drawings prepared for the performance of the contract as well as two copies of the specifications and other contract documents. The supplier may purchase additional copies of these drawings, specifications and other documents, insofar as they are available. Upon the issue of the warranty certificate or upon final acceptance, the supplier shall return to the supervisor all drawings, specifications and other contract documents.
- 8.2. Unless it is necessary for the purposes of the contract, the drawings, specifications and other documents provided by the contracting authority shall not be used or communicated to a third party by the supplier without the prior consent of the supervisor.
- 8.3. The supervisor shall have authority to issue to the supplier, administrative orders incorporating such supplementary drawings and instructions as shall be necessary for the proper and adequate execution of the contract and the remedying of any defects therein.

*Article 9***Assistance with local regulations**

- 9.1. The supplier may request the assistance of the contracting authority in obtaining copies of laws, regulations, and information on local customs, orders or by-laws of the country to which the supplies are to be delivered, which may affect the supplier in the performance of his obligations under the contract. The contracting authority may provide the assistance requested to the supplier at the supplier's cost.
- 9.2. The supplier shall submit to the contracting authority in good time such details of the supplies as will enable the contracting authority to obtain all necessary import permits or licences.
- 9.3. The contracting authority shall obtain all import permits or licences required for the supplies, or any part thereof, in reasonable time having regard to the time for delivery of the supplies and completion of the contract.
- 9.4. Subject to the provisions of the laws and regulations on foreign labour of the State in which the supplies are

to be delivered, the contracting authority shall make all efforts necessary, to facilitate the procurement by the supplier of all required visas and permits, including work and residence permits, for the personnel whose service the supplier and the contracting authority consider necessary as well as residence permits for their families.

**OBLIGATIONS OF THE SUPPLIER***Article 10***General obligations**

- 10.1. The supplier shall perform the contract with due care and diligence including, where specified, the design, manufacture, delivery to site, erecting, testing and commissioning of the supplies and carrying out any other work including the remedying of any defects in the supplies. The supplier shall also provide all necessary equipment, superintendence, labour and facilities required for the performance of the contract.
- 10.2. The supplier shall comply with administrative orders given by the supervisor. Where the supplier considers that the requirements of an administrative order go beyond the authority of the supervisor or the scope of the contract he shall, on pain of being time-barred, give notice, with reasons, to the supervisor within 30 days after receipt thereof. Execution of the administrative order shall not be suspended because of this notice.
- 10.3. The supplier shall respect and abide by all laws and regulations in force in the State of the contracting authority and shall ensure that his personnel, their dependants, and his local employees also respect and abide by all such laws and regulations. The supplier shall indemnify the contracting authority against any claims and proceedings arising from any infringement by the supplier, his employees and their dependants of such laws and regulations.
- 10.4. If the supplier or any of his sub-contractors, agents or servants offers to give or agrees to offer or to give or gives to any person, any bribe, gift, gratuity or commission as an inducement or reward for doing or forbearing to do any act in relation to the contract or any other contract with contracting authority, or for showing favour or disfavour to any person in relation to the contract or any other contract with the contracting authority, then the contracting authority

may, without prejudice to any accrued rights of the supplier under the contract, terminate the contract in which case the provisions of Articles 43 and 44 hereof shall apply.

10.5. The supplier shall treat all documents and information received in connection with the contract as private and confidential, and shall not, save insofar as may be necessary for the purposes of the execution thereof, publish or disclose any particulars of the contract without the prior consent in writing of the contracting authority or the supervisor after consultation with the contracting authority. If any disagreement arises as to the necessity for any publication or disclosure for the purpose of the contract, the decision of the contracting authority shall be final.

10.6. If the supplier is a joint venture or consortium of two or more persons, all such persons shall be jointly and severally bound to fulfil the terms of the contract according to the law of the State of the contracting authority and shall, at the request of the contracting authority, designate one of such persons to act as leader with authority to bind the joint venture or consortium. The composition or the constitution of the joint venture or consortium shall not be altered without the prior consent of the contracting authority.

#### *Article 11*

##### **Performance guarantee**

11.1. The supplier shall, within 30 days after the receipt of the notification of the award of contract, furnish to the contracting authority a guarantee for the full and proper performance of the contract. The amount of the guarantee shall be as specified in the special conditions and shall not exceed 10 % of the contract price including any amounts stipulated in riders to the contract, save where the special conditions provide otherwise; however, it may in no case exceed 20 % of such price.

11.2. The performance guarantee shall be held against payment to the contracting authority for any loss resulting from the supplier's failure to fully and properly perform his obligations under the contract.

11.3. The performance guarantee shall be in the format given in the special conditions and may be provided in the form of a bank guarantee, a banker's draft, a certified cheque, a bond provided by an insurance and/or bonding company, an irrevocable letter of credit or a cash deposit made with the contracting authority. If the performance guarantee is to be provided in the form of a bank guarantee, a banker's draft, a certified cheque or a bond, it shall be issued by

a bank or bonding and/or insurance company approved by the contracting authority in accordance with the eligibility criteria applicable for the award of the contract.

11.4. Unless stated otherwise in the special conditions, the performance guarantee shall be denominated in the types and proportions of currencies in which the contract is payable.

11.5. No payments shall be made in favour of the supplier prior to the provision of the guarantee. The guarantee shall continue to remain valid until the contract has been fully and properly performed.

11.6. During the performance of the contract, if the natural or legal person providing the guarantee is not able to abide by his commitments, the guarantee shall cease to be valid. The contracting authority shall give formal notice to the supplier to provide a new guarantee on the same terms as the previous one. Should the supplier fail to provide a new guarantee, the contracting authority may terminate the contract.

11.7. The contracting authority shall demand payment from the guarantee of all sums for which the guarantor is liable under the guarantee due to the supplier's default under the contract, in accordance with the terms of the guarantee and up to the value thereof. The guarantor shall, without delay, pay those sums upon demand from the contracting authority and may not raise any objection for any reason whatsoever. Prior to making any claim under the performance guarantee, the contracting authority shall notify the supplier stating the nature of the default in respect of which the claim is to be made.

11.8. Except for such part as may be specified in the special conditions in respect of after-sales service, the performance guarantee shall be released within 30 days of the issue of the signed final statement of account referred to in Article 33.

#### *Article 12*

##### **Insurance**

12.1. Without prejudice to Article 37 the special conditions may require that the carriage of supplies shall be covered by an insurance policy the terms of which may be laid down therein. The special conditions may also make provisions for other types of insurance to be borne by the supplier.

12.2. Notwithstanding the obligations of the supplier to insure in accordance with Article 12 (1) the supplier shall be solely liable and shall indemnify the contracting authority and the supervisor against any

claims by third parties for damage to property or personal injuries arising from the execution of the contract by the supplier, his sub-contractors and employees in connection with the contract.

#### Article 13

##### Performance programme

- 13.1. If the special conditions so require, the supplier shall submit for the approval of the supervisor a programme of performance of the contract. The programme shall contain at least the following:
- (a) the order in which the supplier proposes to execute the contract including design, manufacture, delivery to place of acceptance, installation, testing and commissioning;
  - (b) the time limits within which submission and approval of the drawings are required;
  - (c) a general description of the methods which the supplier proposes to adopt for executing the contract; and
  - (d) such further details and information as the supervisor may reasonably require.
- 13.2. The approval of the programme by the supervisor shall not relieve the supplier from any of his obligations under the contract.
- 13.3. No material alteration to the programme shall be made without the approval of the supervisor. If, however, the progress of the performance of the contract does not conform to the programme, the supervisor may instruct the supplier to revise the programme and submit the revised programme to him for approval.

#### Article 14

##### Detailed breakdown of prices

- 14.1. Where appropriate and within a period of not more than 20 days following the supervisor's reasoned request, the supplier shall provide a detailed breakdown of his rates and prices, where such breakdown is required for any purpose under the contract.
- 14.2. After the notification of award of contract, the supplier shall, where appropriate and within the time limits stated in the special conditions, provide to the supervisor for his information only, a detailed cash flow estimate, in quarterly periods, of all payments which may be due to the supplier under the contract. The supplier shall subsequently supply revised cash flow estimates at quarterly intervals, if so required by

the supervisor. The communication shall not impose any liability whatsoever on the contracting authority or the supervisor.

#### Article 15

##### Supplier's drawings

- 15.1. If the special conditions so provide, the supplier shall submit to the supervisor for approval:
- (a) such drawings, documents, samples, and/or models as may be specified in the contract within the time limits laid down therein or in the programme of performance;
  - (b) such drawings as the supervisor may reasonably require for the performance of the contract.
- 15.2. If the supervisor fails to notify his decision of approval referred to in Article 15 (1) within the time limits required by the contract or the approved programme of performance, such drawings, documents, samples or models shall be deemed to be approved at the end of the time limit specified. If no time limit is specified they shall be deemed to be approved 30 days after receipt.
- 15.3. Approved drawings, documents, samples and models shall be signed or otherwise identified by the supervisor and shall not be departed from except as otherwise instructed by the supervisor. Any supplier's drawings, documents, samples or models which the supervisor fails to approve, shall be forthwith modified to meet the requirements of the supervisor and resubmitted by the supplier for approval.
- 15.4. The supplier shall supply additional copies of approved drawings in the form and numbers stated in the contract or in subsequent administrative orders.
- 15.5. The approval of the drawings, documents, samples or models shall not relieve the supplier from any of his obligations under the contract.
- 15.6. The supervisor shall have the right at all reasonable times to inspect all contract drawings, documents, samples or models at the supplier's premises.
- 15.7. Before provisional acceptance of the supplies, the supplier shall supply operation and maintenance manuals together with drawings, which shall be in such detail as will enable the contracting authority to operate, maintain, adjust and repair all parts of the supplies. Unless otherwise stated in the special conditions, the manuals and drawings shall be in the language of the contract and in such forms and numbers as stated in the contract. The supplies shall



not be considered to be completed for the purpose of provisional acceptance until such manuals and drawings have been supplied to the contracting authority.

#### Article 16

##### Sufficiency of tender prices

16.1. Subject to any additional provisions which may be laid down in the special conditions, the supplier shall be deemed to have satisfied himself before submitting his tender as to the correctness and sufficiency of the tender and to have taken account of all that is required for the full and proper performance of the contract and to have included in his rates and prices all costs related to the supplies, in particular:

- (a) the costs of transport;
- (b) the costs of handling, packing, loading, unloading, transit, delivery, unpacking, checking, insurance, and other administrative costs in connection with the supplies. The packaging shall be the property of the contracting authority unless the special conditions provide otherwise;
- (c) the cost of documents relating to the supplies where such documents are required by the contracting authority;
- (d) performance and supervision of on-site assembly and/or start up of the delivered supplies;
- (e) furnishing of tools required for assembly and/or maintenance of the delivered supplies;
- (f) furnishing of detailed operation and maintenance manual for each unit of the delivered supplies, as specified in the contract;
- (g) supervision or maintenance and/or repair of the supplies, for a period of time stated in the contract, provided that this service shall not relieve the supplier of any warranty obligations under the contract; and
- (h) training of the contracting authority's personnel, at the supplier's factory and/or elsewhere as specified in the contract.

16.2. Since the supplier is deemed to have determined his prices on the basis of his own calculations, operations and estimates, he shall carry out without additional

charge any work which is the subject of any item whatsoever in his tender for which he neither indicates a unit price nor a firm sum.

#### Article 17

##### Patents and licences

Save where otherwise provided in the special conditions, the supplier shall indemnify the contracting authority and the supervisor against any claim resulting from the use, as specified in the contract, of patents, licences, drawings, designs, models, or brand or trade marks, except where such infringement results from compliance with the design or specifications provided by the contracting authority and/or the supervisor.

#### COMMENCEMENT AND DELAYS

#### Article 18

##### Commencement orders

- 18.1. The contracting authority shall fix the date on which performance of the contract is to commence, and advise the supplier either in the notification of award of contract or by administrative order issued by the supervisor.
- 18.2. The date for commencing performance shall be no later than 180 days following notification of award of contract unless agreed otherwise by the parties.

#### Article 19

##### Period of performance

- 19.1. The period of performance shall commence on the date fixed in accordance with Article 18 (1) and shall be as stated in the contract, without prejudice to extensions of the period which may be granted under Article 20.
- 19.2. If provision is made for separate periods of performance for supply in separate lots, such periods shall not be aggregated in cases where one supplier is allocated more than one lot.

#### Article 20

##### Extension of period of performance

- 20.1. The supplier may request an extension to the period of performance if he is or will be delayed in completing the contract by any of the following causes:

- (a) extra or additional supplies ordered by the contracting authority;
- (b) exceptional weather conditions in the State of the contracting authority which may affect installation or erection of the supplies;
- (c) physical obstructions or conditions which may affect delivery of the supplies, which could not reasonably have been foreseen by a competent supplier;
- (d) administrative orders affecting the date of completion other than those arising from the supplier's default;
- (e) failure of the contracting authority to fulfil his obligations under the contract;
- (f) any suspension of the delivery and/or installation of the supplies which is not due to the supplier's default;
- (g) *force majeure*;
- (h) any other causes referred to in these general conditions which are not due to the supplier's default.

20.2. The supplier shall, within 15 days of becoming aware that delay may occur, notify the supervisor of his intention to make a request for extension of the period of performance to which he considers himself entitled, and shall within 60 days thereafter, except where otherwise agreed between the supplier and the supervisor, deliver to the supervisor full and detailed particulars of the request, in order that such request may be investigated at the time.

20.3. The supervisor shall, by written notice to the supplier after due consultation with the contracting authority and where appropriate, the supplier, grant such extension of the period of performance as may be justified, either prospectively or retrospectively or, inform the supplier that he is not entitled to an extension.

#### Article 21

##### Delays in performance

21.1. If the supplier fails to deliver any or all of the goods or perform the services within the time period(s) specified in the contract, the contracting authority shall, without formal notice and without prejudice to his other remedies under the contract, be entitled to liquidated damages for every day or part thereof which shall elapse between the end of the period specified for performance, or extended performance under Article 20, and the actual date of completion, at the rate and up to the maximum amount specified in the special conditions.

21.2. If the contracting authority has become entitled to the maximum claim under Article 21.1 he may, after giving notice to the supplier:

- (a) seize the performance guarantee; and/or
- (b) terminate the contract; and
- (c) enter into a contract with a third party at the supplier's cost for the provision of the balance of the supplies.

#### Article 22

##### Variations

22.1. The supervisor shall have power to order any variation to any part of the supplies necessary for the proper completion and/or functioning of the supplies. Such variations may include additions, omissions, substitutions, changes in quality, quantity, form, character, kind, as well as drawings, designs or specifications where the supplies are to be specifically manufactured for the contracting authority, method of shipment or packing, place of delivery, and in the specified sequence, method or timing of execution of the supplies. No order for a variation shall have the effect of invalidating the contract, but the financial effect, if any, of all such variations shall be valued in accordance with Article 22 (5) and 22 (7).

22.2. No variation shall be made except by administrative order, provided that:

- (a) if for any reason, the supervisor shall find it necessary to give an order orally, he shall as soon as possible thereafter confirm the order by an administrative order;
- (b) if the supplier shall confirm in writing an oral order given for the purpose of Article 22 (2) (a) and the confirmation shall not be contradicted in writing forthwith by the supervisor, an administrative order shall be deemed to have been issued for the variation;
- (c) an administrative order for variation shall not be required for increase or decrease in the quantity of any work where such increase or decrease is the result of the quantity exceeding or being less than that stated in the bill of quantities or price schedule.

22.3. Save as provided by Article 22 (2), prior to any administrative order for variation, the supervisor shall notify the supplier of the nature and form of such variation. As soon as possible, after receiving such notice, the supplier shall submit to the supervisor a proposal containing:

- (a) a description of the tasks, if any, to be performed or the measures to be taken and a programme for execution; and
- (b) any necessary modifications to the programme of performance or to any of the supplier's obligations under the contract; and
- (c) any adjustment to the contract price in accordance with the rules as set out in Article 22.

22.4. Following the receipt of the supplier's submission referred to in Article 22 (3), the supervisor shall, after due consultation with the contracting authority and, where appropriate, the supplier, decide as soon as possible whether or not the variation shall be carried out. If the supervisor decides that the variation shall be carried out he shall issue the administrative order stating that the variation shall be carried out at the prices and under the conditions given in the supplier's submission referred to in Article 22 (3) or as modified by the supervisor in accordance with Article 22 (5).

22.5. The prices for all variations ordered by the supervisor in accordance with Articles 22 (2) and 22 (4) shall be ascertained by the supervisor in accordance with the following principles:

- (a) where the task is of similar character and executed under similar conditions to an item priced in the bill of quantities or price schedule it shall be valued at such rates and prices contained therein;
- (b) where the task is not of a similar character or is not executed under similar conditions, the rates and prices in the contract shall be used as the basis for valuation so far as is reasonable, failing which, a fair valuation shall be made by the supervisor;
- (c) if the nature or amount of any variation relative to the nature or amount of the whole of the contract or to any part thereof shall be such that in the opinion of the supervisor any rate or price contained in the contract for any item of work is by reason of such variation rendered unreasonable, then the supervisor shall fix such rate or price as in the circumstances he shall think reasonable and proper;
- (d) where a variation is necessitated by default or breach of contract by the supplier, any additional cost attributable to such variation shall be borne by the supplier.

22.6. On receipt of the administrative order requesting the variation, the supplier shall proceed to carry out the variation and be bound by these general conditions in so doing as if such variation were stated in the

contract. The supplies shall not be delayed pending the granting of any extension of time for completion or adjustment to the contract price. Where the order for a variation precedes the adjustment to the contract price, the supplier shall keep records of the costs of undertaking the variation and of time expended thereon. Such records shall be open to inspection by the supervisor at all reasonable times.

22.7. Where on provisional acceptance, an increase or reduction in the total value of supplies required under the contract resulting from an administrative order, or from some other circumstance which is not caused by the supplier's default, exceeds 15 % of the contract price, the supervisor shall, after consultation with the contracting authority and the supplier determine any additions to or reduction from the contract price as a consequence of the application of Article 22 (5). The sum so determined shall be based on the amount by which the increase or decrease in value of the supplies exceeds 15 %. The sum shall be notified by the supervisor to the contracting authority and the supplier and the contract price adjusted accordingly.

## Article 23

### Suspension

23.1. The supervisor may, by administrative order, at any time, instruct the supplier to suspend:

- (a) progress of the manufacture of the supplies; or
- (b) delivery of supplies to the place of acceptance at the time specified for delivery in the performance programme or, if no time is specified, at the time appropriate for it to be delivered; or
- (c) the installation of the supplies which have been delivered to the place of acceptance.

23.2. The supplier shall, during suspension, protect and secure the supplies affected at the supplier's warehouse or elsewhere, against any deterioration, loss or damage to the extent possible and as instructed by the supervisor, even if the supplies have been delivered to the place of acceptance in accordance with the contract but whose installation has been suspended by the supervisor.

23.3. Additional expenses incurred in connection with such protective measure shall be added to the contract price. The supplier shall not be entitled to be paid any additional expenses if the suspension is:

- (a) otherwise provided for in the contract; or
- (b) necessary by reason of normal climatic conditions at the place of acceptance; or

- (c) necessary by reason of some default of the supplier; or
- (d) necessary for the safety or the proper execution of the contract or any part thereof insofar as such necessity does not arise from any act or default by the supervisor or the contracting authority.

23.4. The supplier shall not be entitled to such additions to the contract price unless he notifies the supervisor, within 30 days after receipt of the order to suspend progress or delivery, of his intention to make a claim for them.

23.5. The supervisor, after consultation with the contracting authority and the supplier, shall determine such extra payment and/or extension of the period of performance to be made to the supplier in respect of such claim as shall, in the opinion of the supervisor, be fair and reasonable.

23.6. If the period of suspension exceeds 180 days, and the suspension is not due to the supplier's default, the supplier may, by notice to the supervisor, request permission to proceed with the supplies within 30 days, or terminate the contract.

#### MATERIALS AND WORKMANSHIP

##### *Article 24*

##### **Quality of supplies**

- 24.1. The supplies must in all respects satisfy the technical specifications laid down in the special conditions and conform in all respects with the drawings, surveys, models, samples, patterns, and other requirements in the contract which shall be held at the disposal of the contracting authority or the supervisor for the purposes of identification throughout the period of performance.
- 24.2. Any preliminary technical acceptance stipulated in the special conditions shall be the subject of a request sent by the supplier to the supervisor. The request shall indicate the specification of the materials, items and samples submitted for such acceptance according to the contract, the lot number and the place where acceptance is to take place, as appropriate. The materials, items and samples specified in the request must be certified by the supervisor as meeting the requirements for such acceptance prior to their incorporation in the supplies.
- 24.3. Even if materials or items to be incorporated in the supplies or in the manufacture of components to be supplied have been technically accepted in this way,

they may still be rejected and must be replaced immediately by the supplier if a further examination reveals defects or faults. The supplier may be given the opportunity to repair and make good materials and items which have been rejected, but such materials and items will be accepted for incorporation in the supplies only if they have been repaired and made good to the satisfaction of the supervisor.

##### *Article 25*

##### **Inspection and testing**

- 25.1. The supplier shall ensure that the supplies are delivered to the place of acceptance in time to allow the supervisor to proceed with acceptance of the supplies. The supplier is deemed to have fully appreciated the difficulties which he might encounter in this respect, and he shall not be permitted to advance any grounds for delay in fulfilling his obligations.
- 25.2. The supervisor shall be entitled either by himself or his agent, from time to time, to inspect, examine, measure and test the components, materials and workmanship, and check the progress of preparation, fabrication or manufacture of anything being prepared, fabricated or manufactured for delivery under the contract in order to establish whether the components, materials and workmanship are of the requisite quality and quantity. This shall take place at the place of manufacture, fabrication or preparation or at the place of acceptance or at such other places as may be specified in the contract.
- 25.3. For the purposes of such tests and inspections, the supplier shall:
  - (a) provide to the supervisor, temporarily and free of charge, such assistance, test samples or parts, machines, equipment, tools, labour, materials, drawings and production data as are normally required for inspection and testing;
  - (b) agree, with the supervisor, on the time and place for tests;
  - (c) provide access for the supervisor at all reasonable times to the place where the tests are to be carried out.
- 25.4. If the supervisor is not present on the date agreed for tests, the supplier may, unless otherwise instructed by the supervisor, proceed with the tests, which shall be deemed to have been made in the supervisor's

presence. The supplier shall forthwith forward duly certified copies of the test results to the supervisor, who shall, if he has not attended the test, be bound by the test results.

25.5. When components and materials have passed the tests referred to in Article 25, the supervisor shall notify the supplier or endorse the supplier's certificate to that effect.

25.6. If the supervisor and the supplier disagree on the test results, each shall give a statement of his views to the other within 15 days after such disagreement arises. The supervisor or the supplier may require such tests to be repeated on the same terms and conditions or, if either party so requests, by an expert to be selected by common consent. All test reports shall be submitted to the supervisor who shall communicate the results of these tests without delay to the supplier. The results of the retesting shall be conclusive. The cost of retesting shall be borne by the party whose views are proved wrong by the retesting.

25.7. In the performance of his duties, the supervisor and all persons authorized by him shall disclose only to those persons who are entitled to know of it information which he has obtained by reason of his inspection and testing of the methods of manufacture and operation of the undertaking.

#### Article 26

##### Property in the supplies

26.1. The special conditions may provide that the supplier, for the purpose of securing payment under Article 32 in respect of any part of the supplies before delivery to the place of acceptance, shall:

- (a) vest that part of the supplies in the contracting authority; or
- (b) make that part of the supplies subject to a lien in favour of the contracting authority; or
- (c) make that part of the supplies subject to any other arrangement regarding priority interest or security.

26.2. Upon termination of the contract before completion, the supplier shall deliver to the contracting authority any part of the supplies the property in which has vested in the contracting authority or been made subject to a lien by virtue of Article 26 (1). If he fails to do so the contracting authority may take such appropriate action as it deems fit in order to obtain possession of such supplies, and recover the cost of so doing from the supplier.

## PAYMENTS

#### Article 27

##### General provisions

27.1. Payments shall be made in the national currency except as otherwise stipulated in the contract.

27.2. The administrative or technical conditions to which the payment of advances, interim and/or final payments made in accordance with Articles 28 to 36 are subject, shall be as stated in the special conditions.

#### Article 28

##### Provisional price contracts

28.1. In exceptional cases, where all the prices cannot be predetermined, a provisional price contract may be awarded after consultation and agreement between the contracting authority and the supplier. The amount of the contract shall be determined initially on the basis of provisional prices and, after the conditions for performance of the contract are known, by the procedure specified in the special conditions.

28.2. The supplier shall supply such information as the contracting authority or the supervisor may reasonably require in respect of any matter relating to the contract for the purpose of the calculation. Where agreement cannot be reached on the valuation of the supplies, the amounts payable shall be determined by the supervisor.

#### Article 29

##### Advances

29.1. Unless otherwise provided in the special conditions, advances shall be granted to the supplier, at his request, for operations connected with the provision of the supplies as a lump-sum advance.

29.2. Subject to the provisions of the special conditions, the total amount of the advances shall not exceed 60 % of the contract price.

29.3. No advance shall be granted until:

- (a) the conclusion of the contract;
- (b) provision to the contracting authority by the supplier of the performance guarantee in accordance with Article 11; and
- (c) provision to the contracting authority by the supplier of a separate directly liable guarantee for the full amount of the advance by the institutions

referred to in Article 11.3, which shall remain effective for at least 60 days after provisional acceptance of the supplies.

- 29.4. The supplier shall use the advance exclusively for operations connected with the provision of the supplies. Should the supplier misuse any portion of the advance, it shall become due and repayable immediately and no further advance payment shall be made to him.
- 29.5. Should the advance guarantee cease to be valid and the supplier fail to re-validate it, either a deduction equal to the amount of the advance may be made by the contracting authority from future payments due to the supplier under the contract, or the contracting authority may apply the provisions of Article 11 (6).
- 29.6. If the contract is terminated for any reason whatsoever, the guarantees securing the advances may be invoked forthwith in order to repay the balance of the advances still owed by the supplier, and the guarantor shall not delay payment or raise objection for any reason whatever.
- 29.7. The advance guarantee provided for in Article 29 shall not be released before provisional acceptance of the supplies but shall be released within 60 days thereafter.
- 29.8. Further conditions and procedures for granting and repaying advances shall be as laid down in the special conditions.

#### Article 30

##### Retention sums

- 30.1. The sum which shall be retained from interim payments by way of guarantee to meet the supplier's obligations during the warranty period, and the detailed rules governing that guarantee, shall be as stipulated in the special conditions, provided that it shall in no case exceed 10 % of the contract price.
- 30.2. Subject to the approval of the contracting authority, the supplier may, if he so wishes, substitute, not later than the provisional acceptance of the supplies, these retention sums by a retention guarantee issued in accordance with Article 11 (3).
- 30.3. The sum retained or the retention guarantee shall be released within 90 days of the date of final acceptance of the supplies.

#### Article 31

##### Revision of prices

- 31.1. Unless otherwise stipulated in the special conditions, and except as provided in Article 31 (4), contracts shall be at fixed prices which shall not be revised.
- 31.2. Where prices may be revised under the contract, such revision shall take into account variations in the prices of significant local or external elements which served as a basis for the calculation of the tender price, such as manpower, services, materials and supplies, as well as charges laid down by law or regulation. The detailed rules for the revision shall be as laid down in the special conditions.
- 31.3. Prices contained in the supplier's tender shall be deemed:
- (a) to have been arrived at on the basis of the conditions in force 30 days prior to the latest date fixed for submission of tenders or, in the case of direct agreement contracts, on the date of the contract;
  - (b) to have taken account of the legislation and the relevant tax arrangements applicable at the reference date fixed in Article 31 (3) (a).
- 31.4. In the event of changes to, or introduction of, any national or State statute, ordinance, decree or other law, or any regulation or by-law of any local or other public authority, after the date stated in Article 31 (3) which causes a change in the contractual relationship between parties to the contract, the contracting authority and the supplier shall consult on how best to proceed further under the contract, and may as a result of such consultation decide:
- (a) to modify the contract; or
  - (b) on payment of compensation for the resulting imbalance by one party to the other; or
  - (c) to terminate the contract by mutual agreement.
- 31.5. In the event of a delay in the execution of the contract for which the supplier is responsible or at the end of the period of performance revised as necessary in accordance with the contract, there shall be no further revision of prices within the 30 days before provisional acceptance except for the application of new price indexation, if this is to the benefit of the contracting authority.

*Article 32**Interim payments*

32.1. Unless otherwise specified in the special conditions, the supplier shall submit an application for interim payment to the supervisor at the end of each period referred to in Article 32 (7) in a form approved by the supervisor. The application shall include the following items, as applicable:

- (a) the estimated contract value of the supplies delivered up to the end of the period in question;
- (b) an amount reflecting any revision of prices pursuant to Article 31;
- (c) an amount to be withheld as retention sum under Article 30;
- (d) any credit and/or debit for the period in question in respect of supplies delivered under the contract, but not yet installed or commissioned in the amount and under the conditions set out in Article 32 (2);
- (e) any other sum to which the supplier may be entitled under the contract.

32.2. The supplier shall be entitled to such sums as the supervisor may consider proper in respect of supplies delivered under the contract, but not yet installed or commissioned, provided that:

- (a) the supplies conform to the specification of the contract and are set out in batches in a way that they may be recognized by the supervisor;
- (b) such supplies have been delivered to the place of acceptance, and are properly stored and protected against loss, damage or deterioration to the satisfaction of the supervisor;
- (c) the supplier's record of requirements, orders, receipts and use of goods and materials under the contract are kept in a form approved by the supervisor and such records are available for inspection by the supervisor;
- (d) the supplier submits with his statement, the estimated value of the supplies at the place of acceptance, together with such documents as may be required by the supervisor for the purpose of valuation of the supplies at the place of acceptance; together with such documents as may be required by the supervisor for the purpose of valuation of the supplies and providing evidence of ownership and payment therefor; and
- (e) where the special conditions so provide, ownership of the supplies shall be deemed to be vested in the contracting authority.

32.3. Approval by the supervisor of any interim payment certified by him in respect of goods and materials pursuant to Article 32 shall be without prejudice to the exercise of any power of the supervisor under the contract to reject any goods and materials which are not in accordance with the provisions of the contract. Where the special conditions so provide, upon any such rejection the property in the rejected goods and materials shall immediately revert to the supplier.

32.4. The supplier shall be responsible for any loss or damage to and for the cost of storing, handling of and removing from the place of acceptance, such goods and materials which have been rejected and shall effect such additional insurance as may be necessary to cover the risk of such loss or damage from any cause.

32.5. Within 30 days of receipt of the said application for interim payment, it shall be approved or amended in such manner that, in the supervisor's opinion, it reflects the amount due to the supplier in accordance with the contract. In cases where there is a difference of opinion as to the value of an item, the supervisor's view shall prevail. On determination of the amount due to the supplier, the supervisor shall issue to the contracting authority and the supplier, an interim payment certificate for the amount due to the supplier and shall inform the supplier of the supplies for which payment is being made.

32.6. The supervisor may, by an interim payment certificate, make any corrections or modifications to any previous certificate issued by him and shall have power to modify the valuation in or withhold the issuing of any interim payment certificate if the contract, or any part thereof, has not been executed to his satisfaction.

32.7. The frequency of interim payments shall be laid down in the special conditions in accordance with the characteristics of the supplies.

32.8. The special conditions may require certain interim payments to be fully secured by a guarantee approved in accordance with Article 11.

*Article 33**Final statement of account*

33.1. Not later than 60 days after the issue of the final acceptance certificate referred to in Article 41, the supplier shall submit to the supervisor a draft final statement of account with supporting documents showing in detail the value of the supplies provided in accordance with the contract, together with all further sums which the supplier considers to be due to him

under the contract in order to enable the supervisor to prepare the final statement of account. The special conditions may, however, in accordance with Article 33 (6) state that the draft final statement of account and further proceedings related thereto, be dealt with before the issue of the provisional acceptance certificate.

33.2. Within 60 days after receipt of this draft final statement of account and of all information reasonably required for its verification, the supervisor shall prepare the final statement of account, which determines:

- (a) the amount which in his opinion is finally due under the contract; and
- (b) after establishing the amounts previously paid by the contracting authority and all sums to which the contracting authority is entitled under the contract, the balance, if any, due from the contracting authority to the supplier, or from the supplier to the contracting authority, as the case may be.

33.3. The supervisor shall issue to the contracting authority or its duly authorized representative, and to the supplier, the final statement of account showing the final amount to which the supplier is entitled under the contract. The contracting authority or its duly authorized representative and the supplier shall sign the final statement of account as an acknowledgement of the full and final value of the supplies provided under the contract and shall promptly submit the signed copy to the supervisor. However, the final statement of account shall not include amounts in dispute which are the subject of negotiations, conciliation, arbitration or litigation.

33.4. The final statement of account signed by the supplier shall constitute a written discharge of the contracting authority confirming that the total of the final statement of account represents full and final settlement of all monies due to the supplier under the contract, other than those amounts which are the subject of amicable settlement, arbitration or litigation. However, such discharge shall become effective only after any payment due in accordance with the final statement of account has been made and the performance guarantee referred to in Article 11, has been returned to the supplier.

33.5. The contracting authority shall not be liable to the supplier for any matter or thing whatsoever arising out of, or in connection with, the contract or provision of the supplies, unless the supplier shall have included a claim in respect thereof in his draft final statement of account.

33.6. The provisions of Article 33 may be varied by the special conditions having regard to the practices in the State of the contracting authority.

#### Article 34

##### Payment to third parties

- 34.1. All orders for payment to third parties may be carried out only after an assignment made in accordance with Article 6. The assignment shall be notified to the contracting authority.
- 34.2. Notification of beneficiaries of the assignment shall be the sole responsibility of the supplier.
- 34.3. In the event of a legally binding attachment of the property of the supplier affecting payments due to him under the contract, and without prejudice to the time limit laid down in Article 35, the contracting authority shall have 30 days, starting from the day when it receives notification of the definitive lifting of the obstacle to payment, to resume payments to the supplier.

#### Article 35

##### Delayed payments

- 35.1. Payment to the supplier of the amounts due under each of the interim payment certificates and the final statement of account issued by the supervisor shall be made by the contracting authority within 90 days of such certificate or statement being delivered to the contracting authority. If the period laid down for payment has been exceeded, the supplier shall qualify for interest calculated pro rata on the basis of the number of days delay at the rate specified in the special conditions subject to a maximum period, also specified therein. The supplier shall be entitled to such payment without prejudice to any other right or remedy under the contract. In the case of the final statement of account, the interest for the delayed payment shall be calculated on a daily basis at the rate specified in the special conditions.
- 35.2. Any default in payment of more than 120 days from the expiry of the period laid down in Article 35 (1) shall entitle the supplier either not to perform the contract or to terminate it.

#### Article 36

##### Payments in foreign currency

Where under the contract the supplier is entitled to payments in foreign currency, the rates of exchange for calculating the payments shall be those prevailing, as determined by the Central Bank of the State of the contracting authority, 30 days prior to the latest date fixed for the submission of tenders for the contract. Such rates of exchange shall not be varied.



## ACCEPTANCE AND MAINTENANCE

*Article 37***Delivery**

- 37.1. The supplier shall deliver the supplies in accordance with the terms specified in the contract and the supplies shall remain at the risk of the supplier until provisional acceptance.
- 37.2. The supplier shall provide such packaging of the supplies as is required to prevent their damage or deterioration in transit to their final destination as indicated in the contract. The packaging shall be sufficient to withstand, without limitation, rough handling, exposure to extreme temperatures, salt and precipitation during transit and open storage. Package size and weights shall take into consideration, where appropriate, the remoteness of the final destination of the supplies, and the possible absence of heavy handling facilities at all points in transit.
- 37.3. The packaging, marking and documentation within and outside the packages shall comply with such special requirements as shall be expressly provided for in the contract, subject to any variations subsequently ordered by the supervisor.
- 37.4. No supplies shall be shipped or delivered to the place of acceptance until a confirmation in writing has been obtained by the supplier from the supervisor that the supplies may be delivered. The supplier shall be responsible for the delivery at the place of acceptance of all supplies and supplier's equipment required for the purpose of the contract.
- 37.5. Each delivery must be accompanied by a statement drawn up by the supplier. This statement, the form of which shall be as prescribed by the special conditions, shall contain, in particular:
- the date of delivery,
  - the reference number of the contract,
  - the identification of the supplier,
  - particulars of the goods supplied and, where appropriate, details of how they were divided for packing.
- 37.6. Each package must be clearly marked with its order number as shown on the statement referred to in Article 37 (5); in the absence of indications to the contrary, this statement shall contain a list of its contents.
- 37.7. 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 and the invoice(s) and all such other documentation as specified in the special conditions, have been submitted to the contracting authority. Where the supplies are delivered to an establishment of the contracting authority, the latter shall bear the responsibility of bailee, in accordance with the requirements of the law of the contract, during the time which elapses between delivery for storage and acceptance.

- 37.8. All materials and goods supplied under the contract shall be fully insured, with the contracting authority as beneficiary, against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the special conditions.

*Article 38***Verification operations**

- 38.1. The supplies shall not be accepted until the prescribed verifications and tests have been carried out at the expense of the supplier. The inspections and tests may be conducted at the point of delivery and/or at the final destination of the goods.
- 38.2. The supervisor shall, during the progress of the delivery of the supplies and before the supplies are taken over, have the power to order or decide:
- (a) the removal from the place of acceptance, within such time or times as may be specified in the order, of any supplies which, in the opinion of the supervisor, are not in accordance with the contract;
  - (b) the substitution by proper and suitable supplies;
  - (c) the removal and proper re-installation, notwithstanding any previous test thereof or interim payment therefor, of any installation which in respect of materials, workmanship or design by the supplier for which he is responsible, is not, in the opinion of the supervisor, in accordance with the contract;
  - (d) that any work done or goods supplied or materials used by the supplier is or are not in accordance with the contract, or that the supplies or any portion thereof do not fulfil the requirements of the contract.
- 38.3. The supplier shall, with all speed and at his own expense, make good the defects so specified. In case of default on the part of the supplier in carrying out such order, the contracting authority shall be entitled to employ other persons to carry out the orders and all expenses consequent thereon or incidental thereto

shall be recoverable from the supplier by the contracting authority, or may be deducted by the contracting authority from any monies due or which may become due to the supplier.

- 38.4. Supplies which are not of the required quality shall be rejected. A special mark may be applied to the rejected supplies. This shall not be such as to alter them or affect their commercial value. Rejected supplies shall be removed by the supplier from the place of acceptance, if the supervisor so requires, within a period which the supervisor shall specify, failing which they shall be removed as of right at the expense and risk of the supplier. Any work incorporating rejected materials shall be rejected.
- 38.5. The provisions of Article 38 shall not affect the right of the contracting authority to claim under Article 21, nor shall it in any way release the supplier from any warranty or other obligations under the contract.

#### Article 39

##### Provisional acceptance

- 39.1. 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 tests, or have been commissioned, as the case may be, and a certificate of provisional acceptance has been issued or is deemed to have been issued.
- 39.2. The supplier may apply, by notice to the supervisor, for a certificate of provisional acceptance not earlier than 15 days before the supplies, in the supplier's opinion, are complete and ready for provisional acceptance. The supervisor shall within 30 days after the receipt of the supplier's application either:
- (a) issue the certificate of provisional acceptance to the supplier with a copy to the contracting authority stating, where appropriate, his reservations and, *inter alia*, the date on which, in his opinion, the supplies were completed in accordance with the contract and ready for provisional acceptance; or
  - (b) reject the application giving his reasons and specifying the actions which, in his opinion, are required of the supplier for the certificate to be issued.
- 39.3. Should exceptional circumstances make it impossible to proceed with the acceptance of the supplies during the period fixed for provisional or final acceptance, a statement certifying such impossibility shall be drawn up by the supervisor after consultation, where possible, with the supplier. The certificate of

acceptance or rejection shall be drawn up within 30 days following the date on which such impossibility ceases to exist. The supplier shall not invoke these circumstances in order to avoid the obligation of presenting the supplies in a state suitable for acceptance.

- 39.4. If the supervisor fails either to issue the certificate of provisional acceptance or to reject the supplies within the period of 30 days, he shall be deemed to have issued the certificate on the last day of that period. The certificate of provisional acceptance shall not be deemed to be an admission that the supplies have been delivered in every respect. If the supplies are divided by the contract into lots, the supplier shall be entitled to apply for separate certificates for each of the lots.
- 39.5. Upon provisional acceptance of the supplies, the supplier shall dismantle and remove temporary structures as well as materials no longer required for use in connection with the performance of the contract. He shall also remove any litter or obstruction and redress any change in the condition of the place of acceptance as required by the contract.

#### Article 40

##### Warranty obligations

- 40.1. The supplier shall warrant that the supplies are new, unused, of the most recent models and incorporate all recent improvements in design and materials, unless otherwise provided in the contract. The supplier shall further warrant that all supplies shall have no defect arising from design, materials or workmanship, except insofar as the design or materials are required by the specifications, or from any act or omission of the contracting authority, that may develop under use of the supplies in the conditions obtaining in the State of the contracting authority.
- 40.2. Unless otherwise specified in the special conditions, this warranty shall remain valid for 360 days after the supplies or any portion thereof, as the case may be, have been delivered and commissioned at the final destination indicated in the contract, or for 540 days after the date of shipment from the port of loading in the country of origin, whichever period ends earlier. The obligation to maintain the supplies shall be subject to any stipulations in the special conditions and specifications which shall determine the period and conditions thereof.
- 40.3. The supplier shall be responsible for making good any defect in or damage to any part of the supplies which may appear or occur during the warranty period, or within 30 days after its expiration and which arise either:

- (a) from the use of defective materials, faulty workmanship or design of the supplier; or
- (b) from any act or omission of the supplier during the warranty period; or
- (c) in the course of an inspection made by, or on behalf of, the contracting authority.

40.4. The supplier shall at his own cost make good the defect or damage as soon as practicable. The warranty period for all items replaced or repaired shall recommence from the date when the replacement or repair was made to the satisfaction of the supervisor. If the contract provides for partial acceptance, the warranty period shall be extended only for the part of the supplies affected by the replacement or repair.

40.5. If any such defects appear or such damage occurs during the period referred to in Article 40 (3), the contracting authority or the supervisor shall notify the supplier. If the supplier fails to remedy a defect or damage within the time limit stipulated in the notification, the contracting authority may:

- (a) remedy the defect or the damage itself, or employ someone else to carry out the work at the supplier's risk and cost, in which case the costs incurred by the contracting authority shall be deducted from monies due to or from guarantees held against the supplier or from both; or
- (b) terminate the contract.

40.6. In case of emergency where the supplier cannot be reached immediately or, having been reached, is unable to take the measures required, the contracting authority or the supervisor may have the work carried out at the expense of the supplier. The contracting authority or the supervisor shall as soon as practicable inform the supplier of the action taken.

#### *Article 41*

##### **After sales service**

An after sales service, if required by the contract, shall be provided in accordance with the details stipulated in the special conditions. The supplier shall undertake to carry out or have carried out the maintenance and repair of supplies and to provide a rapid supply of spare parts. The special conditions may specify that the supplier shall be required to provide any or all of the following materials, notifications and documents pertaining to spare parts manufactured or distributed by the supplier:

- (a) such spare parts as the contracting authority may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
- (b) in the event of termination of production of the spare parts advance notification to the contracting authority to procure needed requirements; and following such termination, furnishing at no cost to the contracting authority, the blueprints, drawings and specifications of the spare parts, if and when requested.

#### *Article 42*

##### **Final acceptance**

- 42.1. Upon the expiration of the warranty period or where there is more than one such period, upon the expiration of the latest period and when all defects or damage have been rectified, the supervisor shall issue to the supplier a final acceptance certificate and a copy thereof to the contracting authority stating the date on which the supplier completed his obligations under the contract to the supervisor's satisfaction. The final acceptance certificate shall be given by the supervisor within 30 days after the expiration of the warranty period, or as soon thereafter as any rectifications instructed, pursuant to Article 40, have been completed to the satisfaction of the supervisor.
- 42.2. The contract shall not be considered to be fully executed until the final acceptance certificate has been signed by the supervisor and delivered to the contracting authority, with a copy to the contractor.
- 42.3. Notwithstanding the issue of the final acceptance certificate, the supplier and the contracting authority shall remain liable for the fulfilment of any obligation incurred under the contract prior to the issue of the final acceptance certificate, which remains unperformed at the time such final acceptance certificate is issued. The nature and extent of any such obligation shall be determined by reference to the provisions of the contract.

#### **BREACH OF CONTRACT AND TERMINATION**

#### *Article 43*

##### **Breach of contract**

- 43.1. Either party commits a breach of contract where he fails to discharge any of his obligations under the contract.
- 43.2. Where a breach of contract occurs, the party injured by the breach shall be entitled to the following remedies:
  - (a) damages; and/or
  - (b) termination of the contract.

## 43.3. Damages may be:

- (a) general damages; or
- (b) liquidated damages.

43.4. In any case where the contracting authority is entitled to damages, it may deduct such damages from any sums due to the supplier or from the appropriate guarantee.

- (i) the supplier fails to provide the required guarantee or insurance, or if the person providing the earlier guarantee or insurance is not able to abide by his commitments.

44.3. Termination shall be without prejudice to any other rights or powers under the contract of the contracting authority and the supplier. The contracting authority may, thereafter, conclude any other contract with a third party for the account of the supplier. The supplier's liability for delay in completion shall immediately cease upon termination without prejudice to any liability thereunder that may have already occurred.

*Article 44***Termination by the contracting authority**

44.1. The contracting authority may, at any time and with immediate effect, terminate the contract, except as provided for in Article 44 (2).

44.4. The supervisor shall, upon the issue of the notice of termination of the contract, instruct the supplier to take immediate steps to bring the execution of the supplies to a close in a prompt and orderly manner and to reduce expenditure to a minimum.

44.2. Except as otherwise provided in these general conditions, the contracting authority may, after giving seven days notice to the supplier, terminate the contract in any of the following cases where:

44.5. The supervisor shall, as soon as possible after termination, certify the value of the supplies and all sums due to the supplier as at the date of termination.

- (a) the supplier fails to provide the supplies in strict accordance with the provisions of the contract;
- (b) the supplier fails to comply within a reasonable time with a notice given by the supervisor requiring him to make good any neglect or failure to perform his obligations under the contract which seriously affect the proper and timely performance of the contract;
- (c) the supplier refuses or neglects to carry out administrative orders given by the supervisor;
- (d) the supplier assigns the contract or sub-contracts without the authorization of the contracting authority;
- (e) the supplier becomes bankrupt or insolvent, or has a receiving order made against him, or compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or goes into liquidation;
- (f) any adverse final judgment is made in respect of an offence relating to the professional conduct of the supplier;
- (g) any other legal disability hindering performance of the contract occurs;
- (h) any organizational modification occurs involving a change in the legal personality, nature or control of the supplier, unless such modification is recorded in an endorsement to the contract;

44.6. In the event of termination:

- (a) the supplier or his representatives being present or duly summoned, a report of supplies delivered and the work performed shall be drawn up by the supervisor as soon as possible, and inventories taken of the materials supplied and unused. A statement shall also be drawn up of sums owed by the supplier to the contracting authority;
- (b) the contracting authority may purchase, at market prices, the materials and items supplied or ordered by the supplier and not already paid for by the contracting authority on such conditions as the supervisor considers appropriate.

44.7. The contracting authority shall not be obliged to make any further payments to the supplier until the supplies are completed, whereupon the contracting authority shall be entitled to recover from the supplier the extra costs, if any, of providing the supplies, or shall pay any balance due to the supplier prior to termination of the contract.

44.8. If the contracting authority terminates the contract, it shall be entitled to recover from the supplier any loss it has suffered up to the maximum amount stated in the contract. If no maximum amount is stated, the

contracting authority shall not be entitled to recover more than the part of the contract price corresponding to the value of that part of the supplies which cannot, by reason of the supplier's failure, be put to the intended use.

- 44.9. Where the termination is not due to an act or omission of the supplier, the latter shall be entitled to claim, in addition to sums owing to him for work already performed, an indemnity for loss suffered.

#### Article 45

##### Termination by the supplier

- 45.1. The supplier may, giving 14 days notice to the contracting authority, terminate the contract if the contracting authority:
- (a) fails to pay the supplier the amounts due under any certificate issued by the supervisor after the expiry of the time limit stated in Article 35 (2);
  - (b) consistently fails to meet his obligations after repeated reminders; or
  - (c) suspends the progress of the delivery of the supplies, or any part thereof, for more than 180 days, for reasons not specified in the contract, or not due to the supplier's default;
- 45.2. Such termination shall be without prejudice to any other rights of the contracting authority or the supplier acquired under the contract.
- 45.3. In the event of such termination, the contracting authority shall pay the supplier for any loss or damage the supplier may have suffered. Such additional payment shall not exceed a limit which has to be specified in the contract.

#### Article 46

##### Force majeure

- 46.1. Neither party shall be considered to be in default or in breach of his obligations under the contract if the performance of such obligations is prevented by any circumstances of *force majeure* which arises after the date of notification of award or the date when the contract becomes effective, whichever is the earlier.
- 46.2. The term *force majeure*, as used herein shall mean acts of God, strikes, lock-outs or other industrial disturbances, acts of the public enemy, wars whether declared or not, blockades, insurrection, riots, epidemics, landslides, earthquakes, storms, lightning,

floods, washouts, civil disturbances, explosions, and any other similar unforeseeable events, not within the control of either party and which by the exercise of due diligence neither party is able to overcome.

- 46.3. Notwithstanding the provisions of Articles 21 and 44, the supplier shall not be liable to forfeiture of his performance guarantee, liquidated damages or termination for default if, and to the extent that, his delay in performance or other failure to perform his obligations under the contract is the result of an event of *force majeure*. The contracting authority shall similarly not be liable, notwithstanding the provisions of Articles 35 and 45, to payment of interest on delayed payments, for non-performance or for termination by the supplier for default, if, and to the extent that, the contracting authority's delay or other failure to perform its obligations is the result of *force majeure*.
- 46.4. If either party considers that any circumstances of *force majeure* have occurred which may affect performance of his obligations, he shall promptly notify the other party and the supervisor, giving details of the nature, the probable duration and the likely effect of the circumstances. Unless otherwise directed by the supervisor in writing, the supplier shall continue to perform his obligations under the contract as far as is reasonably practicable, and shall seek all reasonable alternative means for performance of his obligations which are not prevented by the *force majeure* event. The supplier shall not put into effect such alternative means unless directed so to do by the supervisor.
- 46.5. If the supplier incurs additional costs in complying with the supervisor's directions or using alternative means under Article 46 (4) the amount thereof shall be certified by the supervisor.
- 46.6. If circumstances of *force majeure* have occurred and continue for a period of 180 days then, notwithstanding any extension of time for completion of the contract that the supplier may by reason thereof have been granted, either party shall be entitled to serve upon the other 30 days' notice to terminate the contract. If at the expiry of the period of 30 days, *force majeure* still continues, the contract shall terminate and, in consequence thereof under the law governing the contract, the parties shall be released from further performance of the contract.

#### Article 47

##### Decease

- 47.1. Where the supplier is a natural person, the contract shall be automatically terminated if that person dies. However, the contracting authority shall examine any proposal made by the heirs or beneficiaries if they have

notified their wish to continue the contract. The decision of the contracting authority shall be notified to those concerned within 30 days of receipt of such proposal.

47.2. Where the supplier consists of natural persons and one or more of them die, a report shall be agreed between the parties on the progress of the contract and the contracting authority shall decide whether to terminate or continue the contract in accordance with the undertaking given by the survivors and by the heirs or beneficiaries, as the case may be.

47.3. In the cases provided for in Articles 47 (1) and 47 (2) persons offering to continue to perform the contract shall notify the contracting authority thereof within 15 days of the date of decease.

47.4. Such persons shall be jointly and severally liable, or as otherwise stated in the special conditions for the proper performance of the contract to the same extent as the original supplier. Continuation of the contract shall be subject to the rules relating to establishment of the guarantee provided for in Article 11.

#### SETTLEMENT OF DISPUTES

##### *Article 48*

##### **Settlement of disputes**

48.1. The contracting authority and the supplier shall make every effort to amicably settle any dispute relating to the contract which may arise between them, or between the supervisor and the supplier.

48.2. The special conditions shall prescribe:

- (a) the procedure for the amicable settlement of disputes;
- (b) the time limits within which the amicable settlement procedure may be invoked after the time that the dispute is notified to the other party and the maximum time limit within which such settlement may be reached, which may not exceed 120 days from the commencement of the adopted procedure;
- (c) the time limits for responding in writing to a request for amicable settlement or to other requests permitted during the course of that procedure and the consequences of failure to comply with those time limits.

48.3. The parties may agree to the settlement of the dispute by conciliation within a specific time limit by a third party after the amicable settlement procedure adopted has failed.

48.4. The amicable settlement or conciliation procedure adopted shall in all cases involve a procedure in which complaints and responses are notified to the other party.

48.5. In the absence of an amicable settlement or settlement by conciliation within the maximum time limits specified, the dispute shall:

- (a) in the case of a national contract, be settled in accordance with the national legislation of the State of the contracting authority; and
- (b) in the case of a transnational contract, be settled, either:
  - (i) if the parties to the contract so agree, in accordance with the national legislation of the State of the contracting authority or its established international practices; or
  - (ii) by arbitration in accordance with the procedural rules adopted in accordance with the Convention.