SECTION 3

Part 1 - GENERAL CONDITIONS

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PRELIMINARY PROVISIONS

ARTICLE 1: Definitions

1.1 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.

1.2 Where the context so permits, words in the singular shall be deemed to include the plural and vice versa and words in the masculine shall be deemed to include the feminine and vice versa.

1.3 Words designating persons or parties shall include firms and companies and any organisation having legal capacity.

1.4 The titles "Employer", and "Client" are synonym with IFRC.

ARTICLE 2: Law and language of the contract

2.1 The Special Conditions shall specify the law governing all matters not covered by the contract.

2.2 The contract and all written communications between the parties will be drafted in the language of the procedure.

ARTICLE 3: Order of precedence of contract documents

3.1 Save where otherwise provided in the special conditions, the contract is made up of the following documents, in order of precedence:

a) the Contract Agreement
b) the Special Conditions (Part II)
c) the General Conditions (Part I)
d) the Design documentation (drawings)
e) the priced Bill of Quantities (after arithmetical corrections) / price breakdown
f) the Tender with the Appendix to Tender
g) any other document forming part of the Contract Agreement.

Addenda have the order of precedence of the document they are modifying.

3.2. The various documents making up the contract shall be deemed to be mutually explanatory; in cases of ambiguity or divergence, they should be read in the order in which they appear above.

ARTICLE 4: Communications

4.1 Communications between the IFRC and/or the Supervisor on the one hand, and the Contractor on the other, shall be exclusively in writing. Unless otherwise specified in the Special Conditions, communications between the IFRC and/or the Supervisor on the one hand, and the Contractor on the other hand, shall be sent by post, e-mail, fax transmission, or delivered by hand, to the addresses designated by the Parties for that purpose.

4.2 If the person sending a communication requires acknowledgment of receipt, he shall indicate this in his communication. Whenever there is a deadline for the receipt of a written communication, the sender should ask for an acknowledgement of receipt of his communication. In any event, the sender shall take all necessary measures to ensure receipt of his communication especially if sent by E-Mail.

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4.3 Wherever the contract provides 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: IFRC Supervisor (Technical Delegate)

5.1 The Supervisor (in the FIDIC called: Engineer) shall carry out the duties specified in the contract. Except where expressly stated in the contract, the Supervisor shall not have authority to relieve the Contractor of any of his obligations.

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 Contractor.

5.3 Any communication given by the Supervisor's representative to the Contractor in accordance with the terms of such delegation shall have the same effect as if it had been given by the Supervisor, save that:

a) a failure on the part of the Supervisor's representative to reject any work, materials or plant shall not prejudice the authority of the Supervisor to reject such work, materials or plant and to give the instructions necessary for the rectification thereof;
b) the Supervisor shall be at liberty to reverse or vary the contents of such communication.

5.4 Instructions and/or orders issued by the Supervisor shall take the form of administrative orders. Such orders shall be dated, numbered and entered by the Supervisor in a register, and copies thereof delivered by hand, where appropriate, to the Contractor's representative.

5.5 The Contractor shall ensure that the Supervisor has free access to the places in which the works covered by the contract are carried out and shall provide the supervisor with any information he might require. The Supervisor may arrange for the supervision and inspection of any item being prepared and manufactured for supply under the contract. To this end, he may apply such tests as he considers necessary from among those provided for in these General Conditions, supplemented and amended where appropriate by the Special Conditions, in order to establish whether the materials and objects are of the requisite quality and quantity. He may require the replacement or repair, as the case may be, of items, which do not conform with the contract, even after their installation. He may also propose a reduction in price, which, if accepted by the Contractor, shall cover the latter for any imperfections, which have been found. The Contractor may not rely on the fact that such supervision and inspection have been affected in order to evade his responsibility in the event of the works being rejected by the Supervisor.

5.6 The Contractor shall place at the disposal of the Supervisor, temporarily and free of charge, the patterns and instruments specified in the Special Conditions which are considered necessary for verifying and inspecting the works to be carried out and the items to be provided.

5.7 In the performance of his duties, the Supervisor shall not disclose information on the methods of manufacture and operation of the undertakings which he has obtained by reason of his supervision and inspection, except to those authorities that need to know it.

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ARTICLE 6: Assignment

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

6.2 The Contractor may not, without the prior written consent of the IFRC, 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 Contractor's bankers, of any monies due or to become due under the contract;

or

b) the assignment to the Contractor's insurers of the Contractor's right to obtain relief against any other person liable in cases where the insurers have discharged the Contractor's loss or liability.

6.3 For the purpose of Article 6.2, the approval of an assignment by the IFRC shall not relieve the Contractor of his obligations for the part of the contract already performed or the part not assigned.

6.4 If the Contractor has assigned his contract without authorisation, the IFRC may, without giving formal notice thereof, apply as of right the sanctions for breach of contract provided for in Articles 60 and 61.

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

ARTICLE 7: Subcontracting

7.1 A subcontract shall be valid only if it is a written agreement by which the Contractor entrusts implementation of a part of his contract to a third party.

7.2 The Contractor shall not subcontract without the prior written authorisation of the IFRC. The elements of the contract to be subcontracted and the identity of the subcontractors shall be notified to the IFRC. With due regard to the provisions of Article 4.3, the IFRC shall notify the Contractor of its decision within 30 days of receiving the notification, stating its reasons if authorisation is withheld.

7.3 Subcontractors must satisfy the eligibility criteria applicable for the award of the contract.

7.4 The IFRC shall not be bound to the subcontractors.

7.5 The Contractor shall be responsible for the acts, defaults and negligence of his subcontractors and their agents or employees, as if they were the acts, defaults or negligence of the Contractor, his agents or employees. The approval by the IFRC of the subcontracting of any part of the contract or of the subcontractor to perform any part of the works shall not relieve the Contractor of any of his obligations under the contract.

7.6 If a subcontractor has undertaken any continuing obligation extending for a period exceeding that of the maintenance period under the contract towards the Contractor in respect of the work executed or the goods, materials, plant or services supplied by the subcontractor, the Contractor shall, at any time after the expiration of the maintenance period, transfer immediately to the IFRC, at the IFRC's request and cost, the benefit of such obligation for the unexpired duration thereof.

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7.7 If the Contractor enters into a subcontract without approval, the IFRC may, without giving formal notice thereof, apply as of right the sanctions for breach of contract provided for in Article 60.

OBLIGATIONS OF THE IFRC

ARTICLE 8: Supply of documents

8.1 Save where otherwise provided in the special conditions, within 03 days of the signing of the contract, the Supervisor shall, on behalf of the IFRC, provide the Contractor, free of charge, with a copy of the drawings prepared for the implementation of the contract and a copy of the specifications and other contract documents. The Contractor may purchase additional copies of these drawings, specifications and other documents, in so far as they are available. Upon the issue of the maintenance certificate, or upon final acceptance, the Contractor shall return to the Supervisor all drawings, specifications and other contract documents.][1]

8.2 Unless it is necessary for the purposes of the contract, the drawings, specifications and other documents provided by the IFRC shall not be used or communicated to a third party by the Contractor without the prior consent of the Supervisor.

8.3 The Supervisor shall have authority to issue to the Contractor, on behalf of the IFRC, administrative orders incorporating such supplementary documents and instructions as are necessary for the proper execution of the works and the remedying of any defects therein.

8.4 The special conditions must indicate the procedure used, if necessary, by the IFRC and the Supervisor to approve drawings and other documents provided by the Contractor.

ARTICLE 9: Access to the site

9.1 The IFRC shall, in due time and in conformity with the progress of the works, place the site and access thereto at the disposal of the Contractor in accordance with the programme of implementation referred to in these General Conditions. The Contractor shall afford other persons concerned every reasonable opportunity to carry out their work, as set out in the Special Conditions or as required by administrative orders.

9.2 Land procured for the Contractor by the IFRC shall not be used by the Contractor for purposes other than the implementation of the contract.

9.3 The Contractor shall keep any premises placed at his disposal in good condition while he is in occupation. He shall, if so required by the IFRC or the Supervisor, restore them to their original state on completion of the contract, taking into account normal wear and tear.

9.4 The Contractor shall not be entitled to any payment for improvements resulting from work carried out on his own initiative.

ARTICLE 10: Assistance with local regulations

10.1 The Contractor may request the assistance of the IFRC in obtaining copies of laws, regulations and information on local customs, orders or byelaws of the country where the works are located which may affect the Contractor in the execution of his obligations under the contract. The IFRC may provide the assistance requested to the Contractor at the Contractor's cost.

10.2 If necessary, the Contractor shall duly notify the IFRC of details of the works so that the IFRC can obtain the requisite permits or import licences.

[1] Not applicable to design and build contracts.

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10.3 If necessary, the IFRC will undertake to obtain, in accordance with the Special Conditions, the requisite permits or import licences within a reasonable period, taking account of the implementation dates for the contract.

10.4 Subject to the provisions of the laws and regulations on foreign labour of the states in which the supplies are to be delivered, the IFRC shall make every effort to help the Contractor obtain all the visas and permits required for the personnel whose services the Contractor and the IFRC consider necessary and residence permits for their families.

10.5 The Contractor shall respect internationally agreed core labour standards, e.g. the ILO core labour standards, conventions on freedom of association and collective bargaining, elimination of forced and compulsory labour, elimination of discrimination in respect of employment and occupation, and the abolition of child labour.

OBLIGATIONS OF THE CONTRACTOR

ARTICLE 11: General Obligations

11.1 The Contractor shall, with due care and diligence, and in accordance with the provisions of the contract, design the works to the extent stated in the contract, and execute, complete and remedy any defects in the works. The Contractor shall provide all superintendence, personnel, materials, plant, equipment and all other items, whether of a temporary or permanent nature, required for the design, execution and completion of works, and for remedying any defects, in so far as is specified in, or can be reasonably inferred from, the contract.

11.1.1 The Contractor shall carry out, and assume responsibility for, the design of the works with the help of experienced designers satisfying the criteria laid down by the IFRC. He shall draw up the requisite technical documents according to the provisions laid down in the special conditions and technical specifications. These documents must be submitted to the Supervisor for approval, in accordance with the Special Conditions, and may be corrected at the Contractor's expense to satisfy the IFRC's contractual requirements and eliminate errors, omissions, ambiguities, inconsistencies and other drafting defects. The Contractor shall train the IFRC's personnel and deliver and update the set of detailed documents and operating and maintenance manuals, in accordance with the Special Conditions.[2]]

11.2 The staff and workmen employed by the Contractor must be sufficient in number, and each must have the qualifications necessary to ensure due progress and satisfactory execution of the works. The Contractor shall immediately replace all persons indicated by the Supervisor, in a letter stating reasons, as hampering the proper execution of the works. The Contractor shall make his own arrangements for the engagement of all staff and labour. He shall comply with all the relevant labour laws applying to his employees, shall duly pay them and afford them all their legal rights.

11.3 The equipment, which the Contractor has at the site, shall be deemed to be for the purpose of carrying out the works. The Contractor shall not be entitled to remove it without the written consent of the Supervisor unless he shows that the said equipment is no longer required for the performance of the works.

11.4 The Contractor shall take full responsibility for the adequacy, stability and safety of all operations and methods of construction under the contract.

11.5 The Contractor shall comply fully with any administrative orders given to him. Where the Contractor considers that the requirements of an administrative order exceed the authority of the Supervisor or the scope of the contract, he shall, on pain of being time-barred, notify the Supervisor of this fact within 10 days of receiving the administrative order and inform the IFRC. Execution of the administrative order shall be suspended during this period.

[2] Applicable only to design and build contracts.

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The Contractor shall draw up and submit for the Supervisor's approval a programme of implementation of the contract, in accordance with the detailed rules laid down in the Special Conditions.

Where appropriate and within a period not exceeding two weeks, the Contractor must, in response to a reasoned request from the Supervisor, be able to provide a detailed breakdown of his prices.

The Special Conditions shall specify any detailed drawings to be drawn up by the Contractor and submitted for the Supervisor's approval. The same shall apply to documents and items, which are to be submitted to the Supervisor for endorsement or acceptance. These detailed drawings, documents and items may not be reproduced or used for another purpose by the IFRC, nor communicated to third parties, except with the Contractor's agreement and on payment of fair compensation.

11.6. The Contractor shall either give an address for service or give an address close to the works, or appoint an agent residing at that address. He shall notify the IFRC of the address for service or other address. Should he fail to fulfil this obligation within three months of being notified of the approval of the contract, all notifications concerning the contract shall be valid when they are sent to the address given in Art 4 of the Special Conditions.

After final acceptance of the works, the Contractor shall be relieved of this obligation. Should he fail to inform the IFRC of a change of address before final acceptance of the works, all notifications concerning the contract shall be valid when they are sent to the address given in Art 4 of the Special Conditions.

11.7 The Contractor shall respect and abide by all laws and regulations in force in the state of the IFRC and shall ensure that his personnel, their dependants, and his local employees also respect and abide by all such laws and regulations. The Contractor shall indemnify the IFRC against any claims and proceedings arising from any infringement by the Contractor, his employees and their dependants of such laws and regulations.

11.8 If the Contractor or any of his subcontractors, 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 the IFRC; or for showing favour or disfavour to any person in relation to the contract or any other contract with the IFRC, then the IFRC may, without prejudice to any accrued rights of the Contractor under the contract, terminate the contract in accordance with the relevant provisions of these General Conditions.

11.9 The Contractor shall treat all documents and information received in connection with the contract as private and confidential. He shall not, save in so far as may be necessary for the purposes of the contract's execution, publish or disclose any particulars of the contract without the prior consent in writing of the IFRC or the Supervisor after consultation with the IFRC. If any disagreement arises as to the necessity for any publication or disclosure for the purpose of the contract, the decision of the IFRC shall be final.

The Special Conditions shall list the documents and items which may be placed at the disposal of the Contractor, at the latter's request, to facilitate his work. The Special Conditions shall specify the date and conditions for the return of these documents and items. The Contractor may purchase, in so far as they are available, additional copies of these drawings, documents and items. The Supervisor may not hand over these drawings, documents and items until the performance guarantee is established.

11.10 If the Contractor 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 IFRC and shall, at the request of the IFRC, designate one of such persons to act as leader with authority to bind the joint venture or consortium. The composition or

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constitution of the joint venture or consortium shall not be altered without the prior consent in writing of the IFRC.

11.11 Save where the Employer requests or agrees otherwise, the Contractor shall take the necessary measures to ensure the visibility of the Employer financing or co-financing.

ARTICLE 12: Superintendence of the works

12.1 The Contractor shall superintend the works himself or appoint a representative to do so. Such appointments shall be submitted to the Supervisor for approval. The approval may be withdrawn at any time. Should the Supervisor refuse to approve, or withdraw approval of the appointment, he shall set out the grounds on which his decision is based, and the Contractor shall submit an alternative appointment without delay. The address of the Contractor's representative shall be deemed to be the address for service given by the Contractor.

12.2 If the Supervisor withdraws his approval of the Contractor's representative, the Contractor shall, as soon as is practicable, after receiving notice of such withdrawal, remove the representative from the works and replace him with another representative approved by the Supervisor.

12.3 The Contractor's representative shall have full authority to make any decision necessary for the execution of the works, to receive and carry out administrative orders and to countersign the work register referred to in these General Conditions or the Annexes.

12.4 In any event, the Contractor shall be responsible for ensuring that the works are carried out satisfactorily, including ensuring that the specifications and administrative orders are adhered to by his own employees and by his subcontractors and their employees.

ARTICLE 13: Performance guarantees

13.1 The Contractor shall to, together with the return of the countersigned contract, furnish the IFRC with a guarantee for the full and proper execution of the contract. The amount of the guarantee shall be specified in the Special Conditions. It shall be in the range of 5 and 10% of the amount of the contract price, including any amounts stipulated in addenda to the contract.

Commented [RF1]: Chane the percentage or not?

13.2 The performance guarantee shall be held against payment to the IFRC for any loss resulting from the Contractor's failure to perform his contractual obligations fully and properly.

13.3 The performance guarantee shall be in the format given in Volume 2 of the tender dossier and may be provided in the form of a bank guarantee, a banker's draft, a certified cheque, bond or an irrevocable letter of credit issued by an insurance or financial institution acceptable to the IFRC.

13.4 The performance guarantee shall be denominated in the currency in which the contract is payable. No payments shall be made in favour of the Contractor prior to the provision of the guarantee. The guarantee shall continue to remain valid until the contract has been fully and properly performed.

13.5 If, during the execution of the contract, the natural or legal person providing the guarantee is not able to abide by his commitments, the IFRC shall give formal notice to the Contractor to provide a new guarantee on the same terms as the previous one. Should the Contractor fail to provide a new guarantee, the IFRC may terminate the contract. Before applying these measures, it shall send the Contractor a registered letter with acknowledgement of delivery serving notice for the establishment of the performance guarantee. Such notice shall set a new time limit, which may not be less than 7 days, and which shall commence on the date of delivery of the letter.

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13.6 The IFRC shall demand payment from the guarantee of all sums for which the guarantor is liable under the guarantee due to the Contractor'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 IFRC and may not raise any objection for any reason whatsoever. Before making any claim under the performance guarantee, the IFRC shall notify the Contractor stating the nature of the default in respect of which the claim is to be made.

13.7 Unless the Special Conditions provide otherwise, the performance guarantee shall be released within 45 days of the signing of the final statement of account. However, in view of the special features of the contract, the Special Conditions may provide for half the guarantee to be released or refunded on the date of provisional acceptance.

ARTICLE 14: Insurance

14.1 The Contractor shall take out insurance in both his own and the IFRC's name against any loss or damage for which he is liable under the contract. Such insurance shall, unless the Special Conditions provide otherwise, cover:

a) the works, together with materials and plant for incorporation therein, to the full replacement cost against all loss or damage from whatever cause arising other than from force majeure or risks attributable under the contract to the IFRC;

b) an additional sum of 15% of such replacement cost or any other amount specified in the Special Conditions, to cover all the additional direct or indirect costs of making good losses or damage, including professional fees and the cost of demolishing and removing any part of the works and of removing debris of whatever nature;

Commented [RF2]: What should we do with this amount?

(c) the Contractor's equipment and other things brought onto the site by the Contractor, for a sum sufficient to provide their replacement at the site.

14.2 The Contractor may substitute the insurance provided for in Article 14.1 by a comprehensive insurance policy that covers, inter alia, the elements of Article 14.1(a), (b) and (c). In that case, the Contractor shall notify the insurer of the IFRC's interest.

14.3 The Contractor shall take out insurance against industrial accidents and civil liabilities arising from the execution of the works to any person employed by the Contractor on the works or to the IFRC and its employees. Such liability shall be unlimited in the case of personal injuries.

14.4 The Contractor shall take out insurance covering liability with regard to risks and civil liability resulting from an act or omission attributed to him, to his legal successors or agents. Such insurance shall be for at least the amount stated in the Special Conditions. The Contractor shall ensure that all his subcontractors have taken out similar insurance.

14.5 All the insurance referred to in this Article shall be taken out within 30 days of the notification of the award of the contract and shall be subject to approval by the IFRC. Such insurance shall take effect front the commencement of the works and remain in force until final acceptance of the works. On being asked to do so by the IFRC or the Supervisor, the Contractor shall promptly present the IFRC with the insurance policy and proof that premiums have been duly paid.

14.6 Notwithstanding the Contractor's insurance obligations under Article 14, the Contractor shall bear sole liability for, and indemnify the IFRC and the Supervisor against, any claims by third parties for damage to property or personal injuries arising from the execution of the works by the Contractor, his subcontractors and employees.

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ARTICLE 15: Implementation programme

15.1 If the Special Conditions so require, the Contractor shall submit a programme of implementation of the contract for the approval of the Supervisor. The programme shall contain at least the following:

a) the order in which the Contractor proposes to carry out the works;

b) the deadlines for submission and approval of the drawings;

c) a general description of the methods which the Contractor proposes to adopt for carrying out the works; and

d) such further details and information as the Supervisor may reasonably require.

15.2 The Special Conditions shall specify the time limit within which the programme of implementation must be submitted to the Supervisor for approval. They may set time limits within which the Contractor must submit all or part of the detailed drawings, documents and items. They shall also state the deadline for the Supervisor's approval or acceptance of the programme of implementation, detailed drawings, documents and items. The approval of the programme by the Supervisor shall not relieve the Contractor of any of his obligations under the contract.

15.3 No material alteration to the programme shall be made without the approval of the Supervisor. If, however, the progress of the works does not conform to the programme, the Supervisor may instruct the Contractor to revise the programme and submit the revised programme to him for approval.

ARTICLE 16: Detailed breakdown of prices

16.1 Where necessary for the purposes of the contract, the Contractor shall provide a detailed breakdown of his rates and prices within no more than 7 days of the Supervisor's reasoned request.

16.2 After the notification of award, the Contractor shall provide the Supervisor, for his information only, with a detailed quarterly cashflow estimate of all payments that may be due to the Contractor under the contract. The Contractor shall subsequently supply revised weekly cashflow estimates, if so required by the Supervisor. The communication shall not impose any liability whatsoever on the IFRC or the Supervisor.

ARTICLE 17: Contractor's drawings

17.1 The Contractor shall submit to the Supervisor for approval:

a) the drawings, documents, samples and/or models, according to the time limits and procedures laid down in the Special Conditions;

b) such drawings as the Supervisor may reasonably require for the implementation of the contract.

17.2 If the Supervisor fails to notify his decision of approval referred to in Article 17.1 within the deadlines referred to in the contract or the approved programme of implementation, such drawings, documents, samples or models shall be deemed to be approved on expiry of the deadlines. If no deadline is specified, they shall be deemed to be approved 30 days after receipt.

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17.3 Approved drawings, documents, samples and models shall be signed or otherwise identified by the Supervisor and may only be departed from on the Supervisor's instructions. Any of the Contractor's drawings, documents, samples or models which the Supervisor fails to approve shall immediately be modified to meet the requirements of the Supervisor and resubmitted by the Contractor for approval.

17.4 The Contractor shall supply additional copies of approved drawings in the form and numbers stated in the contract or in subsequent administrative orders.

17.5 The approval of the drawings, documents, samples or models by the Supervisor shall not relieve the Contractor from any of his obligations under the contract.

17.6 The Supervisor shall have the right to inspect all drawings, documents, samples or models relating to the contract at the Contractor's premises at all reasonable times.

17.7 Before provisional acceptance of the works, the Contractor shall supply operating and maintenance manuals together with drawings, which shall be detailed enough to enable the IFRC to operate, maintain, adjust and repair all parts of the works. Unless otherwise stated in the Special Conditions, the manuals and drawings shall be in the language of the contract. The works shall not be considered complete for the purpose of provisional acceptance until such manuals and drawings have been supplied to the IFRC.

ARTICLE 18: Sufficiency of tender prices

18.1 Subject to the Special Conditions, the Contractor shall be deemed to have inspected and examined the site and its surroundings and to have satisfied himself as to the nature of the ground and the subsoil before submitting his tender. He shall also be deemed to have taken into account the form and nature of the site, the extent and nature of the work and materials necessary for the completion of the works, the means of communication with and access to the site, the accommodation he may require and in general to have obtained for himself all necessary information as to the risks, contingencies and any other circumstances influencing or affecting his tender.

18.2 The Contractor shall be deemed to have satisfied himself before submitting his tender as to the correctness and sufficiency of the tender and of the rates and prices stated in the bill of quantities or price schedule, which shall, save where otherwise provided in the Special Conditions, cover all his obligations under the contract.

18.3 Since the Contractor is deemed to have determined his prices on the basis of his own calculations, operations and estimates, he shall, at no additional charge, carry out any work that is the subject of any item whatsoever in his tender for which he indicates neither a unit price nor a lump sum.

ARTICLE 19: Exceptional risks

19.1 If, during the execution of the works, the Contractor encounters artificial obstructions or physical conditions which could not reasonably have been foreseen by an experienced Contractor, and if the Contractor is of the opinion that additional costs will be incurred and/or an extension of the period of implementation of the contract will be necessary as a result of this, he shall notify the Supervisor in accordance with the articles of the General Conditions concerning the extension of the period of implementation and claims for additional payments. The Contractor's notification shall specify the artificial obstructions and/or physical conditions, giving details of the expected effects thereof, the measures he is taking or intends to take and the extent of the expected delay in, or interference with, the execution of the works.

19.2 On receipt of notification, the Supervisor may inter alia:

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a) require the Contractor to provide an estimate of the cost of the measures he is taking or intends to take;
b) approve the measures referred to in Article 19.2(a) with or without modification;
c) give written instructions as to how the artificial obstructions or physical conditions are to be dealt with;
d) order that the contract be modified, suspended or terminated.

19.3 In so far as he considers that some or all of the said artificial obstructions or physical conditions could not reasonably have been foreseen by an experienced Contractor, the Supervisor shall:

a) take into account any delay suffered by the Contractor as a result of such obstructions or conditions in determining any extension of the period of implementation to which the Contractor is entitled under the General Conditions; and/or
b) calculate, in the event of artificial obstructions or physical conditions other than weather conditions, the additional payments due to the Contractor under the General Conditions.

19.4 If the Supervisor decides that some or all of the artificial obstructions or physical conditions could reasonably have been foreseen by an experienced Contractor, he shall so inform the Contractor as soon as practicable.

19.5 Weather conditions shall not entitle the Contractor to claim additional payments under Article 52. Where the Supervisor judges that weather conditions that are normally foreseeable or specified in the Special Conditions make the smooth execution of the works difficult, he may decide to suspend such works for a given period. During the periods of suspension, the Contractor shall, at his own expense, take every precaution necessary to safeguard the works and materials.

ARTICLE 20: Safety on site

20.1 The Contractor shall have the right to forbid access to the site to any person not involved in the execution of the contract, with the exception of persons authorised by the Supervisor or representatives of the IFRC.

20.2 The Contractor shall ensure the safety of sites throughout the period of execution and shall be responsible for taking the necessary steps, in the interests of his employees, agents of the IFRC and third parties, to prevent any loss or accident which may result from carrying out the works.

20.3 The Contractor shall, on his own responsibility and at his own expense, do his utmost to ensure that existing structures and installations are protected, preserved and maintained. He shall be responsible for providing and maintaining at his own expense all lighting, protection, fencing and security equipment that proves necessary for the proper implementation of the works or that the Supervisor may reasonably require.

20.4 If, during the implementation of the contract, urgent measures are necessary to obviate any risk of accident or damage or to ensure safety after an accident or damage, the Supervisor shall give formal notice to the Contractor to do what is necessary. If the Contractor is unwilling or unable to undertake the necessary measures, the Supervisor may, to the extent that the Contractor is liable, arrange for such measures to be implemented at the expense of the Contractor.

ARTICLE 21: Safeguarding adjacent properties

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21.1 On his own responsibility and at his expense, the Contractor shall take all the precautions required by good construction practice and by the prevailing circumstances to safeguard adjacent properties and avoid causing any abnormal disturbance therein.

21.2 The Contractor shall indemnify the IFRC against the financial consequences of all claims by neighbouring landowners or residents to the extent that the Contractor is liable and to the extent that the damage to adjacent properties is not the result of a hazard arising from the design or method of construction imposed on the Contractor by the IFRC or the Supervisor.

ARTICLE 22: Interference with traffic

22.1 The Contractor shall ensure that the works and installations do not impede traffic on communication links such as roads, railways, waterways and aerodromes, save as permitted under the Special Conditions. He shall, in particular, take account of weight restrictions when selecting routes and vehicles.

22.2 Any special measures which the Contractor considers necessary or which are specified in the Special Conditions or which are required by the IFRC in order to protect or strengthen sections of roads, tracks or bridges shall be at the expense of the Contractor, whether or not they are carried out by the Contractor. The Contractor shall inform the Supervisor of any special measures he intends to take before carrying them out. The repair of any damage caused to roads, tracks or bridges by the transport of materials, plant or equipment shall be at the expense of the Contractor.

ARTICLE 23: Cables and conduits

23.1 Where, in the course of carrying out the works, the Contractor encounters markers indicating the course of underground cables, conduits and installations, he shall leave such markers in place or, if the execution of the works required their temporary removal, put them back. Such ancillary operations shall require the prior authorisation of the Supervisor.

23.2 The Contractor shall be responsible for preserving, removing or putting back, as the case may be, the cables, conduits and installations specified by the IFRC in the contract and shall cover the cost of doing so.

23.3 Where the presence of cables, conduits and installations has not been specified in the contract but is revealed by markers and signs, the Contractor shall have a general duty of care and obligations comparable to those above regarding preservation, removal and replacement. In this case, the IFRC shall compensate the Contractor for such expenditure, to the extent that such work is necessary for the execution of the contract.

23.4 However, the obligations to remove and replace cables, conduits and installations and the expenditure resulting therefrom shall not be the responsibility of the Contractor if the IFRC decides to assume them itself. The same shall apply where this obligation and the expenditure resulting therefrom are borne by a specialist administration or an agent.

23.5 Where any work on the site is likely to disrupt or damage a public utility service, the Contractor shall immediately inform the Supervisor in writing, giving a reasonable period of notice so that suitable measures can be taken in time to allow work to continue normally.

ARTICLE 24: Setting-out

24.1 The Contractor shall be responsible for:

a) the accurate setting-out of the works in relation to the original marks, lines and reference levels provided by the Supervisor;

b) the accuracy of the positioning, levelling, dimensioning and alignment of all parts of the works; and

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c) the provision of all necessary instruments, accessories and labour in connection with the foregoing responsibilities.

24.2 If, at any time during the execution of the works, any error appears in the positioning, levelling, dimensioning or alignment of any part of the works, the Contractor shall, if the Supervisor so requires, rectify such errors at his own cost and to the satisfaction of the Supervisor, unless the error is based on inaccurate data supplied by the Supervisor, in which case the IFRC shall be responsible for the cost of rectification.

24.3 The checking of any setting-out or of any alignment or levelling by the Supervisor shall in no way relieve the Contractor of his responsibility for the accuracy of these operations. The Contractor shall carefully protect and preserve all markers, sight rails, pegs and other items used in setting out the works.

ARTICLE 25: Demolished materials

25.1 Where the contract includes demolition work, materials and articles obtained therefrom shall, unless the Special Conditions and/or the law of the state of the IFRC provide otherwise and subject to the provisions of the General Conditions on discoveries, be the property of the Contractor.

25.2 Should the Special Conditions assign the ownership of materials or all or part of the articles obtained from the demolition work to the IFRC, the Contractor shall take all the necessary precautions to ensure that they are preserved. He shall be liable for any destruction of, or damage to, such materials or articles caused by him or his agents.

25.3 Irrespective of the use to which the IFRC intends to put the materials or articles over which it retains ownership, all costs incurred in transporting and storing them and all warehouse charges at the place indicated by the Supervisor shall be borne by the Contractor for any carriage not exceeding 100 metres.

25.4 Save where the Special Conditions provide otherwise, the Contractor shall, at his expense, progressively remove rubble and other demolition materials, rubbish and debris from the site.

ARTICLE 26: Discoveries

26.1 Discoveries of any interest whatsoever made during excavation or demolition work shall immediately be brought to the attention of the Supervisor. The Supervisor shall decide how such discoveries are to be dealt with, taking due account of the law of the state of the IFRC.

26.2 The IFRC reserves the ownership of materials found during excavation and demolition works on land belonging to it, subject to its compensating the Contractor for any special efforts he may have made.

26.3 Artefacts, antiquities, natural or numismatic objects, other objects of academic interest, rare objects or objects made of precious metals found during excavation or demolition work shall be the property of the IFRC.

26.4 In the event of disagreements, the IFRC shall have sole authority to decide as to the qualifications set out in Articles 26.1 and 26.3.

ARTICLE 27: Temporary works

27.1 The Contractor shall carry out at his expense all the temporary works to enable the works to be carried out. He shall submit to the Supervisor drawings of temporary works, which he intends to use, such as cofferdams, scaffolding, trusses and shuttering. He shall take account

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of any observations made to him by the Supervisor, while remaining responsible for these drawings.

27.2 Where the design of particular temporary works is specified in the Special Conditions to be the responsibility of the IFRC, the Supervisor shall provide the Contractor with all drawings necessary in reasonable time to enable the Contractor to undertake the temporary works in accordance with his programme. In such cases, the IFRC shall bear sole responsibility for the safety and suitability of the design. The Contractor, however, shall be responsible for their proper execution.

ARTICLE 28: Soil Studies

28.1 Subject to the Special Conditions and to the technical specifications, the Contractor shall make available to the Supervisor, the personnel and equipment necessary to carry out any soil survey that the Supervisor may reasonably consider necessary.

28.2 The Contractor shall be compensated for the actual cost of the manpower and equipment used or made available in such work, if not already provided for in the contract.

ARTICLE 29: Overlapping contracts

29.1 In accordance with the requirements of the Supervisor, the Contractor shall afford other contractors employed by the IFRC and their workmen, and the workmen of the IFRC and of any other public authorities who may be employed on or near the site for the purposes of works not covered by the contract or of any contract that the IFRC may enter into in connection with, or ancillary to, the works every reasonable opportunity to carry out their work.

29.2 However, if the Contractor, on the written request of the Supervisor, makes available to any such contractor or public authority, or to the IFRC, any roads or ways for the maintenance of which the Contractor is responsible, or permits the use by any such other persons of the Contractor's temporary works, scaffolding or other site equipment, or provides any other service of any kind not provided for in the contract, the IFRC shall, in respect of such use or service, pay the Contractor such sums and/or grant such extension of time as the Supervisor considers reasonable.

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29.3 Article 29 does not relieve the Contractor of any of his obligations under the contract, nor does it entitle him to any compensation other than that provided for in Article 29.2.

29.4 In no circumstances may difficulties arising with regard to one contract entitle the Contractor to modify or delay implementation of other contracts. Similarly, the IFRC may not take advantage of such difficulties to suspend payments due under another contract.

ARTICLE 30: Patents and licences

30.1 Save where otherwise provided in the Special Conditions, the Contractor shall indemnify the IFRC and the Supervisor against any claim resulting from the use as specified in the contract of patents, licences, drawings, designs, models, or brand or trademarks, unless such infringement results from compliance with the design or specification provided by the IFRC and/or the Supervisor.

COMMENCEMENT OF IMPLEMENTATION AND DELAYS

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ARTICLE 31: Commencement order

31.1 The IFRC shall fix the date on which implementation of the contract is to commence and advise the Contractor thereof either in the notice of award of the contract or by administrative order issued by the Supervisor.

31.2 Save where the Parties agree otherwise, implementation of the contract shall begin no later than five 5 days after notification of award of contract. After that date the Contractor shall be entitled not to implement the contract and to obtain its termination or compensation for the damage he has suffered. The Contractor shall forfeit this right unless he exercises it within 7 days of the expiry of the 30-day period.

ARTICLE 32: Period of implementation of tasks

32.1 The period of implementation of tasks shall commence on the date fixed in accordance with Article 31. It shall be stated in the contract, without prejudice to extensions of the period, which may be granted under Article 33.

32.2 If provision is made for separate periods of implementation for separate lots, such periods shall not be aggregated in cases where one Contractor is allocated more than one lot.

ARTICLE 33: Extension of the period of implementation of tasks

33.1 The Contractor may request an extension to the period of implementation of tasks if his implementation of the contract is delayed, or expected to be delayed, for any of the following reasons:

a) exceptional weather conditions in the state of the IFRC;

b) artificial obstructions or physical conditions which could not reasonably have been foreseen by an experienced contractor;

c) administrative orders affecting the date of completion other than those arising from the Contractor's default;

d) failure of the IFRC to fulfil its obligations under the contract;

e) any suspension of the works which is not due to the Contractor's default;

f) force majeure;

g) any other causes referred to in these General Conditions which are not due to the Contractor's default.

33.2 Within 7 days of realising that a delay might occur, the Contractor shall notify the Supervisor of his intention to make a request for extension of the period of implementation to which he considers himself entitled and, save where otherwise agreed between the Contractor and the Supervisor, within 30 days provide the Supervisor with comprehensive details so that the request can be examined.

33.3 Within 30 days the Supervisor shall, by written notice to the Contractor after due consultation with the IFRC and, where appropriate, the Contractor, grant such extension of the period of implementation as may be justified, either prospectively or retrospectively, or inform the Contractor that he is not entitled to an extension.

ARTICLE 34: Delays in implementation

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34.1 If the Contractor fails to complete the works by the deadline(s) specified in the contract, the IFRC shall, without formal notice and without prejudice to any other remedies under the contract, be entitled to liquidated damages for every day or part thereof which elapses between the end of the period of implementation or extended period of implementation and the actual date of completion, at the rate and up to the maximum amount specified in the Special Conditions. If the works have undergone partial acceptance in accordance with Article 59, the liquidated damages specified in the Special Conditions may be reduced by the proportion of the value of the whole of the works represented by the accepted part.

34.2 If the IFRC is entitled to the maximum claim under Article 34.1, it may, after giving notice to the Contractor:

a) seize the performance guarantee;

b) terminate the contract, in which case the Contractor will have no right to compensation; and

c) enter into a contract with a third party at the Contractor's cost for the provision of the balance of the works The Contractor shall not be paid for this part of the contract. The Contractor shall also be liable for the additional costs and damages caused by his failure.

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ARTICLE 35: Modifications

35.1 The Supervisor shall have power to order any modification to any part of the works necessary for the proper completion and/or functioning of the works. Such modifications may consist of additions, omissions, substitutions, changes in quality, quantity, form, character, kind, position, dimension, level or line and changes in the specified sequence, method or timing of execution of the works. No order for a modification may result in the invalidation of the contract. However, the financial effect, if any, of all such modifications shall be valued in accordance with the following Articles. Substantial modifications to the contract, including modifications to the total contract amount, must be made by means of an addendum.

35.2 Modifications may only be made by administrative order, subject to the following provisos:

a) if, for whatever reason, the Supervisor believes it necessary to give an order orally, he shall confirm the order by an administrative order as soon as possible.

b) if the Contractor confirms in writing an oral order given for the purpose of Article 35.2(a) and the confirmation is not immediately refuted in writing by the Supervisor, an administrative order shall be deemed to have been issued for the execution of the modification;

c) an administrative order for a modification shall not be required when increasing or decreasing the quantity of works because the estimates in the bill of quantities or price schedule were too high or too low.

35.3 Save where Article 35.2 provides otherwise, prior to issuing an administrative order for a modification, the Supervisor shall notify the Contractor of the nature and form of that modification. As soon as possible, after receiving such notice, the Contractor 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 implementation or to any of the Contractor's obligations under the contract; and

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c) any adjustment to the contract price in accordance with the rules set out in Article 35.

35.4 Following the receipt of the Contractor's submission referred to in Article 35.3, the Supervisor shall, after due consultation with the IFRC and, where appropriate, the Contractor, decide as soon as possible whether or not the modification should be carried out. If the Supervisor decides that the modification is to be carried out, he shall issue an administrative order stating that the modification is to be made at the prices and under the conditions given in the Contractor's submission referred to in Article 35.3 or as modified by the Supervisor in accordance with Article 35.5.

35.5 The prices for all modifications ordered by the Supervisor in accordance with Articles 35.2 and 35.4 shall be ascertained by the Supervisor in accordance with the following principles:

a) where work is of similar character and executed under similar conditions to work priced in the bill of quantities or price schedule, it shall be valued at such rates and prices contained therein;

b) where work 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 in so far as is reasonable, failing which a fair valuation shall be made by the Supervisor;

c) if the nature or amount of any modification relative to the nature or amount of the whole of the contract or to any part thereof is 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 modification rendered unreasonable, then the Supervisor shall fix such rate or price as he thinks reasonable and proper in the circumstances;

d) where a modification is necessitated by a default or breach of contract by the Contractor, any additional cost attributable to such modification shall be borne by the Contractor.

35.6 On receipt of the administrative order requesting the modification, the Contractor shall proceed to carry out the modification as if it had been stated in the contract. The works 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 modification precedes the adjustment to the contract price, the Contractor shall keep records of the costs of undertaking the modification and of the time expended thereon. Such records shall be open to inspection by the Supervisor at all reasonable times.

35.7 Unless otherwise provided by the Special Conditions, in the event of an increase or decrease in the total volume of work required by the IFRC or resulting from circumstances which are caused neither by the Contractor's negligence nor by any action on his part, the Contractor may not claim compensation unless that increase or decrease, calculated on the basis of the original prices and without varying the object of the contract, exceeds a percentage of the original contract price specified in the Special Conditions. This percentage may not be more than 15% or less than 10%. In these circumstances, on making a reasoned request submitted to the IFRC, the Contractor shall be entitled to have the contractual period of implementation changed.

35.8 Where the increase or decrease, calculated in the manner described, exceeds the percentage laid down in the Special Conditions, the Contractor may, when the general statement is drawn up, make a claim for compensation on the grounds of any damage he has suffered as a result of modifications to the original project. He shall also be entitled, on making a reasoned request submitted to the IFRC, to a modification in the contractual period of execution. Where the modification, calculated in the manner described, exceeds 33%, the Contractor is entitled to refuse to carry out any work beyond that value. In that case, he shall inform the IFRC of his decision by registered letter with acknowledgement of delivery within two months of the administrative order specifying that modification. The Supervisor shall, after consulting the

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IFRC and the Contractor, determine any addition/compensation and extension of period of implementation.

35.9 Subject to the limits indicated in the Special Conditions, if the contract contains a bill of quantities or breakdown of the overall price giving an itemised list of the scale and prices of the various works, and if modifications required by the IFRC or resulting from circumstances which are caused neither by the Contractor's negligence nor by any action on his part alter the scale of some of the works in such a manner that the quantity shown for any item is increased or decreased by 20% or more, the Contractor shall, on making a reasoned request to the IFRC, be entitled to compensation for any damage he has suffered as a result of modifications to the original project, once all the quantities in the relevant item have been executed for the purposes of the contract.

35.10 Contract modifications not covered by an administrative order must be formalised through an addendum to the contract signed by all parties. Changes of address or bank account may simply be notified in writing by the Contractor to the IFRC. All contract modifications have to respect the general principles defined in the *Practical Guide to contract procedures for EC external actions*.

ARTICLE 36: Suspension

36.1 The Contractor shall, on the order of the Supervisor, suspend the progress of the works or any part thereof for such time or times and in such manner as the Supervisor may consider necessary.

36.2 During the period of suspension, the Contractor shall take such protective measures as may be necessary to safeguard the works, plant, equipment and site against any deterioration, loss or damage.

36.3 Additional expenses incurred in connection with such protective measures shall be added to the contract price, unless such suspension is:

a) dealt with differently in the contract;
or
b) necessary owing to some default of the Contractor;
or
c) necessary owing to normal weather conditions on site;
or
d) necessary for the safety or the proper execution of the works or any part thereof insofar as such necessity does not arise from any act or default by the Supervisor or the IFRC or from any of the exceptional risks referred to in Article 19.

36.4 The Contractor shall not be entitled to such additions to the contract price unless he notifies the Supervisor, within 7 days of receiving the order to suspend the works, of his intention to make a claim for them.

36.5 The Supervisor, after consultation with the IFRC and the Contractor, shall determine such extra payment and/or extension of the period of implementation to be made to the Contractor in respect of such claim as shall, in the opinion of the Supervisor, be fair and reasonable.

36.6 If the period of suspension exceeds 180 days (or any shorter period specified in the Special Conditions) and the suspension is not due to the Contractor's default, the Contractor may, by notifying the Supervisor and the IFRC, either request permission to restart or terminate the contract within 30 days.

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36.7 Where the contract's award procedure or implementation is vitiated by substantial errors or irregularities or by fraud, the institutions shall suspend execution of the contract. Where such errors, irregularities or fraud are attributable to the Contractor, the IFRC may also refuse to make payments or may recover amounts already paid, in proportion to the seriousness of the errors, irregularities or fraud.

The purpose of suspending the contract shall be to verify whether presumed substantial errors and irregularities or fraud have actually occurred. If they are not confirmed, execution of the contract shall resume as soon as possible. A substantial error or irregularity shall be any infringement of a contract or regulatory provision resulting from an act or an omission that causes or might cause a loss to the Community budget.

MATERIALS AND WORKMANSHIP

ARTICLE 37: Work register

37.1 A work register shall, unless otherwise provided by the Special Conditions, be kept on the site by the Supervisor, who shall enter in it at least the following information:

a) the weather conditions, interruptions of work owing to inclement weather, hours of work, number and type of workmen employed on the site, materials supplied, equipment in use, equipment not in working order, tests carried out in situ, samples dispatched, unforeseen circumstances, as well as orders given to the Contractor;

b) detailed statements of all the quantitative and qualitative elements of the work done and the supplies delivered and used, capable of being checked on the site and relevant in calculating payments to be made to the Contractor.

37.2 The statements shall form an integral part of the work register but may, where appropriate, be recorded in separate documents. The technical rules for drawing up the statements shall be set out in the Special Conditions.

37.3 The Contractor shall ensure that statements are drawn up, in good time and in accordance with the Special Conditions, in respect of work, services and supplies which cannot be measured or verified subsequently. Failing this, he shall accept the decisions of the Supervisor unless, at his own expense, he provides evidence to the contrary.

37.4 Entries made in the work register as work progresses shall be signed by the Supervisor and countersigned by the Contractor or his representative. If the Contractor objects, he shall communicate his views to the Supervisor within 7 days of the date on which the entry or the statements objected to are recorded. Should he fail to countersign or to submit his views within the period allowed, the Contractor shall be deemed to agree with the notes shown in the register. The Contractor may examine the work register at any time and may, without removing the document, make or receive a copy of entries which he considers necessary for his own information.

37.5 The Contractor shall, on request, provide the Supervisor with the information needed to keep the work register in good order.

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ARTICLE 38: Origin

38.1 Save where otherwise provided for in the Special Conditions, goods and materials must originate from the country as stated in the Invitation to Tender. If no specific demand is made in the Invitation to Tender the origin of goods and materials is not-restricted. The origin of the goods and materials shall be determined according to the rules laid down in the Community Customs Code or the international agreements to which the country concerned is a signatory.

38.2 The Contractor must certify that the goods tendered comply with this requirement, specifying the respective country of origin. He may be required to provide more detailed information in this respect.

38.3 The Contractor shall present an official certificate of origin on provisional acceptance. Failure to comply with this obligation shall lead, after formal notice, to termination of the contract.

ARTICLE 39: Quality of works and materials

39.1 The works, components and materials shall conform to the specifications, drawings, surveys, models, samples, patterns and other requirements in the contract, which must be held at the disposal of the IFRC or the Supervisor for the purposes of identification throughout the period of execution.

39.2 Any preliminary technical acceptance stipulated in the Special Conditions should be the subject of a request sent by the Contractor to the Supervisor. The request shall indicate, as appropriate, the reference to the contract, the lot number and the place where such acceptance is to take place. The components and materials specified in the request must be certified by the Supervisor as meeting the requirements for such acceptance prior to their incorporation in the works.

39.3 Even if materials or items to be incorporated in the works or in the manufacture of components have been technically accepted in this way, they may still be rejected if a further examination reveals defects or faults, in which case they must immediately be replaced by the Contractor. The Contractor 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 works only if they have been repaired and made good to the satisfaction of the Supervisor.

ARTICLE 40: Inspection and testing

40.1 The Contractor shall ensure that the components and materials are delivered to the site in time to allow the Supervisor to proceed with acceptance of the components and materials. The Contractor 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 the obligations.

40.2 The Supervisor shall be entitled, either by himself or through his agent, 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, preparation or on the site or at such other places as may be specified in the Special Conditions.

40.3 For the purposes of such tests and inspections, the Contractor shall:

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a) provide the Supervisor, temporarily and free of charge, with such assistance, samples, parts, machines, equipment, tools or materials and labour as are normally required for inspection and testing;

b) agree, with the Supervisor, the time and place for tests;

c) give the Supervisor access at all reasonable times to the place where the tests are to be carried out.

40.4 If the Supervisor is not present on the date agreed for tests, the Contractor 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 Contractor shall immediately send 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.

40.5 When components and materials have passed the above-mentioned tests, the Supervisor shall notify the Contractor or endorse the Contractor's certificate to that effect.

40.6 If the Supervisor and the Contractor disagree on the test results, each shall state his views to the other within 15 days of such disagreement. The Supervisor or the Contractor may require such tests to be repeated on the same terms and conditions or, if either Party so requests, by an expert 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 Contractor. The results of the retesting shall be conclusive. The cost of the retesting shall be borne by the Party whose views are proved wrong by the retesting.

40.7 In the performance of their duties, the Supervisor and any person authorised by him shall not disclose to unauthorised persons information concerning the undertaking's construction and operating methods obtained through inspection and testing.

ARTICLE 41: Rejection

41.1 Components and materials which are not of the specified quality shall be rejected. A special mark may be applied to the rejected components or materials. This shall not be such as to alter them or affect their commercial value. Rejected components and materials shall be removed by the Contractor from the site within a period which the Supervisor shall specify, failing which they shall be removed by the Supervisor as of right at the expense and risk of the Contractor. Any works incorporating rejected components or materials shall be rejected.

41.2 The Supervisor shall, during the progress of the works and before their acceptance, have the power to order or decide:

a) the removal from the site, by a deadline specified in the administrative order, of any components or materials which, in the opinion of the Supervisor, are not in accordance with the contract;

b) the substitution of proper and suitable components or materials; or

c) the demolition and proper re-execution, or satisfactory repair, notwithstanding any previous test thereof or interim payment therefore, of any works which, in respect of components, materials, workmanship or design for which the Contractor is responsible, is not, in the opinion of the Supervisor, in accordance with the contract.

41.3 The Supervisor shall, as soon as reasonably practicable, notify the Contractor in writing of his decision, specifying particulars of the alleged defects.

41.4 The Contractor shall, with all speed and at his own expense, make good the defects so specified. If the Contractor does not comply with such order, the IFRC shall be entitled to employ other persons to carry out the same works, and all expenses consequent thereon or

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incidental thereto may be deducted by the IFRC from any monies due or which may become due to the Contractor.

41.5 The provisions of Article 41 shall not affect the right of the IFRC to claim for any delays and shortcomings in execution.

ARTICLE 42: Ownership of plant and materials

42.1 All equipment, temporary works, plant and materials provided by the Contractor shall, when brought on the site, be deemed to be exclusively intended for the execution of the works, and the Contractor may not remove the same or any part thereof, except for the purpose of moving it from one part of the site to another, without the consent of the Supervisor. Such consent shall not, however, be required for vehicles engaged in transporting any staff, labour, equipment, temporary works, plant or materials to or from the site.

42.2 The Special Conditions may provide that all equipment, temporary works, plant and materials on site owned by the Contractor or by any company in which the Contractor has a controlling interest shall, for the duration of the execution of the works, be:

a) vested in the IFRC; or

b) made subject to a lien in favour of the IFRC; or

c) made subject to any other arrangement regarding priority interest or guarantee.

42.3 In the event of termination of the contract due to the Contractor's breach of contract, the IFRC shall be entitled to use the equipment, temporary works, plant and materials on site in order to complete the works.

42.4 Any agreement for the hire by the Contractor of equipment, temporary works, plant or materials brought onto the site shall contain a provision binding the owner, at the written request of the IFRC within seven days of the date of termination under the General Conditions, and on the IFRC's undertaking to pay all hire charges from that date, to hire such equipment, temporary works, plant or materials to the IFRC on the same terms as they were hired by the Contractor, without prejudice to the IFRC's right to permit their use by any other contractor employed by it to complete the works in accordance with the provisions of the General Conditions concerning termination of contract.

42.5 In the event of termination of the contract before completion of the works, the Contractor shall hand over to the IFRC any plant, temporary works, equipment or materials the ownership of which has been vested in the IFRC or made subject to a lien by virtue of Article 42.2. If the Contractor fails to do so, the IFRC may take such action as it deems appropriate to obtain possession of such plant, temporary works, equipment, and materials and to recover the cost of so doing from the Contractor.

PAYMENTS

ARTICLE 43: General principles

43.1 Payments shall be made in CHF or national currency. The Special Conditions shall lay down the administrative or technical conditions governing payments of pre-financing, interim and/or final payments made in accordance with the General Conditions. Where payment is in the national currency, it shall be converted into Euro at the rate published on the Infor-Euro on the first working day of the month in which the payment is made.

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43.2 Payments due by the IFRC shall be made to the bank account mentioned on the financial identification form completed by the Contractor. The same form, annexed to the payment request, must be used to report changes of bank account.

43.3 Sums due shall be paid within no more than 45 calendar days from the date on which an admissible payment request is registered by the competent department specified in the Special Conditions. The date of payment shall be the date on which the institution's account is debited. The payment request shall not be admissible if one or more essential requirements are not met.

43.4 The 45-day period may be suspended by notifying the Contractor that the payment request cannot be fulfilled because the sum is not due, because appropriate substantiating documents have not been provided or because there is evidence that the expenditure might not be eligible. In the latter case, an inspection may be carried out on the spot for the purpose of further checks. The Contractor shall provide clarifications, modifications or further information within 30 days of being asked to do so. The payment period shall continue to run from the date on which a properly drawn-up payment request is registered.

43.5 The Contractor undertakes to repay any amounts paid in excess of the final amount due to the IFRC within 45 days of receiving a request to do so. Should the Contractor fail to make repayment within the deadline set by the IFRC, the IFRC may (unless the Contractor is a government department or public body of a Member State of the Community) increase the amounts due by adding interest:

- at the rediscount rate applied by the central bank of the country of the IFRC if payments are in the currency of that country;

- at the rate applied by the IFRC in CHF where payments are in CHF,

on the first day of the month in which the time-limit expired, plus three and a half percentage points. The default interest shall be incurred over the time which elapses between the date of the payment deadline set by the IFRC (exclusive), and the date on which payment is actually made (inclusive). Any partial payments shall first cover the interest thus established.

Amounts to be repaid to the IFRC may be offset against amounts of any kind due to the Contractor. This shall not affect the Parties' right to agree on payment in instalments. Bank charges incurred by the repayment of amounts due to the IFRC shall be borne entirely by the Contractor.

ARTICLE 45: Retention monies

45.1 The Special Conditions shall specify the sum to be retained from interim payments to guarantee performance of the Contractor's obligations during the maintenance period, and the detailed rules governing that guarantee; the sums retained may in no circumstances exceed 10% of the contract price.

45.2 Subject to the approval of the IFRC the Contractor may, if he so wishes, replace these retention monies by a retention guarantee issued in accordance with Article 13.3.

45.3 The retention monies or the retention guarantee shall be released within 45 days of the date of final acceptance of the works.

ARTICLE 46: Price revision

46.1 Unless otherwise stipulated in the Special Conditions, contracts shall be at fixed prices which shall not be revised.

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ARTICLE 47: Measurement

47.1 The following principles shall apply to the measurement of works contracts:

a) For lump-sum contracts, the amount due under the contract shall be determined on the basis of the breakdown of the overall contract price, or on the basis of a breakdown expressed as a percentage of the contract price corresponding to completed stages of the works. Where items are accompanied by quantities, these shall be firm quantities for which the Contractor has submitted a lump-sum price and shall be paid for irrespective of the quantities of works actually carried out.

b) For unit-price contracts:

i) the amount due under the contract shall be calculated by applying the unit rates to the quantities actually executed for the respective items, in accordance with the contract;

ii) the quantities set out in the bill of quantities shall be the estimated quantities of the works, which shall not be taken as the actual and correct quantities of the works to be executed by the Contractor in fulfilment of his obligations under the contract;

iii) the Supervisor shall determine by measurement the actual quantities of the works executed by the Contractor, and these shall be paid for in accordance with the provisions of the General Conditions concerning interim payments. Save where otherwise provided in the Special Conditions, no additions may be made to the items in the bill of quantities, save as a result of a variation in accordance with Article 35 or another provision of the contract entitling the Contractor to additional payment;

iv) the Supervisor must, when he requires any parts of the works to be measured, give the Contractor reasonable notice to attend or send a qualified agent to represent him. The Contractor or his agent shall assist the Supervisor in making such measurements and shall furnish all particulars required by the Supervisor. Jointly undertaken measurements of accomplish works should be the general rule. Should the Contractor fail to attend or to send an agent, the measurement made or approved by the Supervisor shall be binding on the Contractor;

v) the works shall be measured net, notwithstanding any general or local custom, save where otherwise provided for in the contract.

47.2 The Special Conditions shall stipulate the method and conditions to be used to evaluate the works.

ARTICLE 48: Interim payments

48.1 Save where otherwise provided in the Special Conditions, the Contractor shall submit an application for interim payment to the Supervisor at the end of each period referred to in Article 48.7 in a form approved by the Supervisor. The application shall include the following items, as applicable:

a) the estimated contract value of the permanent works executed up to the end of the period in question;

b) an amount reflecting any revision of prices pursuant to Article 46;

c) an amount to be withheld by way of retention monies under Article 45;

d) an amount to be deducted for the repayment of prefinancing under Article 44;

e) any credit and/or debit for the period in question in respect of plant and materials on site intended for, but not yet incorporated in, the permanent works in the amount and under the conditions set out in Article 48.2;

f) any other sum to which the Contractor may be entitled under the contract.

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48.2 The Contractor shall be entitled to such sums as the Supervisor may consider proper in respect of plant and materials intended for, but not yet incorporated in, the permanent works, provided that:

a) the plant and materials conform with the specifications for the permanent works and are set out in batches in a way that they may be recognised by the Supervisor;

b) such plant and materials have been delivered to the site and are properly stored and protected against loss or damage or deterioration to the satisfaction of the Supervisor;

c) the Contractor's record of requirements, orders, receipts and use of plant 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 Contractor submits, with his statement, the estimated value of the plant and materials on site and such documents as may be required by the Supervisor for the purpose of valuation of the plant and materials and providing evidence of ownership and payment therefore; and

e) where the Special Conditions so provide, ownership of the plant and materials referred to in Article 42 shall be deemed to be vested in the IFRC.

48.3 Approval by the Supervisor of any interim payment certified by him in respect of plant and materials pursuant to Article 48 shall be without prejudice to the Supervisor's right under the contract to reject any plant or materials which are not in accordance with the provisions of the contract.

48.4 The Contractor shall be responsible for any loss or damage to, and for the cost of storing and handling, such plant and materials on site. He shall take out any additional insurance necessary to cover the risk of such loss or damage from any cause.

48.5 Within 45 days of receiving an application for interim payment, it shall be approved or amended in such a way that it reflects, in the Supervisor's opinion, the amount due to the Contractor under the contract. In cases where there is a difference of opinion as to the value of an item, the Supervisor's view shall prevail. After calculating the amount due to the Contractor the Supervisor shall send the IFRC and the Contractor an interim payment certificate for the amount due to the Contractor and shall inform the Contractor of the works for which payment is being made.

48.6 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 issue of, any interim payment certificate if the works or any part thereof are not being carried out to his satisfaction.

ARTICLE 49: Final statement of account

49.1 Not later than 90 days after the issue of the final acceptance certificate, the Contractor shall submit to the Supervisor a draft final statement of account with supporting documents showing in detail the value of the work done in accordance with the contract, together with all further sums which the Contractor 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, stipulate, in accordance with Article 49.6, that the draft final statement of account and further proceedings related thereto, be dealt with before the issue of the provisional acceptance certificate.

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49.2 Within 45 days of receiving the 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;

b) after establishing the amounts previously paid by the IFRC and all sums to which the IFRC is entitled under the contract, the balance, if any, due, from the IFRC to the Contractor, or from the Contractor to the IFRC, as the case may be.

49.3 The Supervisor shall issue the IFRC or its duly authorised representative, and the Contractor, with the final statement of account showing the final amount to which the Contractor is entitled under the contract. The IFRC or its duly authorised representative and the Contractor shall sign the final statement of account as an acknowledgement of the full and final value of the work performed under the contract and shall promptly submit a signed copy to the Supervisor. However, the final statement of account shall not include amounts in dispute, which are the subjects of negotiations, conciliation, arbitration or litigation.

49.4 The final statement of account signed by the Contractor shall constitute a written discharge of the IFRC confirming that the total in the final statement of account represents full and final settlement of all monies due to the Contractor under the contract, other than those amounts which are the subject of negotiations, a conciliation or arbitration procedure or litigation. However, such discharge shall become effective only after any payment due to the Contractor under the final statement of account has been made and after the performance guarantee referred to in Article 13 has been returned to the Contractor.

49.5 The IFRC shall not be liable to, the Contractor for any matter or thing whatsoever arising out of, or in connection with, the contract or execution of the works, unless the Contractor has included a claim in that respect in his draft final statement of account.

ARTICLE 50: Delayed payments

50.1 The IFRC shall pay the Contractor sums due within 45 days of the date on which an admissible payment is registered, in accordance with Article 43 of these General Conditions. This period shall begin to run from the approval of these documents by the competent department referred to in Article 43 of the Special Conditions. These documents shall be approved either expressly or tacitly, in the absence of any written reaction in the 45 days following their receipt accompanied by the requisite documents.

50.2 Once the deadline laid down in Article 50.1 has expired, the Contractor may, within two months of late payment, claim late-payment interest:

- at the rediscount rate applied by the issuing institution of the country of the IFRC where payments are in national currency;
- at the rate applied by the European Central Bank to its main refinancing transactions in Euro,

on the first day of the month in which the deadline expired, plus three and a half percentage points. The late-payment interest shall apply to the time which elapses between the date of the payment deadline (exclusive) and the date on which the IFRC's account is debited (inclusive).

50.3 Any default in payment of more than 90 days from the expiry of the period laid down in Article 50.1 shall entitle the Contractor either not to perform the contract or to terminate it, with 30 days' prior notice to the IFRC and the Supervisor.

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ARTICLE 51: Payments to third parties

51.1 Orders for payments to third parties may be carried out only after an assignment made in accordance with Article 6. The IFRC shall be notified of the assignment.

51.2 Notification of beneficiaries of the assignment shall be the sole responsibility of the Contractor.

51.3 In the event of a legally binding attachment of the property of the Contractor affecting payments due to him under the contract, and without prejudice to the time limit laid down in the Special Conditions, the IFRC shall have 30 days, starting from the day on which it receives notification of the definitive lifting of the obstacle to payment, to resume payments to the Contractor.

ARTICLE 52: Claims for additional payment

52.1 If there are circumstances which he considers entitle him to additional payment under the contract, the Contractor shall:

a) if he intends to make any claim for additional payment, notify the Supervisor of his intention or make such claim, stating his reasons, within 10 days of the date on which the said circumstances became known to him; and

b) as soon as is reasonably practicable after the date of such notification, but no later than 60 days afterwards, unless he agrees otherwise with the Supervisor, submit to the Supervisor full and detailed particulars of his claim. In any event, such particulars shall be submitted no later than the date of submission of the draft final statement of account. The Contractor shall thereafter promptly submit such further elements as the Supervisor may reasonably require to assess the validity of the claim.

52.2 When the Supervisor has received the full and detailed elements of the Contractor's claim that he requires, he shall, after duly consulting the IFRC and, where appropriate, the Contractor, determine whether the Contractor is entitled to additional payment and notify the Parties accordingly.

52.3 The Supervisor may reject any claim for additional payment, which does not comply with the requirements of Article 52.

ARTICLE 53: End date

The payment obligations of the IFRC under this Contract shall cease at most 18 months after the end of the period of implementation of the tasks, unless the Contract is terminated in accordance with these General Conditions. In the event of co-financing, this date shall be laid down in the Special Conditions.

ACCEPTANCE AND MAINTENANCE

ARTICLE 54: Fixing a verification date

54.1 Verification of the works by the Supervisor with a view to provisional or final acceptance shall take place in the presence of the Contractor. The absence of the Contractor shall not be a bar to verification, provided that the Contractor has been summoned in due form at least 30 days prior to the date of verification.

54.2 Should exceptional circumstances make it impossible to ascertain the state of the works or otherwise proceed with their acceptance during the period fixed for provisional or final

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acceptance, a statement certifying such impossibility shall be drawn up by the Supervisor, if possible after consulting the Contractor. The verification shall take place and a statement of acceptance or rejection shall be drawn up by the Supervisor within 30 days following the date on which such impossibility ceases to exist. The Contractor shall not invoke these circumstances in order to avoid his obligation to present the works in a state suitable for acceptance.

ARTICLE 55: Verification operations

55.1 The works shall not be accepted until the prescribed verifications and tests have been carried out at the expense of the Contractor. The Contractor shall notify the Supervisor of the date on which such verification and tests may commerce.

55.2 Works which do not satisfy the terms and conditions of the contract or which, in the absence of such terms and conditions, are not carried out in accordance with trade practices in the state where the works are located shall, if necessary, be demolished and rebuilt by the Contractor or repaired to the satisfaction of the Supervisor. Otherwise, this shall be done as of right after due notice, at the expense of the Contractor, by order of the Supervisor. The Supervisor may also require the Contractor to demolish and reconstruct, or to repair to the Supervisor's satisfaction, works in which unacceptable materials have been used or works carried out in the periods of suspension provided for in Article 36.

ARTICLE 56: Partial acceptance

56.1 The IFRC may make use of the various structures, parts of structures or sections of the works forming part of the contract as and when they are completed. Any taking over of the structures, parts of structures or sections of the works by the IFRC shall be preceded by their partial provisional acceptance. However, in cases of urgency, works may be taken over prior to acceptance, provided an inventory of outstanding works is drawn up by the Supervisor and agreed to by the Contractor and the Supervisor beforehand. Once the IFRC has taken possession of a structure, a part thereof or section of the works, the Contractor shall no longer be required to make good any damage resulting otherwise than from faulty construction or workmanship.

56.2 The Supervisor may, at the request of the Contractor and if the nature of the works so permits, proceed with partial provisional acceptance, provided that the structures, parts of structures or sections of the works are completed and suited to the use as described in the contract.

56.3 In the cases of partial provisional acceptance referred to in Article 56.1 and 56.2, the maintenance period provided for in Article 58 shall, unless the Special Conditions provide otherwise, run from the date of such partial provisional acceptance.

ARTICLE 57: Provisional acceptance

57.1 The works shall be taken over by the IFRC when they have satisfactorily passed the tests on completion and a certificate of provisional acceptance has been issued or is deemed to have been issued.

57.2 The Contractor may apply, by notifying the Supervisor, for a certificate of provisional acceptance not earlier than 15 days before the works are, in the Contractor's opinion, complete and ready for provisional acceptance. The Supervisor shall within 30 days of receipt of the Contractor's application either:

a) issue the certificate of provisional acceptance to the Contractor with a copy to the IFRC stating, where appropriate, his reservations, and, inter alia, the date on which,

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in his opinion, the works were completed in accordance with the contract and ready for provisional acceptance; or

b) reject the application, giving his reasons and specifying the action which, in his opinion, is required of the Contractor for the certificate to be issued.

57.3 If the Supervisor fails either to issue the certificate of provisional acceptance or to reject the Contractor's application 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 works have been completed in every respect. If the works are divided by the contract into sections, the Contractor shall be entitled to apply for separate certificates for each of the sections.

57.4 Upon provisional acceptance of the works, the Contractor shall dismantle and remove temporary structures and materials no longer required for use in connection with the implementation of the contract. He shall also remove any litter or obstruction and redress any change in the condition of the site as required by the contract.

57.5 Immediately after provisional acceptance, the IFRC may make use of all the works completed.

ARTICLE 58: Maintenance obligations

58.1 The Contractor shall be responsible for making good any defect in, or damage to, any part of the works which may appear or occur during the maintenance period and which arises either from:

a) the use of defective plant or materials or faulty workmanship or design of the Contractor; and/or
b) any act or omission of the Contractor during the maintenance period;
c) in the course of an inspection made by, or on behalf of, the IFRC.

58.2 The Contractor shall at his own cost make good the defect or damage as soon as practicable. The maintenance period for all items replaced or renewed shall recommence from the date on which the replacement or renewal was made to the satisfaction of the Supervisor. If the contract provides for partial acceptance, the maintenance period shall be extended only for the part of the works affected by the replacement or renewal.

58.3 If any such defect appears or such damage occurs, during the maintenance period, the IFRC or the Supervisor shall notify the Contractor. If the Contractor fails to remedy a defect or damage within the time limit stipulated in the notification, the IFRC may:

a) carry out the works itself or employ someone else to carry them out at the Contractor's risk and cost, in which case the costs incurred by the IFRC will be deducted from monies due to, or from guarantees held against, the Contractor, or from both; or
b) terminate the contract.

58.4 If the defect or damage is such that the IFRC has been deprived substantially of the whole or a part of the benefit of the works, the IFRC shall, without prejudice to any other remedy, be entitled to recover all sums paid in respect of the parts of the works concerned together with the cost of dismantling such parts and clearing the site.

58.5 In emergencies, where the Contractor cannot be reached immediately or, having been reached, is unable to take the measures required, the IFRC or the Supervisor may have the work carried out at the expense of the Contractor. The IFRC or the Supervisor shall as soon as practicable inform the Contractor of the action taken.

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58.6 Where the Special Conditions stipulate that maintenance work necessitated by normal wear and tear is to be carried out by the Contractor, such work shall be paid for from a provisional sum. Deterioration resulting from the circumstances provided for in Article 19 or from abnormal use shall be excluded from this obligation unless it reveals a fault or defect justifying the request for repair or replacement under Article 58.

58.7 The maintenance obligations shall be stipulated in the Special Conditions and technical specifications. If the duration of the maintenance period is not specified, it shall be 365 days. The maintenance period shall commence on the date of provisional acceptance and may recommence, in accordance with Article 58.2.

58.8 After provisional acceptance and without prejudice to the maintenance obligations referred to in Article 58, the Contractor shall no longer be responsible for risks which may affect the works and which result from causes not attributable to him. However, the Contractor shall be responsible from the date of provisional acceptance for the soundness of the construction, as laid down in the Special Conditions.

ARTICLE 59: Final acceptance

59.1 Upon expiry of the maintenance period or, where there is more than one such period, upon expiry of the last period, and when all defects or damage have been rectified, the Supervisor shall issue the Contractor a final acceptance certificate, with a copy to the IFRC, stating the date on which the Contractor completed his obligations under the contract to the Supervisor's satisfaction. The final acceptance certificate shall be issued by the Supervisor within 30 days of the expiry of the above period or as soon as any works ordered under Article 58 have been completed to the satisfaction of the Supervisor.

59.2 The contract shall not be considered to have been performed in full until the final acceptance certificate has been signed or is deemed to have been signed by the Supervisor.

59.3 Notwithstanding the issue of the final acceptance certificate, the Contractor and the IFRC 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 that 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 60: Breach of contract

60.1 A Party shall be in a breach of contract if it fails to discharge any of its obligations under the contract. Breaches of contract shall be entered in the work record. Where a breach of contract occurs, the injured Party shall be entitled to damages and/or termination of the contract.

60.2 Where a breach of contract is attributable to the Contractor, the IFRC shall also be entitled to the following remedies as of right:

a) implementation of all or part of the works using directly-employed labour;

b) termination of all or part of the contract with or without compensation payable by the Contractor;

c) conclusion of a contract with a third party replacing the Contractor, after prior termination of the original contract;

d) temporary or permanent exclusion from the award of contracts.

60.3 The following procedures must be used for the application of measures taken as of right:

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Any decision relating to the application of measures taken as of right shall be adopted by the IFRC and notified to the Contractor by registered letter with acknowledgement of delivery.

In applying any of these measures, the Supervisor shall take all appropriate steps to protect or ensure proper implementation of the works.

In the event of the works being executed by directly employed labour or by a contract with a third party replacing the Contractor, the Supervisor shall inspect the works, draw up an inventory of plant and materials and make out a statement of emoluments due to, and amounts owed by, the Contractor under the contract, after summoning the Contractor by registered letter with acknowledgement of delivery.

In the event of the works being executed by directly employed labour, the Supervisor shall be entitled to use the Contractor's equipment to complete the implementation of the contract. Where the works are undertaken using directly employed labour, the Contractor shall be authorised to observe the operations, without, however, being able to interfere in the execution of instructions given by the Supervisor. The use of directly employed labour may be discontinued if the Contractor furnishes proof of the necessary means to resume the works and bring them to a satisfactory conclusion.

Additional expenditure resulting from the use of directly employed labour or of a contract with a third party replacing the Contractor shall be borne by the latter.

If the use of directly employed labour or a contract with a third party replacing the Contractor results in a reduction in expenditure, the Contractor may not claim any part of the profit thus derived; it shall be the property of the IFRC.

60.4 In addition to the above-mentioned measures, damages may be awarded. They may be either:

a) general damages; or

b) liquidated damages.

The amount and procedures for these damages shall be laid down in the Special Conditions.

60.5 Recovery of damages, disbursements or expenses resulting from the application of measures provided for in this Article shall be effected by deduction from the sums due to the Contractor, from the deposit, or by payment under the guarantee.

ARTICLE 61: Termination by the IFRC

61.1 The IFRC may, after giving the Contractor seven days' notice, terminate the contract in any of the following cases:

a) the Contractor substantially fails to perform his obligations under this contract;

b) the Contractor 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 affects the proper and timely implementation of the works;

c) the Contractor refuses or neglects to carry out administrative orders given by the Supervisor;

d) the Contractor assigns the contract or subcontracts without the authorisation of the IFRC;

e) the Contractor is bankrupt or being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any

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analogous situation arising from a similar procedure provided for in national legislation or regulations;

f) the Contractor has been convicted of an offence concerning professional conduct by a judgment which has the force of res judicata;

g) the Contractor has been guilty of grave professional misconduct proven by any means which the IFRC can justify;

h) the Contractor has been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;

i) the Contractor, following another procurement procedure or grant award procedure financed by the Community budget, has been declared to be in serious breach of contract for failure to perform its contractual obligations.

j) any organisational modification occurs involving a change in the legal personality, nature or control of the Contractor, unless such modification is recorded in an addendum to the contract;

k) any other legal disability hindering execution of the contract occurs;

l) the Contractor fails to provide the required guarantee or insurance, or if the person providing the earlier guarantee or insurance required under the present contract is not able to abide by his commitments.

61.2 Termination shall be without prejudice to any other rights or powers of the IFRC and the Contractor under the contract. The IFRC may then complete the works itself or conclude another contract with a third party on behalf of the Contractor. The Contractor's liability for delay in completion shall immediately cease when the IFRC expels him from the site, without prejudice to any such liability that may already have occurred.

61.3 The Supervisor shall, upon the issue of the notice of termination of the contract, instruct the Contractor to take immediate steps to bring the works to a close in a prompt and orderly manner and to reduce expenditure to a minimum.

61.4 The Supervisor shall, as soon as is possible after termination, certify the value of the works and all sums due to the Contractor at the date of termination.

61.5 In the event of termination:

a) A report on work performed by the Contractor shall be drawn up by the Supervisor as soon as possible after inspection of the works, and inventory taken of temporary structures, materials, plant and equipment. The Contractor shall be summoned to the inspection and the taking of the inventory. The Supervisor shall also draw up statements of emoluments still owed by the Contractor to workers employed by him in relation to the contract and of sums owed by the Contractor to the IFRC.

b) The IFRC shall have the option of acquiring in whole or in part temporary structures which have been approved by the Supervisor, plant and materials specifically supplied or manufactured in connection with the execution of works under the contract.

c) The purchase price of the temporary structures, equipment, plant and materials referred to above shall not exceed the unpaid portion of the expenditure incurred by the Contractor, such expenditure being limited to that required for the implementation of the contract under normal conditions;

d) The IFRC may purchase, at market prices, the materials and items supplied or ordered by the Contractor and not already paid for by the IFRC on such conditions as the Supervisor considers appropriate.

61.6 The IFRC shall not be obliged to make any further payments to the Contractor until the works are completed. Once they have been completed, the IFRC shall be entitled to recover from

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the Contractor the extra costs, if any, of completing the works or shall pay any balance due to the Contractor prior to the termination of the contract.

61.7 If the IFRC terminates the contract, it shall be entitled to recover from the Contractor any loss it has suffered up to the maximum amount stated in the contract. If no maximum amount is stated, the IFRC shall not be entitled to recover more than the part of the contract price corresponding to the value of that part of the works which cannot, by reason of the Contractor's failure, be put to their intended use.

61.8 Where termination is not due to an act or omission on his part, the Contractor shall be entitled to claim, in addition to sums owing to him for work already performed, an indemnity for loss suffered.

61.9 This contract shall be automatically terminated if it has given risen to no payment in the three years following its signing.

ARTICLE 62: Termination by the Contractor

62.1 The Contractor may, after giving 14 days' notice to the IFRC, terminate the contract if the IFRC:

a) fails to pay the Contractor the amounts due under any certificate issued by the Supervisor after the expiry of the deadline laid down in Article 50.2; or

b) consistently fails to meet its obligations after repeated reminders; or

c) suspends the progress of the works or any part thereof for more than 180 days, for reasons not specified in the contract or not attributable to the Contractor.

62.2 Termination shall be without prejudice to any other rights or powers under the contract of the IFRC and the Contractor. Upon such termination, the Contractor shall, subject to the law of the state of the IFRC, be entitled to immediately remove his equipment from the site.

62.3 In the event of such termination, the IFRC shall pay the Contractor for any loss or damage the Contractor may have suffered.

ARTICLE 63: Force Majeure

63.1 Neither Party shall be considered to be in default or in breach of its obligations under the contract if the execution of such obligations is prevented by any event of force majeure arising after the date of notification of award or the date when the contract becomes effective, whichever is the earlier.

63.2 For the purposes of this Article, the term "force majeure" means 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 which are beyond the Parties' control and cannot be overcome by due diligence.

63.3 Notwithstanding the provisions of the General Conditions relating to delays in implementation and termination by the IFRC, the Contractor 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 implementation or other failure to perform his obligations under the contract is the result of an event of force majeure. Nor, notwithstanding the provisions of the General Conditions on delayed payments and termination by the Contractor, shall the IFRC be liable for the payment of interest on delayed payments, for non-execution or for termination by the

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Contractor for default if, and to the extent that, the IFRC's delay or other failure to perform its obligations is the result of force majeure.

63.4 If either Party considers that any circumstances of force majeure have occurred which may affect execution of its obligations, it 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 Contractor shall continue to perform his obligations under the contract as far as is reasonably practicable, and shall employ every reasonable alternative means to perform any obligations that the event of force majeure does not prevent him from performing. The Contractor shall not employ such alternative means unless directed to do so by the Supervisor.

63.5 If the Contractor incurs additional costs in complying with the Supervisor's directions or using alternative means under Article 63.4, the amount thereof shall be certified by the Supervisor.

63.6 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 works that the Contractor may by reason thereof have been granted, either Party shall be entitled to serve the other with 30 days' notice to terminate the contract. If, on the expiry of the period of 30 days, the situation of force majeure still applies, the contract shall be terminated and, by virtue of the law governing the contract, the Parties shall be released from further execution of the contract.

ARTICLE 64: Death

64.1 Where the Contractor is a natural person, the contract shall be automatically terminated if that person dies. However, the IFRC shall examine any proposal made by the heirs or beneficiaries if they have notified their wish to continue the contract. The decision of the IFRC shall be notified to those concerned within 30 days of receipt of such proposal.

64.2 Where the Contractor consists of a number of natural persons and one or more of them die, a report shall be agreed between the Parties on the progress of the works, and the IFRC 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.

64.3 In the cases provided for in Articles 64.1 and 64.2, persons offering to continue to perform the contract shall notify the IFRC thereof within 15 days of the date of decease. Such persons shall be jointly and severally liable, save where otherwise stated in the Special Conditions, for the proper execution of the contract to the same extent as the defunct Contractor. Continuation of the contract shall be subject to the rules relating to establishment.

DISPUTE SETTLEMENT

ARTICLE 65: Amicable dispute settlement

65.1 The Parties shall make every effort to settle amicably any dispute, which may arise between them. Once a dispute has arisen, the Parties shall notify each other in writing of their positions on the dispute and any solution, which they consider possible. If either Party deems it useful, the Parties shall meet and try and settle the dispute. A Party shall respond to a request for amicable settlement within 10 days of such a request. The maximum period laid down for reaching such a settlement shall be 30 days from the commencement of the procedure. Should the attempt to reach an amicable settlement fail or a Party fail to respond in time to requests for a settlement, either Party shall be free to proceed to the next stage of the dispute-settlement procedure by notifying the other.

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65.2 If the amicable dispute-settlement procedure fails, the Parties may, in the case of decentralised contracts, agree to try conciliation through the Employer. If no settlement is reached within 30 days of the start of the conciliation procedure, each Party shall be entitled to move on to the next state of the dispute-settlement procedure.

ARTICLE 66: Dispute settlement by arbitration

66.1 Any dispute between the Parties arising in relation to this Contract which either Party deems cannot be settled amicably may be submitted by either Party to Arbitration.

66.2 Any claim or controversy arising out of this Contract or to the breach, termination or invalidity thereof shall be settled by arbitration to the exclusion of national jurisdiction in accordance with the United Nations Commission arbitration rules on International Trade Law as at present in force, subject to such modification as the parties may agree in writing. The parties agree to be bound by any arbitration award rendered in accordance with this paragraph as final adjudication of any such claim or controversy.

ETHICS CLAUSES

ARTICLE 67: Ethics clauses

67.1 Any attempt by a candidate or tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the committee or the IFRC during the process of examining, clarifying, evaluating and comparing tenders shall lead to the rejection of his candidacy or tender.

67.2 Without the IFRC's prior written authorisation, a Contractor and his staff or any other Company with which the Contractor is associated or linked may not, even on an ancillary or subcontracting basis, supply other services, carry out works or supply equipment for the project.

67.3 This prohibition also applies to any other programmes or projects that could, owing to the nature of the contract, give rise to a conflict of interest on the part of the Contractor.

67.4 When putting forward a candidacy or tender, the candidate or tenderer shall declare that he is affected by no potential conflict of interest and has no particular link with other Tenderers or parties involved in the project. Should such a situation arise during execution of the contract, the Contractor must immediately inform the IFRC.

67.5 The Contractor must at all times act impartially and as a faithful adviser in accordance with the code of conduct of his profession. He shall refrain from making public statements about the project or services without the IFRC's prior approval. He may not commit the IFRC in any way without its prior written consent.

67.6 For the duration of the contract the Contractor and his staff shall respect human rights and undertake not to offend the political, cultural and religious mores of the beneficiary state.

67.7 The Contractor may accept no payment connected with the contract other than that provided for therein. The Contractor and his staff must not exercise any activity or receive any advantage inconsistent with their obligations to the IFRC.

67.8 The Contractor and his staff shall be obliged to maintain professional secrecy for the entire duration of the contract and after its completion. All reports and documents drawn up or received by the Contractor shall be confidential.

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67.9 The contract shall govern the Parties' use of all reports and documents drawn up, received or presented by them during the execution of the contract.

67.10 The Contractor shall refrain from any relationship likely to compromise his independence or that of his staff. If the Contractor ceases to be independent, the IFRC may, regardless of injury, terminate the contract without further notice and without the Contractor having any claim to compensation.

67.11 The IFRC reserves the right to suspend or cancel project financing if corrupt practices of any kind are discovered at any stage of the award process and if the IFRC fails to take all appropriate measures to remedy the situation. For the purposes of this provision, "corrupt practices" are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or implementation of a contract already concluded with the IFRC.

67.12 Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commissions paid to a company which has every appearance of being a front company.

67.13 The Contractor undertakes to supply the IFRC on request with all supporting documents relating to the conditions of the contract's execution. The IFRC may carry out whatever documentary or on-the-spot checks it deems necessary to find evidence in cases of suspected unusual commercial expenses.

ARTICLE 68: Administrative and financial penalties

68.1 Without prejudice to the application of penalties laid down in the contract, a Contractor who has been guilty of making false declarations or has been found to have seriously failed to meet his contractual obligations in an earlier procurement procedure shall be excluded from all contracts and grants financed by the Community budget for a maximum of two years from the time when the infringement is established, as confirmed after an adversarial procedure with the Contractor. The Contractor may present his arguments against this penalty within 30 days of notification of the penalty by registered letter with acknowledgement of receipt or any equivalent means. In the absence of any reaction on the part of the Contractor, or of withdrawal of the penalty by the IFRC within 30 days of receipt of the Contractor's arguments against it, the decision imposing the penalty shall become enforceable. That period may be increased to three years in the event of a repeat offence within five years of the first infringement.

68.2 If the Contractor is found to have seriously failed to meet its contractual obligations, it shall incur financial penalties representing 10% of the total value of the contract in question. That rate may be increased to 20% in the event of a repeat offence within five years of the first infringement.

ARTICLE 69: Checks and audits

69.1 The Contractor will allow the IFRC to verify, by examining the documents or by means of on-the-spot checks, the implementation of the project and conduct a full audit, if necessary, on the basis of supporting documents for the accounts, accounting documents and any other document relevant to the financing of the project. These inspections may take place up to 7 years after the final payment.

69.2 Furthermore, the Contractor will allow any Office entrusted by the IFRC with the tasks under Article 69.1 to carry out checks and verification on the spot.

69.3 To this end, the Contractor undertakes to give appropriate access to staff or agents of the IFRC and/or his entrusted office to the sites and locations at which the Contract is carried

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out, including its information systems, as well as all documents and databases concerning the technical and financial management of the project and to take all steps to facilitate their work. Access given to agents of the IFRC and their Auditors shall be on the basis of confidentiality with respect to third parties, without prejudice to the obligations of public law to which they are subject. Documents must be easily accessible and filed so as to facilitate their examination and the Consultant must inform the IFRC of their precise location.

69.4 The Contractor guarantees that the rights of the IFRC to carry out audits, checks and verification will be equally applicable, under the same conditions and according to the same rules as those set out in this Article, to any sub-contractor or any other party benefiting from IFRC funds.

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