# *SPECIAL CONDITIONS*

**CONTENTS**

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

**Article 2 Language of the contract**

2.1 The language used shall be English.

**Article 4 Communications**

4.1 The Secretary for Trade and Industry

Ministry of Trade and Industry

P.O Box 30366

Lilongwe 3

Attention: Procurement Unit

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

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

**Article 6 Subcontracting**

6.3 When selecting subcontractors the contractor must give preference to natural persons or companies from ACP States capable of implementing the tasks required on similar terms.

**Article 7 Supply of documents**

Operational Manuals should be provided

**Article 8 Assistance with local regulations**

Ministry of Trade will guide on specific regulations.

**Article 9 General obligations**

9.9 The contractor shall ensure that the goods are clearly identified and feature prominently the EU Flag. The obligation towards visibility must comply with the rules lay down in the communication and Visibility Manual for EU External Actions published on the website of DG International Cooperation and Development

https://ec.europa.eu/europeaid/funding/communication-and-visibility-manual-eu-external-actions\_en.

**Article 10 Origin**

## 10.1 All goods purchased must originate from an eligible source country as defined Mchinji Border Posts Upgrade Project under the COMESA EDF 11 Trade Facilitation Programme. For these purposes, ‘origin’ means the place where the goods are mined, grown, produced or manufactured. The origin of the goods must be determined according to the EU Customs Code or to the relevant international agreement applicable.

## Goods originating in the EU includes goods originating in the Overseas Countries and Territories.

**Article 11 Performance guarantee**

11.1 The amount of the performance guarantee shall be  **5 %** of the total contract price, including any amounts stipulated in addenda to the contract.

**Article 12 Liabilities and insurance**

12.2(b), paragraph 2 The contractor shall ensure that all the goods are insured up to the point of delivery and installation (at the point of acceptance).The Incoterm applicable shall be DDP

* DDP - Delivered Duty Paid: Incoterm which imposes on the seller maximum obligations vis-à-vis transportation and loss risks and damage associated with the goods:

‘the seller delivers the goods when the goods are placed at the disposal of the buyer, cleared for import on the arriving means of transport ready for unloading at the named place of destination. The seller bears all the costs and risks involved in bringing the goods to the place of destination and has an obligation to clear the goods not only for export but also for import, to pay any duty for both export and import and to carry out all customs formalities.’13 The transfer of risks and costs occurs at the place of unloading of the goods at the agreed place of destination.

**Article 13 Programme of implementation of tasks**

13.2 The supplies must be delivered within 60 days of signing of the contract by the contractor.

**Article 14 Contractor’s drawings**

14.1 All operational manuals must be provided by the contractor

**Article 15 Sufficiency of tender prices**

15.1 N/A

**Article 16 Tax and customs arrangements**

16.1 The terms of delivery of the goods shall be DDP (Delivery Duty Paid)

**Article 17 Patents and licences**

17.1 N/A

**Article 18 Commencement order**

18.1The start date for the implementation shall be the date of signature of the last party.

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

19.1The period of implementation of the contract is set at 60 Days from the date of signature of the last party.

**Article 24 Quality of supplies**

24.2 Supplies must conform to the technical specifications specified. A certificate of Provisional Acceptance issued by the Contracting Authority is required.

**Article 25 Inspection and testing**

25.2 The goods will be tested in accordance with Article 25 of the general conditions and the practical arrangements for testing at the Mchinji One Stop Border Post

**Article 26 General principles for payments**

26.1 Payments shall be made in USD

 Payments shall be authorized and made by

 The Secretary General

 COMESA, Ben Bella Road

 P.O Box 30051

 Lusaka 10101

 Zambia

26.3 By derogation, the pre-financing payments shall be made within 90 days from the date on which an admissible invoice is registered by the contracting authority. The final payment to the contractor of the amounts due shall be made within 90 days following provisional acceptance of the goods, after receipt by the contracting authority of an admissible invoice.

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

The Secretary for Trade and Industry

Ministry of Trade and Industry

P.O. Box 30366 Lilongwe 3

a)For the 40% pre-financing], [the pre-financing guarantee

b)For the 60 % balance],For the 100 % balance the invoice(s) in triplicate together with the request for provisional acceptance of the supplies.

**Article 28 Delayed payments**

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

**Article 29 Delivery**

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

**Article 31 Provisional acceptance**

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

By derogation from Article 31.2, second paragraph , the contracting authority’s time limit for issuing the certificate of provisional acceptance to the contractor shall not be considered included in the time limit for payments indicated in Article 26.3.

**Article 32 Warranty obligations**

32.7 The warranty must remain valid for 12 Months after provisional acceptance.

**Article 33 After-sales service**

33.1 The contractor shall provide or secure provision of reliable after-sales maintenance service thereafter at the place of destination guaranteeing the upkeep and repair of goods supplied.

**Article 40 Settlement of disputes**

Any dispute arising out of or relating to this contract which cannot be settled otherwise shall:

(a) in the case of a national contract, be settled in accordance with the national legislation of the state of the contracting authority; and

(b) in the case of a transnational contract, be settled either:

(i) if the parties to the contract so agree, in accordance with the national legislation of the state of the contracting authority or its established international practices; or

(ii) by arbitration in accordance with the procedural rules on conciliation and arbitration of contracts financed by the European Development Fund, adopted by Decision 3/90 of the ACP-EEC Council of Ministers of 29 March 1990 (Official Journal No L 382, 31.12.1990, Annex a12 to the practical guide)

**Article 44 Data protection**

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

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

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1. OJ L 205 of 21.11.2018, p. 39 [↑](#footnote-ref-1)