

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 competent Commission departments, other clauses may be introduced to cover specific situations.

Article 2 Law applicable

- 2.1 Community law is the law which applies to the contract, complemented, where necessary, by Belgian law.
- 2.2 The language used shall be English.

Article 4 Communications

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

For the Contracting Authority:

Delegation of the European Commission to Ukraine
10 Kruhlo-Universytetska St.
01024 Kyiv, Ukraine
Tel.: +380 (44) 390 80 10
Fax: +380 (44) 253 43 47

For the Contractor:

Article 7 Supply of documents

For each instrument supplied, the manuals or other supplementary documentation will be clearly written in English and/or Russian or Ukrainian language and will provide at least the following information: instructions for routine use and maintenance; statement of the performance characteristics, e.g. accuracy, sensitivity, etc; health and safety information.

Article 9 The Contractor's obligations

- 9.6 The Contractor shall take the necessary measures to ensure the visibility of the European Union financing or co-financing. These measures must comply with the rules laid down and published by the Commission on the visibility of external operations: http://ec.europa.eu/europeaid/visibility/index_en.htm.

Article 10 Origin

The supplies must originate in a Member State of the European Community or in an official candidate country as recognised by the European Community (Croatia, FYROM and

Turkey), or a Member State of the European Economic Area (Iceland, Lichtenstein and Norway) and the following countries according to Tacis Regulations (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Russian Federation, Tajikistan, Turkmenistan, Ukraine and Uzbekistan). A certificate of origin for the supplies must be provided by the Contractor at the latest when he requests provisional acceptance of the supplies. Failure to comply with this condition may result in the termination of the contract. Exceptions to the rules of origin are admissible for items: Lot 2 Items 1, 2, 3, 4 and 9; Lot 4 Items 1, 2, 3, 4, 5, 6 and 8; Lot 6 Item 3; Lot 9 Item 2; and Lot 12 Items 1, 2 and 3. The origin of the goods shall be determined according to the Community Customs Code or the international agreements to which the country concerned is a signatory.

Article 11 Performance guarantee

The amount of the performance guarantee shall be 5% of the Contract Value and the part in respect of after sales service including any amounts stipulated in addenda to the contract.

Article 12 Insurance

The Contractor will be covered by the insurance policy covering the damages during transportation to the final destination.

Article 13 Implementation programme (timetable)

Performance programme is to be provided by the Contractor for the approval by the Contracting Authority within one week following the contract signature date. The programme shall specify, inter-alia, the date of equipment delivery, dates and period of installation and commissioning of the equipment. Planning for training should also be provided.

Article 18 Commencement order

18.1 The date of commencement will be the date of the signature of the contract by the second of the two parties.

Article 19 Period of Implementation

19.1 The execution period shall start upon the contract signature and shall end on provisional acceptance of the supplies.

Article 22 Variations

The Contracting Authority reserves the right to vary the quantities of any of the items within a range of +/- 100%. The total value of the supplies may not rise or fall as a result of the variation in the quantities by more than 25 % of the contract price at the time of contracting and during the validity of the contract. The unit prices used in the tender shall be applicable to the quantities procured under the variation.

Article 25 Inspection and testing

Inspection of supply will be performed at place of acceptance in Kyiv, Kharkiv, Ivano-Frankivsk and Lviv. Inspection will be performed after putting supplies into operation.

Article 26 Methods of payment

26.1 Payments shall be made in euro.

Payments shall be authorised and made by the Contracting Authority: The European Community, represented by the Commission of the European Communities, for and on behalf of the Government of Ukraine, with address at 10 Kruhlo-Universitetska St., 01024 Kyiv, Ukraine.

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

- a) For the 60% pre-financing, in addition to the payment request, a photocopy of the contract and the performance guarantee. If a pre-financing is requested and this payment exceeds EUR 150.000, or if no proof documents have been provided for the selection criteria, the Contractor must provide a financial guarantee for the full amount of the pre-financing payment.
- b) For the 40% balance, the invoice(s) in triplicate following provisional acceptance of the supplies.

Article 28 Delayed payments

28.2. By derogation from Article 28.2 of the General Conditions, once the deadline laid down in Article 28.1 has expired, the Contractor shall receive late-payment interest at the rate applied by the European Central Bank to its main refinancing transactions in euro, as published in the Official Journal of the European Union, on the first day of the month in which the deadline expired, plus seven 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 Contracting Authority's account is debited (inclusive). By way of exception, when the interest calculated in accordance with this provision is lower than or equal to EUR 200, it shall be paid to the consultant only upon a demand submitted within two months of receiving late payment. The Member States are not entitled to late-payment interest.

Article 29 Delivery

29.1 The Contractor shall bear all risks relating to the goods until provisional acceptance at destination. The supplies shall be packaged so as to prevent their damage or deterioration in transit to their destination.

29.2 The packaging shall be the original one. Each package shall be accompanied by list detailing content and quantities of supplies.

29.3 The packaging shall become the property of the recipient subject to respect for the environment.

29.5/6 Each delivery will be accompanied by conformity declaration and the list of content. The markings shall identify the equipment in the packaging and the final destination.

Article 31 Provisional acceptance

The Certificate of Provisional Acceptance must be issued using the template in Annex C11. It shall be issued after the inspection of supplies, following their putting into operation at the places of installation (for items where installation and commissioning is required by Annex II Technical Specifications).

Article 32 Warranty

The Contractor shall warrant that the supplies are new, unused, of the most recent models and incorporate all recent improvements in design and materials. The Contractor shall further warrant that none of the supplies have any defect arising from design, materials or workmanship. This warranty shall remain valid for 18 months after provisional acceptance.

During the warranty period, the Contractor shall guarantee the technical service and replacement of the damaged parts. The Contractor shall respond to any notification of failure within 48 hours and shall start repair or replacement activities within 14 days after the notification. The supplies should be brought to fully operational status within 1 month from the notification of failure. The warranty includes all parts, labour costs and transport.

Article 41 Dispute settlement by litigation

Any dispute between the Parties that may arise during the execution of this contract and cannot be settled amicably between the Parties shall be submitted to the courts of Brussels.