# VOLUME 2

**SECTION 3 SPECIAL CONDITIONS**

**CONTENTS**

These conditions amplify and supplement the general conditions governing the contract. Unless the special conditions provide otherwise, the general conditions remain fully applicable. The numbering of the articles of the special conditions is not consecutive but follows the numbering of the general conditions. Other special conditions should be indicated afterwards.

## Article 2 Language of the contract

2.1 The language used shall beEnglish.

## Article 4 Communication

* 1. Any written communication related to this Contract between the Contracting Authority on the one hand and the Contractor on the other hand, must state the Contract title and contract number and must be sent by post, fax, e-mail or by hand to the followingaddress:

The addresses and other co-ordinates of the parties are:

* + 1. For the ContractingAuthority:

|  |  |
| --- | --- |
| Name: | Project “Clean Water Project in Gjakovë/Djakovica and Kukës” |
| Contact Person: | Vice President Bashkia Kruje Mr. Granit Gjana |
| Address: | Bashkia Kukes/Municipality KukesStr. Sheshi Skenderbej,8500 Kukes/Albania |
| Telephone: |  |
| Fax: |  |
| E-mail: | gjanagranit@gmail.com |

* + 1. For theContractor:

|  |  |
| --- | --- |
| Name: |  |
| Contact Person: |  |
| Address: |  |
| Telephone: |  |
| Fax: |  |
| E-mail: |  |

* 1. 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 thecontract.

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 33 of the general conditions to the contract, 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 3months.

## Article 5 Supervisor and supervisor’s representative

* 1. The Contracting Authority shall appoint a Supervisor to carry out duties referred to in the contract. The Supervisor may have further staff to which he delegates matters related to thecontract.
	2. The Supervisor acts for the Contracting Authority. He has no authority to relieve either party of any duties, obligations or responsibilities under the Contract. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by the Supervisor (including absence or disapproval) shall not relieve the Contractor from any responsibility he has under the Contract, including the responsibility for errors, omissions, discrepancies andnon-compliances.

Any failure to disapprove any work, plant or materials shall not constitute approval, and shall therefore not prejudice the right of the Supervisor to reject the work, plant ormaterials.

The Supervisor may issue to the Contractor (at any time) instructions which may be necessary for the execution of the works and the remedying of any defects, all in accordance with the Contract. The Contractor shall only take instructions from the Supervisor. If an instruction constitutes a modification, Article 37 of General Conditions shall apply.

The Supervisor shall consult with each party in an endeavour to reach agreement. If agreement is not achieved, the Supervisor shall make a fair determination in accordance with the Contract, taking due regard of all relevantcircumstances.

* 1. The following should be added to article 5.4 of the GeneralConditions:

The Supervisor shall obtain a written approval of the Contracting Authority prior taking any of the following actions specified in the General Conditions:

* + 1. Approve any extension of time determined under Article 35 of the General Conditions;
		2. Approve any modification of the Contract and/or issuing any administrative order under Article 37 of the General Conditions that implies additional costs in the contract and/or use of provisional sum.

Administrative orders issued by the Supervisor shall be dated, numbered and entered in a register. The Supervisor shall send them electronically (by email) to representatives of the Contractor, of the Beneficiary and of the Contracting Authority. Hard copies shall be delivered by hand to representatives of the Contractor and of the Beneficiary, and where appropriate, also to the representative of the Contracting Authority.

## Article 8 Documents to be provided

8.1 The Supervisor shall also, on behalf of the Contracting Authority, provide to the Contractor, free of charge, one copy of the drawings in electronic format, prepared for the initial performance of theContract.

## Article 9 Access to the site

9.1 The contractor is reminded that there is a head of delegation of the European Commission in the state of the contracting authority. The contractor is obliged to give the head of delegation free access to its sites, factories, workshops, etc., and generally assist the head of delegation, like the project Supervisor, in the performance of his duties. The same provisions also apply to the appointed representatives of the head ofdelegation.

### Article 12 General obligations

12.9 The visibility measures must comply with the rules laid down in the Communication and Visibility Manual for EU External Actions published by the European Commission: [http://ec.europa.eu/europeaid/work/visibility/index\_en.htm.](http://ec.europa.eu/europeaid/work/visibility/index_en.htm)

## Article 15 Performanceguarantee

15.1 The amount of the performance guarantee will be 10 % of the amount of the contract (including provisional sum/contingencies) and any addendathereto.

## Article16 Liabilities andinsurance

16.1 a) “By way of derogation from Article 16.1, a) paragraph 2, of the general conditions, compensation for damage to the works resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to the contract value”.

16.1 b) “By way of derogation from Article 16.1(b), paragraph 2, of the general conditions, compensation for damage resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to to the contract value.”

## Article 17 Programme of implementation of tasks

* 1. The Contractor's programme of implementation of tasks shall reflect any specific requirements set out in the Contract Documents and shall be in substantial conformity with the programme included in the Contractor's tender, giving detailson:
		1. the programme showing the order of executing the Works within the stated time for completion;
		2. the list of main items of equipment which:
* he has readily available for the Contract,and
* that he intends to hire,and
* that he intends to purchase for theContract;
	+ 1. the average workforce list, divided for categories (skilled, unskilled, foreman, operators and drivers) he intend to employ monthly at Site during the work execution; the list of subcontractors he proposes to employ on the Works together with details of the part of the Works he proposes tosublet;
		2. the schedule and organization chart of Key Personnel (Supervisor, Site manager, Site Supervisors, Specialists,etc.);
		3. an approximate cash flow, on diagram format to be agreed with the Supervisor, of the expected disbursement the Contracting Authority may support monthly during the workperiod;
		4. in the preparation of the Programme of implementation of tasks, the Contractor shall take into account adverse weather conditions which may severely restrict progress in the winter months or during other wet periods of the year. Programmes incorporating restricted working or a temporary Suspension of Works shall be accepted by the Supervisor, but such acceptance shall not relieve the Contractor from his obligations under the Contract to complete the works in accordance with the agreedprogramme.
		5. traffic management plan proposed for safe passage of traffic and traffic-flow during the construction of the road and ancillaryworks.

The Contractor’s Programme of implementation of tasks shall not, for any reason, exceed the overall contract period as stipulated in theContract.

## Article19 Contractor’s drawings and executionstudies

### 19.1 add to Article 19.1:

(d) The Contractor shall prepare and keep up-to-date a complete set of As-Built records showing the precise locations, sizes and details of all the work executed. These drawings shall be kept on site and shall be used exclusively for this purpose. They shall be available to the Supervisor at any time. Hard copies shall be provided to the Supervisor when requested, in particular as evidence in support of Interim Payment Certificates. The absence of such drawings may lead to the Supervisor not forwarding submitted Interim Payment Certificates to the ContractingAuthority.

The Contractor shall submit to the Supervisor As-Built drawings in a clear and easy-to- understand form, in one original of the reproducible negatives or drawings in electronic format, and two hard copies for each completed section of the works.

## Article20 Sufficiency of tender prices

### add new Article20.4:

The contactor will calculate and present the amount for each item, based on the quantities of materials and works presented in the Volume 4 - Bill of Quantities.

The unit price for unforeseen works, to be recognized throughout the project and ordered by the Contracting Authority shall be derived from the Contract's Unit Prices of a same or similar type of works or extracted from referent recent similar contracts.

Throughout the construction of the works, the Contractor shall provide and maintain for the site staff appropriate offices, stores, dining rooms, sanitary and health and safety facilities etc. All operating and maintenance expenses connected therewith (lighting, heating, water supply etc.) shall be borne by theContractor.

### add new Article20.5:

The Contractor shall make his own arrangements for provision of water, electricity and telephones and shall observe all regulations of the appropriate local authority and shall bear all expenses in connectiontherewith.

### add new Article20.6:

The Contractor may require land outside the site for his offices, stores, workshops, fabrication plants etc. The expenses and other costs so incurred shall be at the expense of the Contractor, but the Contracting Authority and/or the Beneficiary shall assist him in obtaining the use of such land.

## Article24 Interference with traffic

### add to Article24.1:

No important operation of any kind, especially cutting through, transit over, or closing existing roads, water conduits or other public utility shall be carried out without the written consent of the Supervisor.

The Contractor shall inform the Supervisor in due time which shall be not less than 7 calendar days in writing before commencing such works in order that the Supervisor may arrange adequate supervision and safety precautions.With his

application for permission to start construction work, the Contractor shall submit to the Supervisor a list of all major plant he and his sub-contractors intend to use, indicating their characteristics (Excavators, trucks, cranes, compaction equipment, rollers, concrete mixers, other equipments,etc.).

The Contractor shall select routes, choose and use such vehicles and restrict and distribute loads in such a way to prevent damage to the roads or structures communicating with or on the routes to the Site. The Contractor shall ensure that roads and bridges that have become damaged due to the Contractor’s use of that infrastructure, in the opinion of the Supervisor, are reinstated to a serviceability level similar to that which existed prior to the Contractor’s use of theinfrastructure.

Reinstatement shall be to the approval of the Supervisor. All expenses related to these procedures shall be covered by the Contractor.

### Add article24.2

The Contractor shall liaise closely with all relevant authorities in relation to the traffic control, land mines and unexploded missiles, and any other issues related to the safety of the Site as needed.

## Article27 Demolishedmaterials

27.2 No demolition materials will become the property of the Contracting Authority. Should some materials be of interest to the Beneficiary, they will become theirproperty.

## Article29 Temporary works

### 29.2 add to Article29.2

Should the Contractor need any additional information or drawings apart from those being part of the Tender Dossier, he will put his request to the Supervisor/Beneficiary. Final decision will be on the side of the Supervisor.

## Article 34 Period of implementation of tasks

34.1 The period of implementation of tasks is twenty four (24) months from the commencement date mentioned in the administrative order issued in accordance with article 33.1 of the general conditions, followed by twelve (12) months of defects liability period, without prejudice of the extensions of the period which may be granted under Article 35.

## Article 36 Delays in the implementation of tasks

36.1 The rate of liquidated damages for delays in the completion of works shall be 0.1% of the contract price for every day or part thereof which elapses between the end of the period of implementation of tasks and the actual date of completion, up to a maximum amount of 10

% of the contract price.

## Article 39 Work register

* 1. Under the obligation of the laws of Kosovo and any other law to which he is subject, the Contractor shall maintain a Work Register (Contractor's Diary). The Work Register shall be kept on the site by the Contractor, who shall enter in it at least the followinginformation:
		1. 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, safety, health and welfare of persons and damage to property, progress of the works, as well as progress of the Works orders given to the Contractor;
		2. 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. This Work Register shall be made on daily basis and take the form of a bound document with an original and two carbon copies for each day. The Original shall be filled out by the Contractor, who shall sign it. The Supervisor shall review it, add his comments, sign it and remove one of the copies. Work register shall be kept in English and in accordance with the local legislation.>

### add to article39.2:

The statements shall be prepared by the Contractor, in accordance with the Specifications and the Bill of Quantities respectively. The statements shall be two separate documents, one for quality control and one for quantitative measurement. The documents shall be permanently kept at the site, in hard copy and in electronic format. The Contractor shall measure, in cooperation with the Supervisor or his representative, and prepare records of the work executed in such detail as instructed by theSupervisor.

## Article 40 Origin and quality of works and materials

* 1. All goods purchased under the contract must originate in in a Member States of the European Union or in a country or territory specified in the Regulation (EU) N°236/2014 establishing common rules and procedures for the implementation of the Union's instruments for external action (CIR) for the applicable Instrument under which the contract is financed (Regulation (EU) No 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II). However, the goods to be purchased may originate from any country, whenever the total price of the estimated quantity of those goods, as reflected in a separate item of the

Bill of quantities (Volume 4.3.2)] is below example EUR 100 000.

A category of similar goods to be purchased shall not be broken down over more than 1 item of the bill of quantities (Volume 4.3.2).

For these purposes, ‘origin’ means the place where the goods are mined, grown, produced or manufactured and/or from which services are provided. The origin of the goods must be determined according to the EU Customs Code or the applicable international agreement.

For all equipment and materials incorporated in the permanent works, official Certificates of Origin shall be required for provisional acceptance and subsequent payment. When importing goods, any change in the specified origin must have been pointed out to the project Supervisor and approved by him. Prior to ordering, placement and/or instalment of any construction materials the Contractor shall provide attest and samples of all material he proposed to build in, in the timely manner to the Supervisor and/or Contracting Authority for theapproval.

When importing goods, any change in the specified origin must be pointed out to the project supervisor and approved by him.

### add to Article40.2:

Prior to ordering, placement and/or instalment of any construction materials the Contractor shall provide attest and samples of all material he proposed to build in, in the timely manner to the Supervisor (designated by the Contracting Authority) for the approval.

The materials used for the construction shall be selected carefully for the purpose intended and with due consideration to site conditions.

If the Contractor desires to use stock material or components not manufactured especially for works under this Contract, he shall submit evidence by presentation of respective certificates, to the Supervisor’s satisfaction, that such material or components comply with the requirements stated in the Specifications and to an approved standard, and that the quality of such material is adequate for the intended use.

The Contractor shall indicate in the respective Schedules of Requirements the proposed materials and their applicable standards for all major items of the supply. Material specifications, including grade of class, shall be shown on the appropriate detail drawings submitted to the Supervisor for approval.

## Article43 Ownership of plant and materials

43.2 The equipment, temporary works, plant and materials on site shall for the duration of the execution of works be vested in the Contracting Authority.

## Article 44: General principles for payments

44.1 Payments shall be made in euro.

44.3 By derogation, pre-financing payment to the contractor for the lump-sum advance shall be made within 30 days. Other pre-financing payments to the contractor shall be made within 60 days. Interim payments to the contractor of the amounts due under each of the interim payment certificates approved by the supervisor shall be made within 60 days, and the final payment to the contractor of the amounts due after the final statement of account issued by the supervisor shall be made within 60days.

## Article46 Pre-financing

46.1 Pre-financing may be granted to the Contractor, at hisrequest.

46.2(b) No pre-financing will be granted for the purchase or order of: materials, plant, equipment, machines, tools and of any other substantial prior expenses such as the acquisition of patents or study costs, necessary for the execution of thecontract.

46.3(c) When (i) the pre-financing requested is equal or below EUR 300 000 **and** (ii) the contracting authority does not require a financial guarantee following a risk assessment, by derogation from Article 46.3(c) of the general conditions no pre-financing guarantee isrequired.

46.8 Repayment of the pre-financing shall take the form of deductions based on monthly claims.

1. The flat-rate pre-financing (maximum of 10 %) shall be repaid by means of deductions from instalments and, if necessary, the balance due to the contractor. This repayment shall begin with the first instalment and be completed, at the very latest, by the time 80 % of the amount of the contract has beenpaid.

Repayment shall be made in the same currency as the pre-financing.

The amount to be deducted from each instalment shall be calculated using the following formula:

*R* *Va* *D*

*Vt*  0.8

where:

R = the amount to be repaid

Va = the total amount of pre-financing Vt = the initial contract amount

D = the amount of the instalment.

The result is rounded up to two decimal places.

1. The pre-financing for plant, machinery and tools — and the pre-financing for other major prior outlays (20 % maximum) — shall be repaid by means of deductions from instalments and, if necessary, the balance due to the contractor. Repayment shall begin with the first instalment and end, at the very latest, by the time 90 % of the amount of the contract has been paid.

The amount to be deducted from each instalment shall be calculated using the following formula:

*R* *Va* *D*

*Vt* 0.9

where:

R = the amount to be repaid

Va = the total amount of pre-financing Vt = the initial contract amount

D = the amount of the instalment.

## Article47 Retentionmonies

* 1. The sum to be retained from interim payments to guarantee implementation of the Contractor’s obligations during the defects liability period is 10 % of eachinstalment.
	2. The contractor cannot substitute the retention sums by a retentionguarantee.

## Article49 Measurement

49.1 Apart from the amounts qualified as lump sums in the bill of quantities, this is a unit-price contract.

## Article 51 Final statement of account

* 1. The contractor shall, submit to the supervisor a draft final statement of account when it applies for the final acceptance certificate. In order to enable the supervisor to prepare the final statement of account, the draft final statement of account is submitted withsupporting

documents showing in detail the value of the work done in accordance with the contract and all further sums which the contractor considers to be due to it under the contract.

* 1. Within 30 days from issuing the final acceptance certificate referred to in Article 62, the supervisor shall prepare and signed the final statement ofaccount.

## Article 53 Delayed payments

53.1 By derogation from Article 53.1 of the general conditions, once the time-limit referred Article 44.3 has expired, the contractor shall be entitled to late-payment interest at the rate and for the period mentioned in the generalconditions.

However, when the interest calculated in accordance with the first subparagraph is lower than or equal to EUR 200, it shall be paid to the creditor only upon a demand submitted within two months of receiving late payment.

## Article 61 Defects liability

61.1 The defects liability period is defined as the period commencing on the date of provisional acceptance, during which the contractor is required to make good any defect in, or damage to, any part of the work which may appear or occur during this period as notify by the supervisor or the contracting authority. The rights and obligations of the parties with regard to this defect’s liability period are laid down in Article 61 of the generalconditions.

61.7 The commercial warranty granted by the Contractor shall be, from the date of issuing the provisional acceptance certificate by theSupervisor:

* 10 years for theroof;
* 2 years for the mechanicalequipment;
* 2 years for the electrical material and equipment, includingelevators.

The Commercial warranty shall be prepared on the name of the Beneficiaries (Municipalities of Gllogoc/Glogovac, Skënderaj/Srbica and Peja/Peć).

The Contractor shall stand answerable as from the date of the Final Acceptance for a Warranty Period specified in the provisions of the Kosovo legislation, for any material, works, collapse, whether total or in part, that may occur as a result of defective execution of the buildings or structures erected by him under thisContract.

## Article 68 Dispute settlement

68.4 Any dispute arising out of or relating to this contract which cannot be settled otherwise shall be referred to the exclusive jurisdiction of the courts of Brussels,Belgium.

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