**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 be English.

**Article 4 Communication**

4.1 <

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 following address:

Bashkia Kukes/Municipality Kukes

Str. Sheshi Skenderbej,

8500 Kukes/Albania

info@kukesi.gov.al

From 08:30-16:00 from Monday to Friday.

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 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 3 months.

**Article 5 Supervisor and supervisor’s representative**

5.2 The Contracting Authority shall appoint a Supervisor to carry out the duties referred to in the contract. The supervisor may have further staff to whom he can delegate matters related to the contract.5.3 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, and non-compliance.

The Supervisor may issue to the Contractor (at any time) instructions necessary for executing the works and remedying 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 endeavor to reach an agreement. If agreement is not achieved, the Supervisor shall make a fair determination following the Contract, taking due regard of all relevant circumstances.

5.4 <The following should be added to article 5.4 of the General Conditions:

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

(a) Approve any extension of time determined under Article 35 of the General Conditions;

(b) Approve any modification of the Contract and/or issue 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 the Contract

**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 of delegation.

All correspondence between the contractor and the contracting authority or project supervisor must be copied, for information, to the head of delegation of the European Commission at the following official address:

Bashkia Kukes/Municipality Kukes

Str. Sheshi Skenderbej,

8500 Kukes/Albania

info@kukesi.gov.al

**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 Performance guarantee**

15.1 The amount of the performance guarantee will be 5 % of the amount of the contract and any addenda thereto.

**Article 16 Liabilities and insurance**

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 to10 %

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

**Article 19 Contractor’s drawings and execution studies**

19.1 <The Contractor shall prepare and keep up-to-date a complete set of 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. The absence of such drawings may lead to the Supervisor not forwarding submitted Interim Payment Certificates to the Contracting Authority.

19.7 Albanian and/or English

**Article 20 Sufficiency of tender prices**

The contractor 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. Throughout the construction of the works, the Contractor shall provide and maintain for the site staff.

**Article 21 Exceptional risks**

21.4 The risk of weather condition may postpone the deadline.

**Article 24 Interference with traffic**

24.1 The Contractor shall inform the Supervisor in due time which shall be not less than 7 calendar days in writing before commencing such works so 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 plants he and his sub-contractors intend to use, indicating their characteristics (Excavators, trucks, cranes, compaction equipment, rollers, concrete mixers, other types of equipment, etc.).

The Contractor shall select routes, choose and use such vehicles, and restrict and distribute loads in such a way as to prevent damage to the roads or structures communicating with or on the routes to the Site.

**Article 27 Demolished materials**

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 their property.

**Article 29 Temporary works**

29.2 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. The final decision will be on the side of the Supervisor.

**Article 30 Soil studies**

30.1 N/A

**Article 32 Patents and licenses**

32.1 As specified in general conditions

**Article 34 Period of implementation of tasks**

34.1 The period of implementation of tasks is seven (7) months from the signed contract between the two sides.

**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 or, if the contract is subdivided into phases, 10 % of the price of the phase concerned.

**Article 40 Origin and quality of works and materials**

40.1 **All goods purchased under the contract must originate in any eligible source country as defined in IADSA programme.**

for unit price contracts Bill of quantities (Volume 4.3.2)]

is below 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.**

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

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. Before ordering, placement, and/or installment of any construction materials the Contractor shall provide attest and samples of all material he proposed to build in, on time to the Supervisor and/or Contracting Authority for the approval When importing goods, any change in the specified origin must be pointed out to the project supervisor and approved by him.

**Article 43 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 Albanian LEK

44.2 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 60 days.

**Article 46 Pre-financing**

46.1 <Pre-financing may be granted to the Contractor, at his request.

46.2 The total amount of the pre-financing will be 10 % of the total contract price. 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 the contract.46.3(c)

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 been paid.

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:



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:



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.

**Article 47 Retention monies**

47.1

The sum to be retained from interim payments to guarantee the implementation of the Contractor’s obligations during the defects liability period is 10 % of each installment.

The contractor cannot substitute the retention sums with a retention guarantee.

**Article 49 Measurement**

49.1 This is a unit-price contract.

**Article 50 Interim payments**

50.1 TBD

**Article 51 Final statement of account**

51.(1) and (2)

51.1 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 with supporting 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.

51.2 Within 30 days from issuing the final acceptance certificate referred to in Article 62, the supervisor shall prepare and signed the final statement of account.

**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 general conditions.

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 59 Partial acceptance**

59.3 The defects liability period provided for in Article 61 shall run fromnot earlier than 15 days before the works, in the contractor's opinion, are complete and ready for provisional acceptance. The contractor may apply, by notice to the supervisor, for a certificate of provisional acceptance.

**Article 60 Provisional acceptance**

60.1 In complement to Article 60.1 of the general conditions: The works shall be taken over by the contracting authority 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.

**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 defects liability period are laid down in Article 61 of the general conditions.

**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.

**Article 72 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, personnel, 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-2) and as detailed in the specific privacy statement published at ePRAG.]

**Article 73 Further additional clauses**

N/A

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1. OJ L 205 of 21.11.2018, p. 39 [↑](#footnote-ref-2)