

# **GENERAL CONDITIONS FOR WORKS CONTRACTS**

## **NOTE**

**These general conditions for works contracts are used by LuxDev for certain contracts financed by the government of the Grand Duchy of Luxembourg. They have been modelled on the “general regulations, general conditions and procedural rules on conciliation and arbitration for works, supply and service contracts financed by the European development fund”.**

***Official journal n° L382, 31.12.1990 p. 0001 - 0107***

## TABLE OF CONTENTS

PRELIMINARY PROVISIONS .....	4
Article 1 - Definitions .....	4
Article 2 - Law and language of the contract .....	6
Article 3 - Order of precedence of contract documents .....	6
Article 4 - Notices and written communications .....	6
Article 5 - Supervisor and supervisor's representative .....	7
Article 6 - Cession .....	7
Article 7 - Sub-contracting.....	7
OBLIGATIONS OF THE CONTRACTING AUTHORITY .....	8
Article 8 - Supply of documents .....	8
Article 9 - Access to site .....	8
Article 10 - Assistance with local regulations.....	9
Article 11 - Delayed payments to the contractor's staff.....	9
OBLIGATIONS OF THE CONTRACTOR .....	9
Article 12 - General obligations .....	9
Article 13 - Superintendence of the works .....	10
Article 14 - Staff.....	10
Article 15 - Performance guarantee .....	10
Article 16 - Insurance .....	11
Article 17 - Work programme .....	12
Article 18 - Detailed breakdown of prices .....	12
Article 19 - Contractor's drawings.....	12
Article 20 - Sufficiency of tender prices .....	13
Article 21 - Exceptional risks.....	13
Article 22 - Security of sites .....	14
Article 23 - Safeguarding adjacent properties .....	14
Article 24 - Interference with traffic.....	14
Article 25 - Cables and conduits.....	15
Article 26 - Setting-out .....	15
Article 27 - Demolished materials .....	15
Article 28 - Discoveries.....	16
Article 29 - Temporary structures.....	16
Article 30 - Soil studies.....	16
Article 31 - Overlapping contracts .....	16
Article 32 - Patents and licences .....	17
PERFORMANCE OF THE CONTRACT .....	17
Article 33 - Commencement orders .....	17
Article 34 - Period of performance .....	17
Article 35 - Extension of period of performance .....	17
Article 36 - Delays in performance.....	17
Article 37 - Modifications.....	18
MATERIALS AND WORKMANSHIP .....	20
Article 39 - Work register .....	20
Article 40 - Quality of the works and materials.....	20
Article 41 - Inspection and testing .....	20
Article 42 - Rejection .....	21
Article 43 - Ownership of plant and materials .....	22

PAYMENTS.....	22
Article 44 - General provisions.....	22
Article 45 - Provisional price contracts .....	22
Article 46 - Advances.....	23
Article 47 - Retention monies .....	23
Article 48 - Revision of prices .....	24
Article 49 - ASSESSMENT OF WORK .....	24
Article 50 - Interim payments .....	25
Article 51 - Final statement of account .....	26
Article 52 - Direct payments to sub-contractors .....	27
Article 53 - Delayed payments.....	27
Article 54 - Payments to third parties .....	27
Article 55 - Claims for additional payment.....	28
Article 56 - Payments in foreign currency.....	28
ACCEPTANCE AND MAINTENANCE .....	28
Article 57 - General clauses.....	28
Article 58 - Tests on completion .....	28
Article 59 - Partial acceptance.....	29
Article 60 - Provisional acceptance .....	29
Article 61 - Maintenance obligations .....	30
Article 62 - Final acceptance .....	30
BREACH OF CONTRACT AND TERMINATION .....	31
Article 63 - Breach of contract .....	31
Article 64 - Termination by the contracting authority.....	31
Article 65 - Termination by the contractor .....	32
Article 66 - Force majeure .....	33
Article 67 - Decease .....	33
SETTLEMENT OF DISPUTES .....	34
Article 68 - Settlement of disputes .....	34

# PRELIMINARY PROVISIONS

## ARTICLE 1 - DEFINITIONS

1.1. The following definitions apply to these general conditions and to the contract:

**Donor:** the government of the Grand-Duchy of Luxembourg

**Donor's representative:** LuxDev, Luxembourg agency for development Co-operation, acting under mandate of the Ministry of Foreign and European Affairs, Defence, Development Cooperation and Foreign Trade. As donor's representative, LuxDev acts as the implementing agency of the obligations falling to the government of the Grand Duchy of Luxembourg as set out in the project's bilateral agreement and project document.

**Partner state:** a State which has signed a cooperation agreement and a project's bilateral agreement with the government of the Grand Duchy of Luxembourg and for the benefit of which the project is implemented and on whose territory the contract must be performed.

**National implementing agency:** the body appointed by the partner government which acts as the implementing agency for the obligations of the government of the partner State as laid down in the project's bilateral agreement and the project document.

**Convention:** the cooperation agreement and the project's bilateral agreement signed between the partner State and the government of the Grand-Duchy of Luxembourg.

**Project:** all the activities which are the subject of a project's bilateral agreement and the objectives, activities and results of which are described in a project document that is an integral part of the project's bilateral agreement and for which services, supplies and works must be undertaken as part of the contract.

**Project management:** double supervision of the project carried out by the chief technical adviser, under direct contract of the donor's representative and the national project director, designated by the implementing agency of the partner country.

**Contract:** the signed agreement entered into by the parties for the performance of the works including all attachments thereto and all documents incorporated therein.

**Contractor:** the party with whom the contracting authority concludes the contract.

**Contracting authority:** the legal person governed by public or private law, formally appointed in a mutual agreement by the donor's representative and the national implementing agency, which concludes the contract or in whose name the contract is concluded with the contractor.

**State of the contracting authority:** the country of origin of the appointed contracting authority either the Grand Duchy of Luxembourg or the partner country.

**Supervisor:** the natural or legal person to whom the responsibility of directing and/or monitoring the performance of a contract has been granted by mandate, and to whom the appointed contracting authority may delegate its rights and/or responsibilities under the contract.

**Supervisor's representative:** any natural or legal person, designated by the supervisor as such under the contract, and empowered to represent the supervisor in the performance of his functions, and in exercising such rights and/or powers as have been delegated to him. Accordingly, where functions, rights and/or powers of the supervisor have been delegated to the supervisor's representative, references to the supervisor include the supervisor's representative.

**Works:** the temporary or permanent works to be carried out under the contract.

**Equipment:** machinery, apparatus, components and all items to be provided under the contract for incorporation in the works.

**Plant:** appliances and other machinery, and, where applicable under the law and/or practice of the partner State, the temporary structures on the site required for carrying out the works but excluding plant or other items required to form part of the permanent works.

**Bill of quantities:** the document containing an itemised breakdown of the works to be carried out in a unit price contract, indicating a quantity and the corresponding unit price for each item.

**Price schedule:** the completed schedule of prices, including the breakdown of the overall price, submitted by the contractor with his tender, modified as necessary and forming part of the unit price contract.

**Breakdown of the overall price:** the itemised list of rates and prices showing the breakdown of the price in a lump sum contract, but not forming part of the contract.

**Contract price:** the sum stated in the contract representing the initial estimate payable for the performance of the works or such other sum as ascertained by the final statement of account as due to the contractor under the contract.

**Site:** the places provided by the contracting authority where the works are to be carried out, and other places stated in the contract as forming part of the site.

**Communications:** certificates, notices, orders and instructions issued under the contract.

**Writing:** any hand-written, typewritten or printed communication, including telex, cable, email and facsimile transmission.

**Maintenance period:** the period stated in the contract starting from the date of provisional acceptance, during which the contractor is required to complete the works and to remedy defects or faults as instructed by the supervisor.

**Final acceptance certificate:** certificate(s) issued by the supervisor to the contractor at the end of the maintenance period stating that the contractor has completed his obligations to construct, complete and maintain the works concerned.

**Day:** calendar day

**Time limits:** those periods in the contract which shall begin to run from the day following the act or event which serves as the starting point for those periods. Should the last day of the period fall upon a non-working day, the period shall expire at the end of the first working day following the last day of the period.

**Administrative order:** any instruction or order issued by the supervisor to the contractor in writing regarding the performance of the works.

**National currency:** the currency of the State of the contracting authority.

**Foreign currency:** any permissible currency which is not the national currency, and which is indicated in the contract.

**Provisional sum:** a sum included in the contract and so designated for the performance of works or the supply of goods, materials, plant or services, or for contingencies. This sum may be used in whole or in part, or not at all, as instructed by the supervisor.

**Liquidated damages:** the sum stated in the contract as compensation payable by the contractor to the contracting authority for failure to complete the works or part thereof within the periods under the contract, or as payable by either party to the other for any other specific breach identified in the contract.

**General damages:** the sum, not stated beforehand in the contract, which is awarded by a court or arbitration tribunal, or agreed between the parties, as compensation payable to an injured party for a breach of the contract by the other party.

**Drawings:** drawings provided by the contracting authority and/or by the supervisor, and/or drawings provided by the contractor and approved by the supervisor, for carrying out the works.

**Special conditions:** the special conditions issued by the contracting authority as part of the invitation to tender, as amended where necessary, and incorporated into the contract, consisting of:

- a) amendments to these general conditions;
- b) special contractual clauses;
- c) technical specifications;
- d) any other matter related to the contract.

- 1.2. 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.
- 1.3. 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.
- 1.4. Words designating persons or parties shall include firms and companies and any organisation having legal capacity.

## **ARTICLE 2 - LAW AND LANGUAGE OF THE CONTRACT**

- 2.1. The law of the contract shall be the law of the State of the contracting authority unless otherwise stated in the special conditions.
- 2.2. In all matters which are not covered by these general conditions, the law of the contract shall apply.
- 2.3. The language of the contract and of all communications between the contractor, contracting authority and supervisor or their representatives shall be as stated in the special conditions.

## **ARTICLE 3 - ORDER OF PRECEDENCE OF CONTRACT DOCUMENTS**

- 3.1. Unless otherwise stipulated in the contract, the order of precedence of the contract documents shall be as stated in the special conditions.

## **ARTICLE 4 - NOTICES AND WRITTEN COMMUNICATIONS**

- 4.1. Unless otherwise specified in the special conditions, communications between the contracting authority and/or the supervisor on the one hand, and the contractor on the other hand, shall be sent by post, cable, telex, facsimile transmission, email, or personal delivery, to the appropriate addresses designated by those parties for that purpose.
- 4.2. If the sender requires evidence of receipt, he shall state such requirement in his communication and shall demand such evidence of receipt whenever there is a deadline for the receipt of the communication. In any event, the sender shall take all the necessary measures to ensure receipt of his communication.
- 4.3. Wherever in the contract provision is made 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”, “consent”, “certify”, “approve” or “decide” shall be construed accordingly. Any such consent, approval, certificate or decision shall not be withheld or delayed unreasonably.

## **ARTICLE 5 - SUPERVISOR AND SUPERVISOR'S REPRESENTATIVE**

- 5.1. The supervisor shall carry out the duties specified in the contract. Except as expressly stated in the contract, the supervisor shall not have authority to relieve the contractor of any of his obligations under the contract.
- 5.2. The supervisor may, if needs be, 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 though it had been given by the supervisor, provided that:
  - a) any failure on the part of the supervisor's representative to disapprove any work, materials or plant shall not prejudice the authority of the supervisor to disapprove 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 be by way of administrative orders. Such orders shall be dated, numbered and entered in a register by the supervisor, and copies thereof delivered by hand, where appropriate, to the contractor's representative.

## **ARTICLE 6 - CESSION**

- 6.1. A cession 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 shall not, without the prior written consent of the contracting authority and the donor's representative, cede the contract or any part thereof, or any benefit or interest there under, except where the contractor:
  - a) makes a surety payable to the contractor's bankers covering any monies due or to become due under the contract; or
  - b) transfers to its insurers the contractor's right to obtain compensation from any other person who is liable in cases where the insurers have indemnified the contractor for loss it has suffered or for which it has assumed liability.
- 6.3. For the purpose of article 6.2. the approval of a cession by the contracting authority and the donor's representative 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 ceded his contract without authorisation, the contracting authority may, without giving formal notice thereof, apply as of right the sanctions for breach of contract provided for in articles 63 and 64.
- 6.5. Assignees must satisfy the eligibility criteria applicable for the award of the contract.

## **ARTICLE 7 - SUB-CONTRACTING**

- 7.1. A subcontract shall be valid only if it is a written agreement by which the contractor entrusts performance of a part of his contract to a third party.
- 7.2. The contractor shall not subcontract without the prior written authorisation of the contracting authority. The work to be subcontracted and the identity of the subcontractors shall be notified to the contracting authority. The contracting authority shall with due regard to the provisions of article 4.3. within thirty days of receipt of the notification, notify the contractor of his decision, stating reasons should he withhold such authorisation.
- 7.3. In the selection of subcontractors, the contractor shall give preference to natural persons, companies or firms of the partner State capable of performing the work required on similar terms.
- 7.4. Sub-contractors must satisfy the eligibility criteria applicable for the award of the contract.

- 7.5. Subject to article 52, the contracting authority shall have no contractual relations with the subcontractors.
- 7.6. The contractor shall be responsible for the acts, defaults and negligence of his sub-contractors 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 contracting authority of the sub-contracting of any part of the contract or of the sub-contractor to perform any part of the works shall not relieve the contractor of any of his obligations under the contract.
- 7.7. If a sub-contractor 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 sub-contractor, the contractor must, at any time after the expiration of the maintenance period, at the contracting authority's request and cost, immediately transfer to the contracting authority the benefit of such obligation for the no expired duration thereof.
- 7.8. If the contractor enters into a sub-contract without approval, the contracting authority may apply, as of right without giving formal notice thereof, the sanctions for breach of contract provided for in articles 63 and 64.

## **OBLIGATIONS OF THE CONTRACTING AUTHORITY**

### **ARTICLE 8 - SUPPLY OF DOCUMENTS**

- 8.1. Within 30 days of the establishment of the performance guarantee provided for in article 15, the supervisor shall provide to the contractor, free of charge, a copy of the drawings prepared for the performance of the contract as well as two copies of the specifications and other contract documents. The contractor may purchase additional copies of these drawings, specifications and other documents, insofar as they are available. Upon issue of the maintenance certificate, or upon final acceptance, the contractor shall return to the supervisor all drawings, specifications and other contract documents.
- 8.2. Unless it is necessary for the purposes of the contract, the drawings, specifications and other documents provided by the contracting authority 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 administrative orders incorporating such supplementary documents and instructions as shall be necessary for the proper and adequate performance of the works and the remedying of any defects therein.

### **ARTICLE 9 - ACCESS TO SITE**

- 9.1. The contracting authority 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 work programme referred to in these general conditions. The contractor shall afford all reasonable opportunities to other persons concerned for carrying out their work as set out in the special conditions or as required by administrative orders.
- 9.2. Any land procured for the contractor by the contracting authority shall not be used by the contractor for purposes other than the performance of the contract.
- 9.3. The contractor shall preserve any premises placed at his disposal in a good state while he is in occupation and shall, if so required by the contracting authority 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 contracting authority in obtaining copies of laws, regulations and information on local customs, orders or by-laws of the country where the works are located, which may affect the contractor in the performance of his obligations under the contract. The contracting authority may provide the assistance requested to the contractor at the contractor's cost.
- 10.2. Subject to the provisions of the laws and regulations on foreign labour of the State in which the works are to be carried out, the national implementing Agency shall make all efforts necessary to facilitate the procurement by the contractor of all required visas and permits, including work and residence permits, for the personnel whose services the contractor and the contracting authority consider necessary as well as residence permits for their families.

## **ARTICLE 11 - DELAYED PAYMENTS TO THE CONTRACTOR'S STAFF**

- 11.1. Where there is a delay in the payment of wages and salaries owed to the contractor's employees as well as the allowances and contributions laid down by the law of the State which the works are located, the contracting authority may give notice to the contractor that he intends to pay such wages, salaries, allowances and contributions directly within 15 days of the notice. Should the contractor contest that such payments are due, he shall make representations to the contracting authority with reasons, within the 15 day period. If the contracting authority, having considered such representations, is of the opinion that payment of the wages and salaries should be made, it may pay such wages, salaries, allowances and contributions out of amounts due to the contractor. Failing this, he may obtain a contribution under any of the guarantees provided for in these general conditions. Any action taken by the contracting authority under this article, shall not relieve the contractor of his obligations to his employees, except to the extent that any obligation may be satisfied by this action. The contracting authority shall not assume any responsibility towards the contractor's employees by this action.

## **OBLIGATIONS OF THE CONTRACTOR**

### **ARTICLE 12 - GENERAL OBLIGATIONS**

- 12.1. 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, performance and completion of the works, as well as for the remedying of any defects, insofar as specified in, or can be reasonably inferred from, the contract.
- 12.2. The contractor shall take full responsibility for the adequacy, stability and safety of all operations and methods of construction under the contract.
- 12.3. The contractor shall comply with administrative orders given by the supervisor. Where the contractor considers that the requirements of an administrative order go beyond the authority of the supervisor or of the scope of the contract he shall, on pain of being time-barred, give notice, with reasons, to the supervisor within 30 days after receipt thereof. Performance of the administrative order shall not be suspended because of this notice.
- 12.4. The contractor shall respect and abide by all laws and regulations in force in the partner State 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 contracting authority against any claims and proceedings arising from any infringement by the contractor, his employees and their dependants of such laws and regulations.

- 12.5. If the contractor or any of his sub-contractors, agents or employees 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 contracting authority; or for showing favour or disfavour to any person in relation to the contract or any other contract with the contracting authority, then the contracting authority may, without prejudice to any accrued rights of the contractor under the contract, terminate the contract in which case the provisions of articles 63 and 64 hereof shall apply.
- 12.6. The contractor shall treat all documents and information received in connection with the contract as private and confidential, and shall not, except insofar as may be necessary for the purposes of the performance thereof, publish or disclose any particulars of the contract without the prior consent in writing of the contracting authority or the supervisor after consultation with the contracting authority. If any disagreement arises as to the necessity for any publication or disclosure for the purpose of the contract, the decision of the contracting authority shall be final.
- 12.7. 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 contracting authority and shall, at the request of the contracting authority, designate one of such persons to act as leader with authority to bind the joint venture or consortium. The composition or the constitution of the joint venture or consortium shall not be altered without the prior consent of the contracting authority.

### **ARTICLE 13 - SUPERINTENDENCE OF THE WORKS**

- 13.1. The contractor shall superintend the works himself or shall appoint a representative to do so. Such appointment shall be submitted to the supervisor for approval. The approval may at any time be withdrawn. 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.
- 13.2. 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.
- 13.3. The contractor's representative shall have full authority to make any decision necessary for the performance of the works, to receive and carry out administrative orders and to countersign the work register referred to in article 39 or attachment, where appropriate. 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 sub-contractors and their employees.

### **ARTICLE 14 - STAFF**

- 14.1. The persons employed by the contractor must be sufficient in number and permit the optimum use of the human resources of the State in which the works are located. Such employees must have the skills and experience necessary to ensure due progress and satisfactory performance of the works. The contractor shall immediately replace all employees indicated by the supervisor as likely to jeopardise the satisfactory performance of the works.
- 14.2. The rates of remuneration and the general working conditions, as laid down by the law of the partner State, shall apply as a minimum to employees on the site.

### **ARTICLE 15 - PERFORMANCE GUARANTEE**

- 15.1. The contractor shall, within 30 days of receipt of the notification of the award of contract, furnish to the contracting authority a guarantee for the full and proper performance of the contract. The amount of the guarantee shall be as specified in the special conditions. It shall not exceed 10% of the amount of the contract price including any amounts stipulated in amendments to the contract, save where the special conditions provide otherwise. However, it may in no case exceed 20% of the contract price.
- 15.2. The performance guarantee shall be held against payment to the contracting authority for any loss resulting from the contractor's failure to fully and properly perform his obligations under the contract.

- 15.3. The performance guarantee shall be in the format given in the special conditions and may be provided in the form of a bank guarantee, a banker's draft, a certified cheque, a bond provided by an insurance and/or bonding company, an irrevocable letter of credit or a cash deposit made with the donor's representative. If the performance guarantee is to be provided in the form of a bank guarantee, a banker's draft, a certified cheque or a bond, it shall be issued by a bank or bonding and/or insurance company approved by the contracting authority and the donor's representative in accordance with the eligibility criteria applicable for the award of the contract.
- 15.4. Unless stated otherwise in the special conditions, the performance guarantee shall be denominated in the types and proportions of currencies in which the original contract is payable.
- 15.5. 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.
- 15.6. During the performance of the contract, if the natural or legal person providing the guarantee is not able to abide by his commitments, the guarantee shall cease to be valid. The contracting authority or the donor's representative 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 contracting authority may terminate the contract. In all cases and notwithstanding the contracting authority's decision, the donor's representative may call upon the performance guarantee.
- 15.7. The contracting authority or the donor's representative 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 contracting authority and may not raise any objection for any reason whatsoever. Prior to making any claim under the performance guarantee, the contracting authority or the donor's representative shall notify the contractor stating the nature of the default in respect of which the claim is to be made.
- 15.8. Unless the contract provides otherwise the performance guarantee shall be released within 30 days of the issue of the signed final statement of account referred to in article 51.

## **ARTICLE 16 - INSURANCE**

- 16.1. The contractor shall insure in the joint names of the contracting authority and himself against 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 contracting authority;
  - b) an additional sum of 15% of such replacement cost, or as may be specified in the special conditions, to cover any additional or incidental costs for the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the works and of removing debris of whatever nature;
  - c) the contractor's equipment and other materials brought onto the site by the contractor, for a sum sufficient to provide their replacement on the site.
- 16.2. The contractor may substitute the insurance provided for in article 16.1. by a global policy of insurance which covers, inter alia, the elements of article 16.1. a), b) and c). In this case, the contractor shall notify the insurer of the contracting authority's interest.
- 16.3. The contractor shall take out insurance covering his liability with regard to industrial accidents and civil liabilities to any person employed by him on the site, or to the contracting authority and any employee of that authority, arising from the performance of the works. Such liability shall be unlimited in the case of personal injuries.

- 16.4. 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. Furthermore, he shall ensure that all his sub-contractors have taken out a similar insurance.
- 16.5. 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 contracting authority. Such insurance shall take effect from the commencement of the works and remain in force until final acceptance of the works. The contractor shall, without delay, provide the contracting authority with the insurance policy and shall furnish proof of regular payment of premiums whenever he is required to do so by the contracting authority or the supervisor.
- 16.6. Notwithstanding the contractor's insurance obligations in accordance with article 16, the contractor shall be solely liable and shall indemnify the contracting authority and the supervisor against any claims by third parties for damage to property or personal injuries arising from the performance of the works by the contractor, his sub-contractors and their employees in connection with the works.

## **ARTICLE 17 - WORK PROGRAMME**

- 17.1. The contractor shall draw up, and submit for the approval of the supervisor, a work programme in accordance with the special conditions. This work programme shall contain at least the following:
- a) the order in which the contractor proposes to carry out the works;
  - b) the time limits within which submission and approval of the drawings are required;
  - c) a general description of the construction methods which the contractor proposes to adopt for carrying out the works;
  - d) such further details and information as the supervisor may reasonably require.
- 17.2. The approval of the programme by the supervisor shall not relieve the contractor from any of his obligations under the contract.
- 17.3. No significant alteration to the work programme shall be made without the approval of the supervisor. If, however, the progress of the works does not conform to the work programme, the supervisor may instruct the contractor to revise the work programme and submit the revised programme to him for approval.

## **ARTICLE 18 - DETAILED BREAKDOWN OF PRICES**

- 18.1. Where appropriate and within a period of not more than 20 days following the supervisor's reasoned request, the contractor shall provide a detailed breakdown of his rates and prices, where such breakdown is required for any purpose under the contract.
- 18.2. After the notification of award, the contractor shall, within the time limit stated in the special conditions, provide to the supervisor, for his information only, a detailed cash flow estimate, in quarterly periods, of all payments which may be due to the contractor under the contract. The contractor shall subsequently supply revised cash flow estimates at quarterly intervals, if so required by the supervisor. The communication shall not impose any liability whatsoever on the contracting authority or the supervisor.

## **ARTICLE 19 - CONTRACTOR'S DRAWINGS**

- 19.1. The contractor shall submit to the supervisor for approval:
- a) such drawings, documents, samples and/or models as may be specified in the contract within the time limits laid down therein or in the work programme;
  - b) such drawings as the supervisor may reasonably require for the performance of the contract.
- 19.2. If the supervisor fails to notify his decision of approval referred to in article 19.1. within the time limits referred to in the contract or the approved work programme, such drawings, documents, samples or models shall be deemed to be approved at the end of the specified time limits. If no time limit is specified, they shall be deemed to be approved 30 days after receipt.

- 19.3. Approved drawings, documents, samples and models shall be signed or otherwise identified by the supervisor and shall not be departed from, except as otherwise instructed by the supervisor. Any contractor's drawings, documents, samples or models which the supervisor fails to approve, shall be forthwith modified to meet the supervisor's requirements and resubmitted by the contractor for approval.
- 19.4. The contractor shall supply additional copies of approved drawings in the form and number stated in the contract or in subsequent administrative orders.
- 19.5. 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.
- 19.6. The supervisor shall have the right at all reasonable times to inspect all contract drawings, documents, samples or models at the contractor's premises.
- 19.7. Before provisional acceptance of the works, the contractor shall supply operation and maintenance manuals together with drawings, which shall be sufficiently detailed to enable the contracting authority 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 and in such forms and numbers as stated in the contract. The works shall not be considered to as completed for the purpose of provisional acceptance until such manuals and drawings have been supplied to the contracting authority.

## **ARTICLE 20 - SUFFICIENCY OF TENDER PRICES**

- 20.1. The contractor shall be deemed to have inspected and examined the site and its surroundings and to have satisfied himself, before submitting his tender, as to the nature of the ground and sub-soil, and 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 risks, contingencies and all other circumstances influencing or affecting his tender.
- 20.2. 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, except in so far as it is otherwise provided in the contract, cover all his obligations under the contract.

Since the contractor is deemed to have determined his prices on the basis of his own calculations, operations and estimates, he shall carry out without additional charge any work which is the subject of any item whatsoever in his tender for which he neither indicates a unit price nor a fixed sum.

## **ARTICLE 21 - EXCEPTIONAL RISKS**

- 21.1. If during the performance 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 performance of the contract will be necessary as a result of this, he shall give notice to the supervisor in accordance with articles 35 and/or 55. The contractor shall specify in this notice the artificial obstructions and/or physical conditions, giving details of the anticipated effects thereof, the measures he is taking or intends to take and the extent of the anticipated delay in or interference with the performance of the works.
- 21.2. Following receipt of the notice, the supervisor may, inter alia:
  - a) require the contractor to provide an estimate of the cost of the measures he is taking or intends to take;
  - b) approve measures referred to in article 21.2. a) with or without modification;
  - c) give written instructions as to how the artificial obstructions or physical conditions should be dealt with;
  - d) order a modification, a suspension, or termination of the contract.

- 21.3. To the extent that the supervisor shall decide that the whole or part of the artificial obstructions or physical conditions in question 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 performance to which the contractor is entitled under article 35; and/or
  - b) in case of artificial obstructions or physical conditions other than weather conditions, determine additional payments due to the contractor in accordance with article 55.
- 21.4. Weather conditions shall not entitle the contractor to claims under article 55.
- 21.5. If the supervisor decides that the artificial obstructions or physical conditions could, in whole or in part, have been reasonably foreseen by an experienced contractor, he shall so inform the contractor as soon as practicable.

## **ARTICLE 22 - SECURITY OF SITES**

- 22.1. The contractor shall have the right to forbid access to the site to any person not involved in the performance of the contract, with the exception of persons authorised by the supervisor.
- 22.2. The contractor shall ensure the security of sites during the whole period of performance and shall be responsible for taking the necessary steps, in the interests of his employees, agents of the contracting authority and third parties, to prevent any loss or accident which may result from carrying out the works.
- 22.3. The contractor shall take all necessary steps, under his responsibility and at his expense, to ensure that existing structures and installations are protected, preserved and maintained. He shall be responsible for providing and maintaining at his expense all lighting, protection, fencing and security equipment which proves necessary for the proper performance of the works, or which may reasonably be required by the supervisor.
- 22.4. If, during the performance of the contract, urgent measures are necessary to obviate any risk of accident or damage or to ensure security following any 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 carry out the work at the expense of the contractor to the extent that the contractor is liable.

## **ARTICLE 23 - SAFEGUARDING ADJACENT PROPERTIES**

- 23.1. Under his 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.
- 23.2. The contractor shall indemnify the contracting authority 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 created through the design or method of construction imposed by the contracting authority or the supervisor upon the contractor.

## **ARTICLE 24 - INTERFERENCE WITH TRAFFIC**

- 24.1. The contractor shall ensure that the works and structures do not cause damage to, or obstruct 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.
- 24.2. Any special measures which the contractor considers necessary, or which are specified in the special conditions or which are required by the contracting authority 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 25 - CABLES AND CONDUITS**

- 25.1. Where, in the course of carrying out the works, the contractor encounters reference marks indicating the course of underground cables, conduits and installations, he shall keep such reference marks in position or replace them, should performance of the works have necessitated their temporary removal. Such related operations require the authorisation of the supervisor.
- 25.2. The contractor shall be responsible for the preservation, removal and replacement, as the case may be, of the cables, conduits and installations specified by the contracting authority in the contract and for the cost thereof.
- 25.3. Where the presence of cables, conduits and installations has not been specified in the contract but is revealed by reference marks or signs, the contractor shall be under a general duty of care and similar obligations to those set out above regarding preservation, removal and replacement. In this case, the contracting authority shall compensate him for expenditure, to the extent that such work is necessary for the performance of the contract.
- 25.4. 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 contracting authority decides to accept that responsibility. The same shall apply where this obligation and the expenditure resulting therefrom devolve upon another specialised administration or agent.
- 25.5. When any work on the site is likely to cause disturbances or damage to 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 26 - SETTING-OUT**

- 26.1. The contractor shall be responsible for:
  - a) the accurate setting-out of the works in relation to original marks, lines and levels of reference given by the supervisor;
  - b) the correctness, of the position, levels, dimensions and alignment of all parts of the works; and
  - c) the provision of all necessary instruments, appliances and labour in connection with the tasks above.
- 26.1. If, at any time during the performance of the works, any error appears in the position, levels, dimensions or alignment of any part of the works, the contractor shall, if the supervisor so requires, at the contractor's cost, rectify such error to the supervisor's satisfaction, unless such error is based on incorrect data supplied by the supervisor, in which case the contracting authority shall be responsible for the cost of rectification.
- 26.2. The checking of any setting-out or of any line or level by the supervisor shall not in any way relieve the contractor of his responsibility for the accuracy thereof and the contractor shall carefully protect and preserve all reference marks, sight-rails, pegs and other items used in setting-out the works.

## **ARTICLE 27 - DEMOLISHED MATERIALS**

- 27.1. Where the contract includes demolition work, materials and articles obtained therefrom shall, unless the special conditions and/or the law of the partner State otherwise provide and subject to the provisions of article 28, be the property of the contractor.
- 27.2. Should the special conditions reserve the contracting authority the right of ownership of materials or all or part of the articles obtained from the demolition work, the contractor shall take all the necessary precautions to ensure that these are preserved. He shall be liable for any destruction of, or damage to, such materials or articles caused by him or his agents.
- 27.3. Irrespective of the use to which the contracting authority intends to put the materials or articles, in respect of which he reserves the right of 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.

- 27.4. 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 28 - DISCOVERIES**

- 28.1. Discoveries of any interest whatsoever made during excavation or demolition work shall immediately be brought to the supervisor's attention. The supervisor shall decide how such discoveries are to be dealt with, taking due account of the law of the partner State.
- 28.2. The contracting authority reserves the right of ownership of materials found during the excavation and demolition work carried out on land belonging to him, subject to compensating the contractor for any special efforts.
- 28.3. Artefacts, antiquities and natural, numismatic, or other objects which are of scientific interest, as well as rare objects or objects made of precious metals found during excavation or demolition work shall be the property of the contracting authority.
- 28.3. In the event of disagreements, the contracting authority shall have sole authority to decide in the conditions set out in articles 28.2. and 28.3.

## **ARTICLE 29 - TEMPORARY STRUCTURES**

- 29.1. The contractor shall carry out at his expense all temporary structures which enable the works to be carried out. He shall submit to the supervisor the drawings for temporary structures which he intends to use, such as cofferdams, scaffolding, trusses and shuttering. He shall take into account any observations made to him by the supervisor while assuming responsibility for these drawings.
- 29.2. Where the design of particular temporary structures is specified in the special conditions to be the contracting authority's responsibility, the supervisor shall provide the contractor with all drawings necessary in reasonable time to enable the contractor to construct the temporary structures in accordance with his programme. In such cases, the contracting authority shall be solely responsible for the safety and adequacy of the design. However, the contractor shall be responsible for the proper construction.

## **ARTICLE 30 - SOIL STUDIES**

- 30.1. Subject to the special conditions and to the technical specifications, the contractor shall make available to the supervisor, the personnel and equipment necessary for carrying out any soil survey which the supervisor considers necessary. 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 31 - OVERLAPPING CONTRACTS**

- 31.1. The contractor shall, in accordance with the supervisor's requirements, afford all reasonable opportunities for carrying out their work to any other contractors employed by the contracting authority and their workmen, to the contracting authority's workmen and to any other public authorities who may be employed on or near the site in the performance of any work not included in the contract, or of any contract which the contracting authority may enter into in connection with, or ancillary to, the works.
- 31.2. If, however, the contractor, on the written request of the supervisor, makes available to another contractor, or public authority, or to the contracting authority, 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 structures, scaffolding or other equipment on the site, or provides any other service of whatsoever nature, which was not provided for in the contract, the contracting authority shall pay to the contractor in respect of such use or service, such sums and/or grant such extension of time, as shall, in the opinion of the supervisor, be reasonable.
- 31.3. The contractor shall not by reason of article 31 be relieved of any of his obligations under the contract nor shall he be entitled to any claims other than those provided for in article 31.2.

## **ARTICLE 32 - PATENTS AND LICENCES**

- 32.1. Except where otherwise stated in the special conditions, the contractor shall indemnify the contracting authority 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, except where such infringement results from compliance with the design or specification provided by the contracting authority and/or the supervisor.

## **PERFORMANCE OF THE CONTRACT**

### **ARTICLE 33 - COMMENCEMENT ORDERS**

- 33.1. The contracting authority shall fix the date on which performance of the contract is to commence and advise the contractor either in the notification of award of contract or by an administrative order issued by the supervisor.
- 33.2. The date for commencing performance shall be no later than one 180 days following notification of award of contract unless agreed otherwise by the parties.

### **ARTICLE 34 - PERIOD OF PERFORMANCE**

- 34.1. The period of performance shall commence on the date fixed in accordance with article 33.1. It is stated in the contract, without prejudice to extensions which may be granted under article 35.

### **ARTICLE 35 - EXTENSION OF PERIOD OF PERFORMANCE**

- 35.1. The contractor may request an extension to the period of performance if he is or will be delayed in completing the contract by any of the following causes:
- a) exceptional weather conditions in the partner state;
  - 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 contracting authority to fulfil his 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.
- 35.2. The contractor shall, within thirty days of becoming aware that a delay may occur, notify the supervisor of his intention to make a request for extension of the period of performance to which he may consider himself entitled. He shall as soon thereafter as is reasonable in the circumstances deliver to the supervisor full and detailed particulars of the request, in order that such request may be investigated at the time.
- 35.3. The supervisor shall, by written notice to the contractor after due consultation with the contracting authority and, where appropriate, the contractor, grant such extension of the period of performance as may be justified, either prospectively or retrospectively, or inform the contractor that he is not entitled to an extension.

### **ARTICLE 36 - DELAYS IN PERFORMANCE**

- 36.1. If the contractor fails to complete the works within the time period(s) specified in the contract, the contracting authority shall, without formal notice and without prejudice to any remedies under the contract be entitled to liquidated damages for every day or part thereof which shall elapse between the end of the period specified for performance or extended period of performance under article 35 and the actual date of completion, at the rate and up to the maximum amount specified in the special conditions.

If the works have been the subject of partial acceptance in accordance with article 59, the liquidated damages specified in the special conditions may be reduced in the proportion which the value of the part of the works which have been partially accepted bears to the value of the whole of the works.

- 36.2. If the contracting authority has become entitled to the maximum claim under article 36.1. he may, after giving notice to the contractor:
- a) seize the performance guarantee; and/or
  - b) terminate the contract;
  - c) enter into a contract with a third party at the contractor's cost for the provision of the remainder of the works.

## **ARTICLE 37 - MODIFICATIONS**

- 37.1. 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 include 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 performance of the works. No order for a modification shall have the effect of invalidating the contract, but the financial effect, if any, of all such modifications shall be valued in accordance with articles 37.5. and 37.7.
- 37.2. No modification shall be made except by administrative order, provided that:
- a) if for any reason, the supervisor finds it necessary to give an order orally, he shall as soon as possible thereafter confirm the order by an administrative order;
  - b) if the contractor confirms in writing an oral order given for the purpose of article 37.2. point a) and the confirmation is not contradicted in writing forthwith by the supervisor, an administrative order, shall, unless the special conditions stipulate otherwise, be deemed to have been issued for the modification;
  - c) an administrative order for a modification is not required for an increase or decrease in the quantity of any part of the work where such an increase or decrease is the result of an under or over evaluation of the estimated quantities stated in the bill of quantities or price schedule.
- 37.3. Save as provided by article 37.2. prior to issuing any administrative order for modification, the supervisor shall notify the contractor of the nature and form of such 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 work programme for the implementation of the modifications, any necessary modifications to the work programme or to any of the contractor's obligations under the contract; and
  - b) any adjustment to the contract price in accordance with the rules as set out in article 37.
- 37.4. Following the receipt of the contractor's submission referred to in article 37.3., the supervisor shall, after due consultation with the contracting authority and, where appropriate, the contractor, decide as soon as possible whether or not the modification shall be carried out. If the supervisor decides to carry out the modification, he shall issue an administrative order stating that the modification must be carried out at the prices and under the conditions given in the contractor's submission referred to in article 37.3. or as modified by the supervisor in accordance with article 37.5.
- 37.5. The prices for all modifications ordered by the supervisor in accordance with articles 37.2. and 37.4. 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 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 shall be 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 in the circumstances he shall think reasonable and proper;
  - d) where a modification is necessitated by default or breach of contract by the contractor, any additional cost attributable to such modification shall be borne by the contractor.
- 37.6. On receipt of the administrative order requesting the modification, the contractor shall proceed to carry out the modification and be bound by these general conditions in so doing as if such modification were 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 time expended thereon. Such records shall be open to inspection by the supervisor at all reasonable times.
- 37.7. Where on provisional acceptance, an increase or reduction in the total value of the works resulting from an administrative order, or from some other circumstance which is not caused by the contractor's default, exceeds 15% of the contract price, the supervisor shall, after consultation with the contracting authority and the contractor determine any additions to or reduction from the contract price as a consequence of the application of article 37.5. The sum so determined shall be based on the amount by which the increase or decrease in value of the works exceeds 15%. The supervisor shall notify the contractor and the contracting authority of this sum and the contract price shall be adjusted accordingly.

## **ARTICLE 38 - SUSPENSION OF WORK**

- 38.1. 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.
- 38.2. 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. Additional expenses incurred in connection with such protective measures shall be added to the contract price, unless such suspension is:
- a) otherwise provided for in the contract; or
  - b) necessary by reason of some default of the contractor; or
  - c) necessary by reason of normal climatic conditions on site; or
  - d) necessary for the safety or the proper performance of the works or any part thereof insofar as such necessity does not arise from any act or default by the supervisor or the contracting authority or from any of the exceptional risks referred to in article 21.
- 38.4. The contractor shall not be entitled to such additions to the contract price unless he notifies the supervisor, within 30 days after receipt of the order to suspend the works, of his intention to make a claim for them.
- 38.5. The supervisor, after consultation with the contracting authority and the contractor, shall determine such extra payment and/or extension of the period of performance to be made to the contractor in respect of such claim as shall, in the opinion of the supervisor, be fair and reasonable.
- 38.6. If the period of suspension exceeds 180 days and the suspension is not due to the contractor's default, the contractor may, by notice to the supervisor, request permission to proceed within 30 days or terminate the contract.

# **MATERIALS AND WORKMANSHIP**

## **ARTICLE 39 - WORK REGISTER**

- 39.1. 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, materials in use, materials not in working order, tests carried out *in situ*, samples dispatched, unforeseen events, 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.
- 39.2. 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 as set out in the special conditions.
- 39.3. 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.
- 39.4. 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 15 days following 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.
- 39.5. The contractor shall, on request, provide the supervisor with the information needed to keep the work register in good order.

## **ARTICLE 40 - QUALITY OF THE WORKS AND MATERIALS**

- 40.1. The works, components and materials shall comply with the specifications, drawings, surveys, models, samples, patterns and other requirements in the contract which shall be held at the disposal of the contracting authority or the supervisor for the purposes of identification throughout the period of performance.
- 40.2. Any preliminary technical acceptance stipulated in the special conditions shall be the subject of a request sent by the contractor to the supervisor. The request shall indicate the reference to the contract, the lot number and the place where such acceptance is to be carried out. The components and materials specified in the request can only be incorporated in the works after the supervisor has certified them as meeting the requirements for such acceptance.
- 40.3. 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 and must be replaced immediately by the contractor if a further examination reveals defects or faults. 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 41 - INSPECTION AND TESTING**

- 41.1. 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 his obligations.

- 41.2. In order to establish whether the components, materials and workmanship are of the requisite quality and quantity, the supervisor, or his agent, shall be entitled to inspect, examine, measure and test them, and check the progress of preparation, fabrication or manufacture of anything being prepared, fabricated or manufactured for delivery under the contract. This shall take place at the place of construction, manufacture, or preparation or on the site or at such other places as may be specified in the contract.
- 41.3. For the purposes of such tests and inspections, the contractor shall:
- a) provide to the supervisor, temporarily and free of charge, such assistance, test samples, parts, machines, equipment, tools or materials and labour as are normally required for inspection and testing;
  - b) agree, with the supervisor, on the time and place for tests;
  - c) provide access for the supervisor at all reasonable times to the place where the tests are to be carried out.
- 41.4. 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 without delay forward 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.
- 41.5. When components and materials have passed the tests referred to in article 41, the supervisor shall notify the contractor or endorse the certificate from the contractor to that effect.
- 41.6. If the supervisor and the contractor disagree on the test results, each shall give a statement of his views to the other within 15 days after such disagreement arises. 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 to be selected by common consent. All test reports shall be submitted to the supervisor who shall communicate the results of these tests to the contractor without delay. The results of the re-testing shall be conclusive. The cost of the re-testing shall be borne by the party whose views are proved wrong by the re-testing.
- 41.7. In the performance of his duties, the supervisor and all persons authorised by him shall disclose only to those persons who are entitled to know of it information concerning the company's manufacturing methods and operation which he has obtained by his inspection and testing.

## **ARTICLE 42 - REJECTION**

- 42.1. 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 from the site by the contractor within a period which the supervisor shall specify, failing which they shall be removed by the supervisor at the expense and risk of the contractor. Any work incorporating rejected components or materials shall be rejected.
- 42.2. The supervisor shall, during the construction of the works and before their acceptance, have the power to order or decide on:
- a) the removal from the site, within such time limits as may be specified in the order, of any components or materials which, in the opinion of the supervisor, are not in accordance with the contract;
  - b) their replacement by proper and suitable components or materials; or
  - c) the demolition and proper reconstruction, or satisfactory repair, by the contractor, notwithstanding any previous tests or interim payments, of any work concerning components, materials, workmanship or design for which the contractor is responsible and which, in the opinion of the supervisor, is not in accordance with the contract.
- 42.3. The supervisor shall, as soon as reasonably practicable, notify the contractor in writing of his decision specifying particulars of the alleged defects.

- 42.4. The contractor shall with all speed and at his expense make good the defects so specified. If the contractor does not comply with such an order, the contracting authority shall be entitled to employ other persons to carry out these works and all expenses consequent thereon or incidental thereto may be deducted by the contracting authority from any monies due or which may become due to the contractor.
- 42.5. The provisions of article 42 shall not affect the contracting authority's rights under articles 36 and 63.

#### **ARTICLE 43 - OWNERSHIP OF PLANT AND MATERIALS**

- 43.1. All equipment, temporary structures, plant and materials supplied by the contractor shall, when brought on the site, be deemed to be exclusively intended for the performance of the works and the contractor shall 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, however, not be required for vehicles engaged in transporting any staff, workers, equipment, temporary structures, plant or materials to or from the site.
- 43.2. The special conditions may provide that all equipment, temporary structures, 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 performance of the contract, be:
- a) vested in the contracting authority; or
  - b) made subject to a lien in favour of the contracting authority; or
  - c) made subject to any other arrangement regarding priority interest or security.
- 43.3. In the event of termination of the contract in accordance with article 63 due to the contractor's breach of contract the contracting authority shall be entitled to use the equipment, temporary structures, plant and materials on site in order to complete the works.
- 43.4. Any agreement for the hire by the contractor of equipment, temporary structures, plant and materials brought onto the site, shall contain a provision that on the contracting authority's written request made within seven days after the date on which the termination under article 64 becomes effective, and on the contracting authority undertaking to pay all hire charges in respect thereof from such date, the owner thereof will hire out such equipment, temporary structures, plant or materials to the contracting authority on the same terms as they were hired by the contractor, save that the contracting authority shall be entitled to permit the use thereof by any other contractor employed by him for completing the works under the provisions of article 64.3.
- 43.5. Upon termination of the contract before completion of the works, the contractor shall deliver to the contracting authority any plant, temporary structures, equipment or materials the ownership of which has been vested in the contracting authority or been made subject to a lien by virtue of article 43.2. If he fails to do so, the contracting authority may take such appropriate action as it deems fit in order to obtain possession of such plant, temporary structures, equipment and materials and recover the cost of so doing from the contractor.

### **PAYMENTS**

#### **ARTICLE 44 - GENERAL PROVISIONS**

- 44.1. Payments shall be made in the national currency except as otherwise stipulated in the contract.
- 44.2. The administrative or technical conditions to which the payment of advances, interim and/or final payments made in accordance with articles 45 to 56 are subject, shall be as stated in the special conditions.

#### **ARTICLE 45 - PROVISIONAL PRICE CONTRACTS**

- 45.1. In exceptional cases, where a provisional price contract has been awarded, the amounts payable under the contract shall be calculated as follows:
- a) as for cost-plus contracts in article 49.1. point c); or

- b) initially on the basis of provisional prices and, after the conditions for performing the contract are known, as for lump-sum contracts or unit price contracts in article 49.1. points a) and b) respectively, or as in a composite contract.
- 45.2. The contractor shall supply such information as the contracting authority or the supervisor may reasonably require in respect of any matter relating to the contract for valuation purposes. Where agreement cannot be reached on the valuation of the works, the supervisor shall determine the amounts payable.

## **ARTICLE 46 - ADVANCES**

- 46.1. If the special conditions so provide, advances shall be granted to the contractor, at his request, for operations connected with the performance of the works, in the cases listed hereinafter:
- a) as a lump-sum advance enabling him to meet expenditure resulting from the commencement of the contract;
  - b) if he affords proof of the conclusion of a contract for the purchase or order of materials, plant, equipment, machines and tools, necessary for the performance of the contract, and of any other substantial prior expenses such as the acquisition of patents or study costs.
- 46.2. The special conditions shall state the amount of the advances which shall not exceed 20% of the original contract price for the lump-sum advance in article 46.1. point a) and 20% of the original contract price for all other advances in article 46.1. point b).
- 46.3. No advance shall be granted until:
- a) the conclusion of the contract;
  - b) provision to the donor's representative by the contractor of the performance guarantee, in accordance with article 15; and
  - c) provision to the donor's representative by the contractor of a separate directly liable guarantee for the full amount of the advance by the institutions referred to in article 15.3., which shall remain effective until the advance has been completely repaid by the contractor out of interim payments under the contract.
- 46.4. The contractor shall use the advance exclusively for operations connected with the performance of the works. Should the contractor misuse any portion of the advance, it shall become repayable immediately and no further advance payments will be made to him.
- 46.5. Should the advance guarantee cease to be valid, and the contractor fail to re-validate it, the donor's representative may either make a deduction equal to the amount of the advance from future payments due to the contractor under the contract, or may apply the provisions of article 15.6.
- 46.6. If the contract is terminated for any reason whatsoever, the guarantees securing the advances may be invoked forthwith in order to repay the balance of the advances still owed by the contractor, and the guarantor shall not delay payment or raise objection for any reason whatever.
- 46.7. The advance guarantee provided for in article 46 shall be released as and when advances are repaid.
- 46.8. Further conditions and procedures for granting and repaying advances shall be as laid down in the special conditions.

## **ARTICLE 47 - RETENTION MONIES**

- 47.1. The sum which shall be retained from interim payments by way of guarantee to meet the contractor's obligations during the maintenance period, and the detailed rules governing that guarantee, shall be stipulated in the special conditions. This sum shall in no case exceed 10% of the contract price.
- 47.2. Subject to the approval of the contracting authority and/or the donor's representative, the contractor may, if he so wishes, substitute these retention monies by a retention guarantee issued in accordance with article 15.3. no later than the date fixed for the commencement of the works.

- 47.3. The retention monies or the retention guarantee shall be released within 90 days of the date of final acceptance of the works.

## **ARTICLE 48 - REVISION OF PRICES**

- 48.1. Unless otherwise stipulated in the special conditions, and except as provided in article 48.4. the contract shall be at fixed prices which shall not be revised.
- 48.2. Where prices may be revised under the contract, such revision shall take into account variations in the prices of significant local or external elements which serve as a basis for the calculation of the tender price, such as manpower, services, materials and supplies, as well as charges laid down by law or regulation. The detailed rules for the revision shall be as laid down in the special conditions.
- 48.3. Prices contained in the contractor's tender shall be deemed:
- a) to have been arrived at on the basis of the conditions in force 30 days prior to the deadline fixed for submission of tenders; or in the case of direct agreement contracts, on the date of the contract;
  - b) to have taken account of the legislation and the relevant tax arrangements applicable at the reference date fixed in article 48.3. point a).
- 48.4. In the event of changes to, or introduction of, any national or regional statute, ordinance, decree or other law, or any regulation or by-law of any local or other public authority, after the date stated in article 48.3. which causes a change in the contractual relationship between the parties to the contract, the contracting authority and the contractor shall consult on how best to proceed further under the contract, and may as a result of such consultation decide:
- a) to modify the contract; or
  - b) on payment of compensation for the resulting imbalance by one party to the other; or
  - c) to terminate the contract by mutual agreement.
- 31.5. In the event of a delay in the performance of the works for which the contractor is responsible, or at the end of the period of performance revised as necessary in accordance with the contract, there shall be no further revision of prices within the 30 days before provisional acceptance, except for the application of new price index, if this is to the benefit of the contracting authority.

## **ARTICLE 49 - ASSESSMENT OF WORK**

- 49.1. The following methods 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 his all-in price, and shall be paid for irrespective of the quantities of work actually carried out;
  - a) 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 quantity of the works performed by the contractor, and these shall be paid for in accordance with article 50. Unless otherwise provided in the special conditions no additions shall be made to the items in the bill of quantities except as a result of a modification in accordance with article 37 or other provision of the contract entitling the contractor to additional payment,

- iv) the supervisor shall, when he requires any parts of the works to be measured, give reasonable notice to the contractor and invite him to attend, or to 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. Should the contractor not attend, or omit to send such agent, the measurement made by the supervisor or approved by him shall be binding on the contractor,
  - v) the works shall be measured net, notwithstanding any general or local custom, except where otherwise provided for in the contract;
- c) for cost-plus contracts, the amount due under the contract shall be determined on the basis of actual costs with an agreed addition for overheads and profit. The special conditions shall stipulate the information that the contractor is required to submit to the supervisor for the purpose of article 49.1. point c) and the manner in which it should be submitted.
- 49.2. Where an item in the contract is indicated as “provisional” the provisional sum set aside for it shall not be taken into account in calculating the percentages referred to in article 37.

## **ARTICLE 50 - INTERIM PAYMENTS**

- 50.1. Unless otherwise specified 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 50.7. in a form approved by the supervisor. The application shall include the following items, as applicable:
- a) the estimated contract value of the permanent structures constructed up to the end of the period in question ;
  - b) an amount reflecting any revision of prices pursuant to article 48;
  - c) an amount to be withheld as retention monies under article 47;
  - d) 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 structures for the amounts and under the conditions set out in article 50.2.;
  - e) an amount to be deducted on account of the advance repayment under the provisions of article 46; and
  - f) any other sum to which the contractor may be entitled under the contract.
- 50.2. 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 structures provided that:
- a) the plant and materials conform with the specifications for the permanent structures 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 together with 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;
  - e) where the special conditions so provide, ownership of the plant and materials referred to in article 43 shall be deemed to be vested in the contracting authority.
- 50.3. Approval by the supervisor of any interim payment certified by him in respect of plant and materials pursuant to article 50 shall be without prejudice to the exercise of any power of the supervisor under the contract to reject any plant or materials which are not in accordance with the provisions of the contract.
- 50.4. The contractor shall be responsible for any loss or damage to, and for the cost of storing and handling of, such plant and materials on site and shall effect such additional insurance as may be necessary to cover the risk of such loss or damage from any cause.

- 50.5. Within 30 days of receipt of the said application for interim payment, it shall be approved or amended in such manner that, in the supervisor's opinion, the sum due to the contractor is in accordance with the contract. In cases where there is a difference of opinion as to the value of an item, the supervisor's view shall prevail. On determination of the amount due to the contractor, the supervisor shall issue to the contracting authority 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.
- 50.6. 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 or withhold the issue of any interim payment certificate if the works or any part thereof are not being carried out to his satisfaction.
- 50.7. Unless the special conditions provide otherwise, interim payments shall be made monthly.
- 50.8. Payments eligible under the contract will be processed by LuxDev only after receipt and acceptance of a written request by the contracting authority stipulating the details of the payments to be made, the certification of the quantities and amounts by the supervisor, and clearance by the project management.

## **ARTICLE 51 - FINAL STATEMENT OF ACCOUNT**

- 51.1. Not later than 90 days after the issue of the final acceptance certificate referred to in article 62, 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, in accordance with article 51.6. state that the draft final statement of account and procedures related thereto, be dealt with before the issue of the provisional acceptance certificate.
- 51.2. Within 90 days after receipt of 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 final amount which in his opinion is due under the contract; and
  - b) the balance, if any, due from the contracting authority to the contractor, or from the contractor to the contracting authority, as the case may be, after establishing the amounts previously paid by the contracting authority and all sums to which the contracting authority is entitled under the contract.
- 51.3. The supervisor shall issue to the contracting authority or to its duly authorised representative, and to the contractor, the final statement of account showing the final amount to which the contractor is entitled under the contract. The contracting authority 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 disputed amounts which are the subject of negotiations, conciliation, arbitration or litigation.
- 51.4. The final statement of account signed by the contractor shall constitute a written discharge of the contracting authority confirming that the total in the final statement of account represents the full and final settlement of all monies due to the contractor under the contract, other than those amounts which are the subject of amicable settlement, arbitration or litigation. However, such discharge shall become effective only after any payment due in accordance with the final statement of account has been made and the performance guarantee referred to in article 15 has been returned to the contractor.
- 51.5. The contracting authority shall not be liable to the contractor for any matter or thing whatsoever arising out of, or in accordance with, the contract or performance of the works, unless the contractor has included a claim in respect thereof in his draft final statement of account
- 51.6. The provisions of article 51 may be varied by the special conditions according to the practices in the partner State.

## **ARTICLE 52 - DIRECT PAYMENTS TO SUB-CONTRACTORS**

- 52.1. When the supervisor receives a claim from a sub-contractor duly approved under article 7 to the effect that the contractor has not met his financial obligations so far as the sub-contractor is concerned, the supervisor shall give notice to the contractor either to pay the sub-contractor or to inform him of the reasons why payment should not be made. Should such payment not be made, or reasons not be given within the period given in the notice, the supervisor may, after satisfying himself that the work has been carried out, establish the corresponding payment certificate, and the contracting authority settles the debt claimed by the sub-contractor out of the sums remaining due to the contractor. The contractor shall remain entirely responsible for the work in respect of which direct payment has been made.
- 52.2. If the contractor gives adequate reasons for refusing to meet all or part of the debt claimed by the sub-contractor, the contracting authority shall only pay to the sub-contractor such sums as are not in dispute. Sums claimed by the sub-contractor in respect of which the contractor has given adequate reasons for his refusal to pay shall be paid by the contracting authority only after the parties have come to an amicable settlement, or after the decision of an arbitrating authority or after a judgement of a court has been duly notified to the supervisor.
- 52.3. Direct payments to sub-contractors shall not exceed the value at contract prices of the services performed by the sub-contractors for which they request payment. The value at contract prices shall be calculated or assessed on the basis of the bill of quantities, the price schedule or the breakdown of the lump sum price.
- 52.4. Direct payments to sub-contractors shall be made entirely in the national currency of the country in which the contract is performed, or in accordance with the contract, partly in such national currency and partly in foreign currency.
- 52.5. Where direct payments to sub-contractors are made in foreign currency, they shall be calculated in accordance with article 56. They shall not result in any increase in the total amount payable in foreign currency, as stipulated in the contract.
- 52.6. The provisions of article 52 shall apply subject to the requirements of the law applicable by virtue of article 54 concerning the right to payment of creditors who are beneficiaries of an assignment of credit or of a collateral security.

## **ARTICLE 53 - DELAYED PAYMENTS**

- 53.1. Payment to the contractor of the amounts due under each of the interim payment certificates and the final statement of account issued by the supervisor shall be made by the contracting authority within 90 days of such certificate or statement being delivered to the contracting authority. If the period laid down for payment has been exceeded, the contractor shall qualify for interest calculated pro rata on the basis of the number of days delay at the rate specified in the special conditions, subject to a maximum period, also specified therein. The contractor shall be entitled to such payment without prejudice to any other right or remedy under the contract. In the case of the final statement of account, the interest for the delayed payment shall be calculated on a daily basis at the rate specified in the special conditions.
- 35.2. Any default in payment of more than 120 days from the expiry of the period laid down in article 53.1. shall entitle the contractor either not to perform the contract or to terminate it.

## **ARTICLE 54 - PAYMENTS TO THIRD PARTIES**

- 54.1. Orders for payments to third parties may be carried out only after a cession made in accordance with article 6. The cession shall be notified to the contracting authority.
- 54.2. Notification of beneficiaries of the cession shall be the sole responsibility of the contractor.
- 54.3. In the event of a legally binding attachment of the contractor's property affecting payments due to him under the contract, without prejudice to the time limit laid down in article 53, the contracting authority shall have 30 days, starting from the day when it receives notification of the final discharge of the order for attachment, to resume payments to the contractor.

## **ARTICLE 55 - CLAIMS FOR ADDITIONAL PAYMENT**

- 55.1. If under the contract there are circumstances which the contractor considers entitle him to additional payment, the contractor shall:
- a) if he intends to make any claim for additional payment, give the supervisor notice of his intention or make such claim, stating the reason for his claim, within 15 days after the said circumstances become known to him; and
  - b) as soon as is reasonably practicable after the date of such notice but not later than 60 days after such notice, unless otherwise agreed by 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 particulars as the supervisor may reasonably require to assess the validity of the claim.
- 55.2. When the supervisor has received all the particulars that he requires concerning the contractor's claim, he shall, without prejudice to article 21.4., and after due consultation with the contracting authority and, where appropriate, the contractor, determine whether the contractor is entitled to additional payment and notify the parties accordingly.
- 55.3. The supervisor may reject any claim for additional payment which does not comply with the requirements of article 55.

## **ARTICLE 56 - PAYMENTS IN FOREIGN CURRENCY**

- 56.1. Where under the contract the contractor is entitled to payments in foreign currency, the rates of exchange for calculating the payments shall be those prevailing, as determined by the central Bank of the State of the contracting authority, 30 days prior to the deadline for the submission of tenders for the contract. Such rates of exchange shall not be varied.

# **ACCEPTANCE AND MAINTENANCE**

## **ARTICLE 57 - GENERAL CLAUSES**

- 57.1. 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 on condition that the contractor has been duly summoned at least 30 days prior to the date of verification.
- 57.2. Should exceptional circumstances make it impossible to ascertain the state of the works or otherwise proceed with the acceptance of the works during the period fixed for provisional or final acceptance, a statement certifying such impossibility shall be drawn up by the supervisor after consultation, where possible, with 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 58 - TESTS ON COMPLETION**

- 58.1. The works shall not be accepted until the prescribed verifications and tests have been carried out at the contractor's expense. The contractor shall notify the supervisor of the date on which such verification and tests may commence.

- 58.2. Works which do not satisfy the terms and conditions of the contract, or in the absence of such terms and conditions, which are not carried out in accordance with trade practices in the State where the structures are located, shall, if required, be demolished and rebuilt by the contractor or repaired to the satisfaction of the supervisor, otherwise this shall be done as of right by order of the supervisor after due notice and at the contractor's expense. The supervisor may also require the demolition and reconstruction, or repair to his satisfaction, by the contractor, of works in which unacceptable materials have been used, or of works constructed during the suspension periods provided for in article 38

## **ARTICLE 59 - PARTIAL ACCEPTANCE**

- 59.1. The contracting authority may make use of the various works, parts of works or sections of works forming part of the contract as and when they are completed. Any taking possession of the works, parts of works or sections of works by the contracting authority shall be preceded by their partial provisional acceptance. However, in cases of urgency, works may be taken possession of prior to acceptance, provided an inventory of outstanding work is drawn up by the supervisor and agreed to by the contractor and the supervisor beforehand. Once the contracting authority has taken possession of a work, a part thereof or section of a work, the contractor shall no longer be required to make good any damage, otherwise than that resulting from faulty construction or workmanship.
- 59.2. 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 works, parts of works or sections of works are completed and suited to the use as described in the contract.
- 59.3. In the cases of partial provisional acceptance referred to in article 59.1. and 59.2. the maintenance period provided for in article 62 shall, unless the special conditions provide otherwise, run as from the date of such partial provisional acceptance.

## **ARTICLE 60 - PROVISIONAL ACCEPTANCE**

- 60.1. The contracting authority shall take possession of the works 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.
- 60.2. The contractor may apply, by notice to the supervisor, for a certificate of provisional acceptance not earlier than 15 days before the works, in the contractor's opinion, are complete and ready for provisional acceptance. The supervisor shall within 30 days after the receipt of the contractor's application:
- a) issue the certificate of provisional acceptance to the contractor with a copy to the contracting authority stating, where appropriate, his reservations, and the date on which, 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.
- 60.3. 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, in the contract, the works are divided into sections, the contractor shall be entitled to apply for separate certificates for each section.
- 60.4. Upon provisional acceptance of the works, the contractor shall dismantle and remove temporary structures as well as materials no longer required for performance of the contract. He shall also remove any rubble or obstruction and redress any change in the condition of the site as required by the contract.
- 60.5. Immediately after provisional acceptance, the contracting authority may make use of all the completed works.

## **ARTICLE 61 - MAINTENANCE OBLIGATIONS**

- 61.1. The contractor shall be responsible for making good any defect in, or damage to, the works or any part thereof which may appear or occur during the maintenance period or within 30 days after its expiration and which arises either from:
- a) the use of defective plant or materials or faulty workmanship or design by the contractor; and/or
  - b) any act or omission of the contractor during the maintenance period.
- 61.2. The contractor shall at his own expense make good the defect or damage as soon as practicable. The maintenance period for all items replaced or renewed shall recommence from the date when 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
- 61.3. If any such defect appears or such damage occurs, during the period referred to in article 61.1., the contracting authority 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 contracting authority may:
- a) carry out the works himself, or employ someone else to carry out the works, at the contractor's risk and expense, in which case the costs incurred by the contracting authority shall be deducted from monies due to the contractor or from guarantees held against the contractor, or from both; or
  - b) terminate the contract.
- 61.4. If the defect or damage is such that the contracting authority has been substantially deprived of the whole or a part of the benefit of the works, the contracting authority 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 these works and clearing the site.
- 61.5. In case of emergency, where the contractor cannot be reached immediately or, having been reached, is unable to take the required measures, the contracting authority or the supervisor may have the work carried out at the contractor's expense. The contracting authority or the supervisor shall inform the contractor of the action taken as soon as practicable.
- 61.6. Where the special conditions stipulate that the maintenance work, necessitated by normal wear and tear, shall 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 21 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 61.
- 61.7. 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.
- 61.8. After provisional acceptance and without prejudice to the maintenance obligations referred to in article 61, 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 as from the date of provisional acceptance for the soundness of the construction, as laid down in the special conditions or in the law of the State of the contracting authority.

## **ARTICLE 62 - FINAL ACCEPTANCE**

- 62.1. Unless otherwise stipulated in the special conditions, one year after the provisional acceptance and when all defects or damage have been rectified, the supervisor shall issue to the contractor a final acceptance certificate and a copy thereof to the contracting authority 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 after the expiration of the above stated period, or as soon thereafter as any works as instructed, pursuant to article 61, have been completed to the supervisor's.

- 62.2. The works shall not be considered as completed until a final acceptance certificate has been signed by the supervisor and delivered to the contracting authority, with a copy to the contractor.
- 63.3. Notwithstanding the issue of the final acceptance certificate, the contractor and the Contracting authority 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 such 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 63 - BREACH OF CONTRACT**

- 63.1. A party commits a breach of contract where he fails to discharge any of his obligations under the contract.
- 63.2. Where a breach of contract occurs, the injured party shall be entitled to the following remedy:
- a) damages; and/or
  - b) termination of the contract.
- 63.3. Damages may be either:
- a) general damages; or
  - b) liquidated damages.
- 63.4. In any case where the contracting authority is entitled to damages, he may deduct such damages from any sums due to the contractor or from the appropriate guarantee.

### **ARTICLE 64 - TERMINATION BY THE CONTRACTING AUTHORITY**

- 64.1. The contracting authority may, at any time and with immediate effect, terminate the contract, as provided for under article 64.2
- 64.2. Unless otherwise stipulated, the contracting authority may, after giving seven day's notice to the contractor, terminate the contract and expel the contractor from the site in any of the following cases:
- a) the contractor fails to carry out the works substantially in accordance with the provisions of the 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 performance 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 sub-contracts without the contracting authority's authorisation;
  - e) the contractor becomes bankrupt or insolvent, or has a receiving order made against him, or compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or goes into liquidation;
  - f) any adverse final judgement is made in respect of the contractor for an offence relating to his professional conduct;
  - g) any other legal disability hindering performance of the contract occurs;
  - h) any organisational modification occurs involving a change in the legal personality, nature or control of the contractor, unless such modification is recorded in an endorsement to the contract;
  - i) the contractor fails to provide the required guarantee or insurance, or if the person providing the earlier guarantee or insurance is not able to abide by his commitments.

- 64.3. Termination shall be without prejudice to any other rights or powers of the contracting authority or the contractor under the contract. The contracting authority may, thereafter, complete the works himself or conclude any other contract with a third party for the account of the contractor. The contractor's liability for delay in completion shall immediately cease when the contracting authority expels him from the site without prejudice to any liability thereunder that may have already occurred.
- 64.4. 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.
- 64.5. The supervisor shall, as soon as is possible after termination, certify the value of the works and all sums due to the contractor as at the date of termination.
- 64.6. 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 an inventory taken of temporary structures, materials, plant and equipment. The contractor shall be summoned to be present during 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 contracting authority;
  - b) the contracting authority shall have the option of acquiring in whole or in part temporary structures which have been approved by the supervisor, plant as well as materials specifically supplied or manufactured in connection with the performance of work 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 performance of the contract under normal conditions;
  - d) the contracting authority may purchase, at market prices, the materials and items supplied or ordered by the contractor and not already paid for by the contracting authority on such conditions as the supervisor considers appropriate.
- 64.7. The contracting authority shall not be obliged to make any further payments to the contractor until the works are completed, whereupon the contracting authority shall be entitled to recover from the contractor the extra costs, if any, of completing the works, or pay any balance due to the contractor prior to termination of the contract.
- 64.8. If the contracting authority 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 contracting authority 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 breach, be put to the intended use.
- 64.9. Where the termination is not due to an act or omission of the contractor, the latter shall be entitled to claim in addition to sums owing to him for work already performed, an indemnity for loss suffered.

## **ARTICLE 65 - TERMINATION BY THE CONTRACTOR**

- 65.1. The contractor may, after giving 14 days' notice to the contracting authority, terminate the contract if the contracting authority:
- a) fails to pay the contractor the amounts due under any certificate issued by the supervisor after the expiry of the time limit stated in article 53.2.; or
  - b) consistently fails to meet his 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.
- 65.2. Such termination shall be without prejudice to any other rights of the contracting authority or the contractor under the contract. Upon such termination, the contractor shall, subject to the law of the partner State, be entitled to immediately remove his equipment from the site.

- 65.3. In the event of such termination, the contracting authority shall pay the contractor for any loss or damage the contractor may have suffered. Such additional payment shall not exceed a limit specified in the contract.

## **ARTICLE 66 - FORCE MAJEURE**

- 66.1. No party shall be considered to be in default or in breach of his obligations under the contract if the performance of such obligations is prevented by any circumstances of force majeure which arises after the date of notification of award of the contract or the date when the contract becomes effective, whichever is the earlier.
- 66.2. The term “*force majeure*”, as used herein shall mean strikes, lock-outs or other industrial disturbances, acts of the 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, not within the control of either party and which by the exercise of due diligence neither party is able to overcome.
- 66.3. Notwithstanding the provisions of articles 36 and 64, 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 performance or other failure to perform his obligations under the contract is the result of an event of force majeure. The contracting authority shall similarly not be liable, notwithstanding the provisions of articles 53 and 65, to payment of interest on delayed payments, for non-performance or for termination by the contractor for default, if, and to the extent that, the contracting authority’s delay or other failure to perform its obligations is the result of *force majeure*.
- 66.4. If either party considers that any circumstances of *force majeure* have occurred which may affect performance of his obligations, he 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 seek all reasonable alternative means for performance of his obligations which are not prevented by the *force majeure* event. The contractor shall not put into effect such alternative means unless directed so to do by the supervisor.
- 66.5. If the contractor incurs additional costs in complying with the supervisor’s directions or using alternative means under article 66.4., the amount thereof shall be certified by the supervisor.
- 66.6. 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 upon the other 30 days’ notice to terminate the contract. If, at the expiry of the period of 30 days, *force majeure* still continues, the contract shall terminate and, in consequence thereof under the law governing the contract, the parties shall be released from obligations to further performance of the contract.

## **ARTICLE 67 - DECEASE**

- 67.1. Where the contractor is a natural person, the contract shall be automatically terminated if that person dies. However, the contracting authority shall examine any proposal made by the heirs or beneficiaries if they have notified their wish to continue the contract. The decision of the contracting authority shall be notified to those concerned within 30 days of receipt of such proposal.
- 67.2. Where the contractor consists 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 contracting authority 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.
- 67.3. In the cases provided for in articles 67.1. and 67.2., persons offering to continue to perform the contract shall notify the contracting authority thereof within 15 days of the date of decease.
- 67.4. Such persons shall be jointly and severally liable, unless otherwise stated in the special conditions, for the proper performance of the contract to the same extent as the deceased contractor. Continuation of the contract shall be subject to the rules relating to establishment of the guarantee provided for in article 15.

# SETTLEMENT OF DISPUTES

## ARTICLE 68 - SETTLEMENT OF DISPUTES

- 68.1. The contracting authority and the contractor shall make every effort to settle amicably disputes relating to the contract which may arise between them, or between the supervisor and the contractor under the contract.
- 68.2. The special conditions shall prescribe:
- a) the procedure for the amicable settlement of disputes;
  - b) the time limits within which the amicable settlement procedure may be invoked after notification of the dispute to the other party and the maximum time limit within which such settlement may be reached, which may not exceed 120 days from the commencement of the adopted procedure;
  - c) the time limits for responding in writing to a request for amicable settlement or to other requests permitted during the course of that procedure and the consequence of failure to comply with those time limits.
- 68.3. Where the adopted amicable settlement procedure has failed, the parties may agree to settlement of the dispute by conciliation by a third party within a specific time limit.
- 68.4. The amicable settlement or conciliation procedure adopted shall in all cases involve a procedure in which complaints and responses are notified to the other party.
- 68.5. In the absence of an amicable settlement or settlement by conciliation within the maximum time limits specified, the dispute 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 adopted in accordance with the convention.