**VOLUME 2**

**SECTION 3**

**SPECIAL CONDITIONS**

**CONTENTS**

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

**Article 2 Language of the contract**

2.1 The language used shall be English.

**Article 4 Communication**

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

For the Contracting Authority:

|  |  |
| --- | --- |
| Name: | The City of Sombor |
| Contact Person: | Viktor Despotovic |
| Address: | Trg cara Urosa 1, 25000 Sombor |
| Fax: | N/a |
| E-mail: | vdespotovic@sombor.rs |

For the Contractor:

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

For the Supervisor:

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

E-mail communications between the parties are also permitted, in particular for communications between the Supervisor and the Contractor. Formal notifications, such as notifications of termination or breach or notifications which have an impact on Contract Price or additional cost claims must be submitted through the methods mentioned above. Email may be used as a supplementary notification method for such formal notifications.

Where signed documents are transmitted electronically they shall be confirmed by delivery of hard copy with the original signatures within one week.

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

5.2 The name and address of the Supervisor and his Representative(s) shall be given to the Contractor after the award of the Contract.

The Contracting Authority shall appoint a Supervisor to carry out duties referred to in the Contract. The Supervisor may have further staff to which he delegates matters related to the Contract.

5.3 The Supervisor acts for the Contracting Authority. He has no authority to relieve either party of any duties, obligations or responsibilities under the Contract or to amend the Contract.

Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by the Supervisor (including absence or disapproval) shall not relieve the Contractor from any responsibility he has under the Contract, including the responsibility for errors, omissions, discrepancies and non-compliances.

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

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

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

During the construction stage Supervisor shall be entitled to perform checks on Contractor progress as well as compliance with Technical Specification. These checks shall be performed at least once in two weeks and Supervisor shall have right to ask for clarification, to approve or reject proposed works solution. Contractor shall not be entitled to any additional costs and/or extension of time, which may occur as result of clarification or rejection of the part of disputed works performed.

The Supervisor and the Contracting Authority shall monitor the Project according to Volume 3 and the approved Time Schedule.

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

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

(b) Approve any modification of the Contract and/or issuing any administrative order under Article 37 of the General Conditions.

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

**Article 7 Subcontracting**

Subcontracting is allowed up to 30% of the value of the Contract. Any subcontract or agreement with the Sub-Contractor shall be written in a manner as to be consistent with this Contract and shall require that the Contractor has full access for auditing purposes to the Sub-Contractors records, documents, costs and accounts.

**Article 8 Documents to be provided**

8.1 The Supervisor’s approval of any technical documentation shall not relieve the Contractor of his responsibilities under the Contract.

The Contractor should maintain manuals as work diary together with proposed or changed drawings during the permanent work in a format and manner approved by the Supervisor.

The Contractor shall be responsible for the safekeeping of any formal documents relating to the Works.

**Article 9 Access to the site**

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

**Article 12 General obligations**

**12.3** The Contractor shall respect and abide by all laws and regulations in force in the Republic of Serbia 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 The Contractor shall be responsible for the preservation, removal and replacement, as the case may be, of the cables, conduits and installations specified by Contracting Authority in the tender documentation and for the cost thereof.

12.9 The visibility measures must comply with the rules laid down in the Communication and Visibility Manual for EU External Actions published by the European Commission: <http://ec.europa.eu/europeaid/work/visibility/index_en.htm>.

Contractor has obligation to mark construction site with appropriate billboard in according with Visual\_Identity\_Manual\_Interreg – IPA CBC HUSRB.

12.11 The Supervisor, where necessary and/or appropriate shall ask the Contractor to prepare for his approval:

**Article 12d: Contractor’s undertaking**

The Contractor undertakes that the Design, the Contractor’s Documents, the execution and the completed Works shall be in accordance with:

1) The laws of the Republic of Serbia

2) The documents forming the contract, as altered or modified by the Contracting Authority through Addenda, Side letters or Administrative Orders whatever the case may be.

**Article 12g: As-Built Documents**

The Contractor shall prepare, and keep up-to -date, a complete set of As-Built records of the execution of the Works, showing the As-Built locations, sizes and details of the work as executed. These records shall be kept on site and shall be used exclusively for this purpose. They shall be available to the Supervisor at any time. Hard copy prints shall be provided to the Supervisor, when reasonably requested, and, in particular, as evidence in support of Interim Payments.

The absence of such records may be used by the Supervisor as reason to withhold payment of Interim Certificates.

Before Provisional Acceptance can be considered, the Contractor shall supply all As-Built documentation together with Operational Manuals and evidence of appropriate Training to the Supervisor for review and approval.

**Article 12i: Design Error**

If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the Contractors documents, they and the Works shall be corrected at the Contractor’s cost, notwithstanding any consent or approval that may have been given.

**Article 15 Performance guarantee**

15.1 The amount of the performance guarantee will be 10% of the amount of the Contract and any addenda thereto.

The Contractor shall provide a Performance Guarantee of 10% of the Contract price (including provisional sum/contingencies) for his full and proper performance of the Contract to the Contracting Authority within 15 days after the signature of the Contract by both parties.

The Performance Guaranty shall be in the form of a Bank Guarantee, as stipulated in the Volume 2; Section 4.

15.8 Within 60 days after the deliverance of the certificate of provisional acceptance according to Article 60.1 and the completion of any outstanding work or reservation, 100% of the amount of the performance guarantee may be released.

**Article 16 Liabilities and insurance**

16.1 The amount of insurance covering liability with regard to risks and civil liability insurance shall be in according with Article 16 of General Conditions

**Article 17 Programme of implementation of tasks**

17.1 The Contractor shall submit to the Supervisor an Implementation Programme in Critical Path Analysis format within 7 days of the commencement of the works.

The programme shall reflect any specific requirements set out in the Contract Documents and Contractor's Tender, giving details on:

a) the list of sub-contractors he proposes to employ on the Works together with details of the part of the Works he proposes to subcontract;

b) the schedule of key personnel and organisation chart;

c) the schedule of sources of materials, plant and equipment for incorporation into the works;

d) milestones for all major groups of works etc. within the stated time for completion

e) an approximate cash flow with monthly disbursement plan.

In the preparation of the Implementation Programme the Contractor shall take into account adverse weather conditions which may severely restrict progress in the winter months or during other wet periods of the year. Programmes incorporating restricted working or a temporary Suspension of Works shall be accepted by the Supervisor, but such acceptance shall not relieve the Contractor from his obligations under the Contract to complete the works in accordance with the agreed programme.

The Contractor’s Implementation Programme shall not, for any reason, exceed the overall contract period as stipulated in the Contract. It shall only be revised and increased upon approval of an Addendum to the Contract. Upon the written request by the Supervisor, the Programme and Schedule shall be updated by the Contractor and submitted to the Supervisor in hard copy and electronic format.

The Programme and Schedule shall be submitted in hard copy and electronic format. Programme shall take into account the appropriate time needed for purpose of informing public regarding closing the roads and streets or for limiting or disconnecting water, electricity or other utilities.

The Contractor shall, within 15 (fifteen) days after the date of the issue of the Commencement Order, submit for the Supervisors’ approval detailed Programme of Implementation of the Contract. The Supervisor shall make comments and/or objections concerning the Programme and schedules supplied by the Contractor within 7 (seven) calendar days of their submission. It shall be considered that all these comments and/or objections are accepted by the Contractor, if he should not contradict them in writing, either by registered letter, or facsimile sent on the Supervisor, within 4 (four) calendar days of their receipt. The order in which the Contractor intends to carry out the works, including the anticipated timing of each stage of construction, Contractor’s documents, procurement, manufacture, inspection, delivery to site, construction, erection, testing, commissioning and trial operation, Provisional and Final Acceptance. The interrelations among all activities must be shown, as well as, the critical paths, the earliest time for the critical activities commencement or end respectively and the margin foreseen.

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

19.1 On the basis of the Technical Specifications, Drawings and other information contained in the Tender Documents, the Contractor shall supply all further fabrication and working drawings, documents, calculations, official permits and other data necessary for the construction of the Works and for satisfying the technical parameters stipulated in the Contract. The Contractor may supply this information successively in parts, but each part submitted should be complete to such an extent that it can be judged and approved by the Supervisor in isolation as part of the whole.

The Supervisor may instruct the Contractor to prepare particular drawings or to make any modifications, including calculations for any part of the project. These calculations and drawings are part of the Contractor’s duties.

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

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

The works shall not be considered to be completed for the purpose of provisional acceptance until such drawings have been supplied to the Contracting Authority. Operation and maintenance manuals and As-Built drawings shall be handed over to the Supervisor not later than **10** days after provisional acceptance of the works. After revision, the Supervisor shall certify them or return them to the Contractor for correction and amendment.

19.7 The manuals and drawings shall be supplied in the Serbian Language.

**Article 20 Sufficiency of tender prices**

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

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

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

**Article 21 Exceptional risks**

21.4 Exceptional weather conditions are the risk of the Contractor. All costs incurred by the Contractor due to exceptional weather conditions have to be borne by the Contractor

**Article 24 Interference with traffic**

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

The Contractor shall inform the Supervisor in due time which shall be not less than **7** calendar days in writing before commencing such works in order that the Supervisor may arrange adequate supervision and safety precautions. With his application for permission to start construction work, the Contractor shall submit to the Supervisor a list of all major plant he and his sub-contractors intend to use, indicating their characteristics (Excavators, trucks, cranes, compaction equipment, rollers, concrete mixers, equipment, etc.).

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

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

The Contractor shall obtain any permission from the relevant authorities, which may be required to impede traffic on communication links, for his use of routes, signs and directions.

24.2 TheContractor will have to take necessary measures to secure the transportation of heavy loads and big size loads and/or any load on and around the site.

1. the Contractor shall (as between the Parties) be responsible for any maintenance which may be required for his use of access routes;
2. the Contractor shall provide all necessary signs or directions along access routes, and shall obtain any permission which may be required for his use of routes, signs and directions;
3. the Contracting Authority and the Beneficiary shall not be responsible for any claims which may arise from the use or otherwise of any access route,
4. the Contracting Authority and the Beneficiary do not guarantee the suitability or availability of particular access routes, and
5. Costs due to non-suitability or non-availability, for the use required by the Contractor, of access routes shall be borne by the Contractor

**Article 27 Demolished materials**

27.2 No material to be removed from the site as result of demolition, dislocations etc. will become the property of the Contracting Authority.

27.4 The Contractor will remove demolition materials at its own expense.

**Article 29 Temporary works**

29.2 There are not temporary works to be designed by the Contracting Authority.

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

**Article 30 Soil studies**

30.1 No special soil studies are needed

**Article 32 Patents and licenses**

32.1 There is no a derogation from Article 32 of the general conditions.

**Article 34 Period of implementation of tasks**

34.1 The period of implementation is 60 days from the signing the contract by both parties.

**Article 36 Delays in the implementation of tasks**

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

**Article 39 Work register**

39.1 Work register is required, to be in line with Serbian Construction legislative and Supervisor instructions.

39.2 Technical rules for drawing up statements have to be in line with Serbian Construction legislative and Supervisor instructions.

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

## 40.1 All goods purchased under the Contract must originate in any eligible source country as defined in INTERREG IPA Cross-border Cooperation Programme Hungary-Serbia. For these purposes, ‘origin’ means the place where the goods are mined, grown, produced or manufactured and/or from which services are provided. The origin of the goods must be determined according to the EU Customs Code or the applicable international agreement.

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

40.2 The works and the objects, appliances, equipment or materials used in their construction must comply with:

* the requirements specified in Volume 3 (Technical Requirements).
* the specifications as in Volume 4.
* the specifications as in Volume 5.

40.3 No preliminary technical acceptance is necessary.

**Article 41 Inspection and testing**

The Supervisor shall at all reasonable times:

(a) have full access to all parts of the Site and to all places from which natural Materials are being obtained, and

(b) during production, manufacture and construction (at the Site and elsewhere), be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture of Plant and production and manufacture of Materials, on the basis of approved QA & QP.

The Contractor shall give the Supervisor and the appointed CA's Personnel full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Contractor from any obligation or responsibility.

The following shall apply to all tests specified in the Contract, other than the Tests on Completion:

The Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Contractor shall agree, with the Supervisor, the time and place for the specified testing of any Plant, Materials and other parts of the Works.

The Supervisor may vary the location or details of specified tests, or instruct the Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, the cost of carrying out this Modification shall be borne by the Contractor, notwithstanding other provisions of the Contract.

The Supervisor shall give the Contractor not less than 24 hours' notice of the Supervisor 's intention to attend the tests. If the Supervisor does not attend at the time and place agreed, the Contractor may proceed with the tests, unless otherwise instructed by the Supervisor, and the tests shall then be deemed to have been made in the Supervisor’s presence. The Contractor shall forthwith forward dully certified copies of the test results to the Supervisor for his evaluation.

**Article 43 Ownership of plant and materials**

43.2 All equipment, temporary works, 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 execution of the works, be made subject to a lien in favour of the Contracting Authority.

**Article 44: General principles for payments**

44.1 Payments shall be made in the RSD for companies registered in Republic of Serbia or EUR for companies registered outside Republic of Serbia.

InforEuro exchange rate for month of pre-invoice if offer is in EUR. Payment will be in EUR for companies registered outside of Republic of Serbia.

**Article 46 Pre-financing**

46.1 No pre-financing is foreseen

**Article 47 Retention monies**

47.1 No retention money is retained.

**Article 49 Measurement**

49.1 This is a unit-price contract. No additions may be made to the items in the bill of quantities. Supervisor is authorized to check and measure work performed on site given in interim/final report of Contractor and authorizes payments in according with financial offer of Contractor (Bill of Quantities) and in line with authority given to him by this Contract.

**Article 50 Interim payments**

50.1 Payments will be practically arranged in the following way:

At the beginning of each month during Contract implementation tenderer will compose report of temporary work situation. Report will be examined and approved by Supervisor and it will be used as base for interim payment request. In case that work finished have value of more than 10% of Contract value Contractor will then submit approved report with request for payment to Contracting Authority.

**Article 51 Final statement of account**

51.1 The Contractor shall, submit to the Supervisor a draft final statement of account when it applies for the provisional acceptance certificate. In order to enable the Supervisor to prepare the final statement of account, the draft final statement of account is submitted with supporting documents showing in detail the value of the work done in accordance with the contract and all further sums which the Contractor considers to be due to it under the contract.

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

51.3 The Supervisor shall issue to the Contracting Authority or to its duly authorized 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 authorized representative and the Contractor shall sign the final statement of account as an acknowledgement of the full and final value of the work implemented under the contract and shall promptly submit a signed copy to the Supervisor. However, the final statement of account shall not include amounts in dispute which are the subject of negotiations, conciliation, arbitration or litigation.

**Article 60 Provisional acceptance**

60.1 In complement to article 60.1 of the General Conditions the works shall be taken over by the Contracting Authority when they have satisfactorily passed the tests on completion and a certificate of provisional acceptance has been issued or is deemed to have been issued.

**Article 61 Defects liability**

61.1 The defects liability period is defined as the period commencing on the date of provisional acceptance, during which the Contractor is required to make good any effect in, or damage to, any part of the work which may appear or occur during this period as notify by the Supervisor or the Contracting Authority. The rights and obligations of the parties with regard to this defects liability period are laid down in Article 61 of the General Conditions.

61.6 The normal wear and tear maintenance works shall not be borne by the Contractor.

61.7 Duration of the defects liability period is twelve months on all works and equipment installed.

**Article 68 Dispute settlement**

68.4 Any dispute arising out of or relating to this contract which cannot be settled otherwise shall be referred to the exclusive jurisdiction of relevant Court in Sombor applying the national legislation of the Contracting Authority.

**Article 72 Data protection**

Not applicable for indirect management.

\* \* \*