

## GCC

GENERAL CONTRACTUAL CONDITIONS FOR SUBCONTRACTORS  
2022

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## Preliminary Remarks and Definitions

The following **abbreviations** shall apply in these General Conditions of Contract for Subcontractors and in all contract documents drawn up pursuant to them:

EM = Employer (Contractor = PORR).

CO = Contractor (Subcontractor).

IN = Investor.

Article = an article in these General Conditions of Contract for Subcontractors.

GCC = these General Conditions of Contract for Subcontractors.

The following **definitions** apply to these General Conditions of Contract for Subcontractors and to all contract documents drawn up pursuant to them:

<b>Contract:</b>	a subcontracting agreement between the EM and the Contractor for the Contractor's performance of services for the Project, together with these General Conditions of Contract for Subcontractors and other contract documents, which are integral parts thereof.
<b>Employer:</b>	a legal person that, as the contractor for the Project on the basis of the Master Contract, contracts the Contractor to perform the services in the context of the implementation of the Project.
<b>Contractor:</b>	a legal person, an unincorporated legal person, or an individual who, on the basis of a concluded Contract, undertakes to perform the services commissioned by the EM.
<b>Investment Project:</b>	the investment project specified in the Contract under which the Contractor is to perform the services.
<b>Construction Site:</b>	the site where the Project is to be carried out.
<b>Project Country:</b>	the country listed in the Agreement in which the Project is to be implemented.
<b>Days:</b>	calendar days according to the Gregorian calendar.
<b>Investor:</b>	the entity that, as the contracting authority, has entered into the Master Contract with the EM as contractor for the Project.
<b>Master Contract:</b>	The contract concluded between the Investor and the EM for the implementation of the Project.
<b>Contract Documents:</b>	the documents constituting the Contract listed in the Contract Deed or Negotiation Protocol.

### 1. Contract Documents

- 1.1. The contract documents are complementary in nature. In the event of contradictions between the various contract documents, the document listed first shall take precedence over the document listed next.
- 1.2. The Contractor represents that the contract documents have been checked by him with the diligence required of a professional with regard to the proper execution of the subject of the Contract and their valuation and considers them to be sufficient and complete. The Contractor shall not be entitled to rely on any defects or deficiencies in the contract documents identified during the execution stage of the Contract as a circumstance that excludes or limits the Contractor's liability for non-performance or improper performance of contractual obligations.
- 1.3. The Contractor may only use documents provided by the EM or third parties for the performance of the Contract. Any other use shall require the written consent of the EM.
- 1.4. If the scope of services provided by the Contractor includes design services or other services, as a result of which works within the meaning of copyright law (design documentation) are created, then upon handing over the design documentation to the Contractor, within the framework of the Contract and the remuneration specified in the Contract, the Contractor shall acquire copyright to the completed and handed over design documentation. The transfer of author's economic rights shall take place unconditionally, for unlimited use and disposal in time, in all areas of exploitation defined in the Copyright and Neighbouring Rights Act and known at the moment of concluding the Contract, and in particular in the following areas of exploitation:

- a) fixating and multiplication by any technique of an unlimited number of copies of works or their elements, including printing, reprography, magnetic recording, in computer memory and by digital technique, as well as in multimedia networks, including the Internet and Intranet, on any data media, including preparatory actions for preparing copies of works or their fixating, as well as by computer printout;
  - b) circulation of originals or copies on which the works have been fixated, including marketing, lending, renting or otherwise disposing of the original or copies;
  - c) dissemination in a manner other than that specified in letter b) above - including, in particular, through their public exhibition, display, reproduction, broadcasting and re-broadcasting, as well as making the works available to the public in such a way that anyone can access them from a place and at a time individually chosen by them;
  - d) developments of the works, use and disposal of such developments, and use at the discretion of the Contractor and making any amendments;
  - e) multiple use in construction;
  - f) use of the work for the execution of the Project for which the design documentation has been prepared.
- As part of the transfer of copyright, the Contractor also transfers to the EM the right to make changes and modifications to the design documentation to an unlimited extent, including incorporation in whole or in part into other design documentation, and grants the EM the right to exercise and authorise the exercise of derivative copyrights.

The original drawings and documents and their digital records prepared by the Contractor shall become the property of the EM upon receipt. The Contractor warrants to the EM that he owns all necessary intellectual property rights in the project documentation delivered to the EM under the Contract and that they do not infringe any third party rights.

The Contractor shall indemnify and hold the EM harmless from and against any liability and obligation to provide and shall make good any damage to the EM connected with the infringement of any intellectual property rights or personal rights of any third party connected with intellectual property rights in respect of the transferred project documentation.

At the same time, the Contractor undertakes not to exercise his moral copyrights or shall submit to the EM a corresponding written commitment to this effect from a third party in whom these rights are vested and irrevocably permits the EM and each owner of the project documentation to exercise all moral copyrights on behalf of the Contractor, including deciding on the method of marking, deciding on the integrity of content and form, deciding on the supervision of use, deciding on initial release and withdrawal from circulation.

## **2. Workplaces, Access Roads**

- 2.1. The Contractor shall, in the course of the performance of his services, duly protect his services from damage or theft and keep the site tidy, including the removal of all waste on an ongoing basis.
- 2.2. Unless otherwise agreed between the Parties, the Contractor shall be obliged to perform his services with his own materials.
- 2.3. All access roads to the Construction Site shall be agreed by the Contractor with the EM. The Contractor shall be responsible for and bear the cost of cleaning up soil, earth (mud) and any waste and materials falling from the Contractor's vehicles. The Contractor shall also bear the cost of any damage to roads leading to and within the Construction Site caused by the Contractor.

## **3. Cooperation on the Construction Site**

- 3.1. The Contractor acknowledges that other contractors/subcontractors will also be working on the site during the time he is on site and that any resulting disruption and obstacles are covered by the agreed remuneration. The Contractor shall be obliged to carry out the works in such a way as to avoid disorganisation and collisions with other contractors/subcontractors. The Contractor shall also be obliged to adapt the number of personnel employed and his own machinery and equipment to the requirements of the construction progress and to interact with the EM's site management and the EM's other contractors/subcontractors in such a way that a continuous and collision-free construction process is ensured. The Contractor should come to an agreement with other EM contractors/subcontractors on his own initiative and inform the EM construction management. If no mutual agreement is reached, the EM shall decide.

- 3.2. The Contractor shall be obliged to notify the EM without delay of circumstances that may cause an impediment to the execution of the performance and to provide documents confirming these circumstances.
- 3.3. During the period of execution of the works and, if the EM deems it necessary, also before the works commence, the Contractor shall be obliged to participate in construction meetings; the meetings are convened by the EM's construction management and are generally held once a week. A competent representative of the Contractor must participate in the construction meetings without time limitation and without being entitled to separate remuneration.
- 3.4. Works that will not be possible to inspect after the subsequent works have been carried out (disappearing works or works to be covered up) shall be notified in writing by the Contractor to the EM for inspection at the latest 3 (three) days in advance. The inspection shall be deemed to have been carried out if the EM confirms the acceptance of these works in writing or by an entry in the construction log. This inspection shall not relieve the Contractor of liability in any respect.
- 3.5. Where equipment, materials, facilities, or other ancillary means of the Contractor are delivered to the site which are part of the Contractor's services or are essential to the performance of the Contractor's services, the Contractor shall not remove them or any part of them from the site without the consent of the EM.
- 3.6. Equipment, materials, devices, or other aids supplied by the Contractor may be stored by the Contractor on site only with the consent of the EM and in locations agreed with or designated by the EM. The EM shall not be responsible for any equipment, materials, devices, or other ancillary means of the Contractor stored on site by the Contractor or his subcontractors, service providers and suppliers.
- 3.7. The working hours must be determined in accordance with the instructions of the EM's construction site management. If necessary, the works must be carried out in shifts and at night, which has been included by the Contractor in the remuneration (unit prices) payable under the Contract.
- 3.8. If objects of historic, artistic, scientific, or other significant value are found during the execution of works on the construction site, installation sites and similar locations, the Contractor shall act in accordance with the applicable regulations of the Project Country and notify the EM immediately.

#### **4. Personnel**

- 4.1. The Contractor shall be obliged to perform his services using personnel of his own choice and to ensure the presence on site of a sufficient number of personnel with the necessary licences, means of work, equipment, and facilities to perform the services in accordance with the Contract.
- 4.2. The Contractor shall be independently liable for fulfilling all statutory and official obligations to his employees.
- 4.3. Employees of the Contractor who behave in a grossly inappropriate manner, who do not comply with health and safety rules or regulations applicable on the construction site, or who by their behaviour obstruct the provision of services in accordance with the Contract or interfere with the work of third parties performing services in connection with the Project, must be immediately removed from the construction site at the request of the EM and replaced by other persons.
- 4.4. The Contractor shall ensure during the performance of his services that the works are adequately supervised by a person authorised to perform independent technical functions in the construction industry (works manager). The Contractor shall be obliged to ensure that the works manager or a deputy works manager is present at the Construction Site during working hours, speaking, and writing the working language mentioned in the Contract Deed or the Negotiation Protocol.  
The Contractor shall immediately notify the EM of any change in the person or competence of the works manager, including the appointment of a temporary replacement. The EM reserves the right to reasonably refuse to engage the designated works manager or his substitute. In such case, the Contractor shall be obliged to propose another works manager or substitute to the EM.

#### **5. Subcontracting**

- 5.1 The Contractor shall, in principle, be obliged to perform the service himself and shall not be entitled to outsource the performance of his service to third parties in its entirety.  
If the Contractor intends to subcontract part of the services to a subcontractor, the Contractor shall seek the written consent of the EM in good time. When requesting the EM's consent to subcontract, the Contractor shall submit to the EM a complete draft of the agreement with the subcontractor he intends to conclude, together with a detailed indication of the scope of services and remuneration, with the terms of the agreement with the subcontractor being analogous to the terms of the Contract concluded between the EM and the Contractor. The aforementioned requirement shall also apply to the engagement of any further

subcontractors by the Contractor subcontractor. The draft agreement with the Contractor subcontractor must contain provisions making the subcontracting of further subcontractors subject to the consent of the Contractor and the EM.

The EM may object to the award of the contract to subcontractors or a specific subcontractor or to the terms of the agreement. The EM shall notify the Contractor of the above within the statutory period. If an objection is raised, the Contractor shall carry out the works himself or propose another subcontractor to the EM or amend the contract terms in accordance with the comments of the EM and re-submit the request for consent to subcontract to the EM. In such case, the procedure indicated above shall apply again.

- 5.2 Failure by the EM to agree to subcontracting shall be at the risk of the Contractor and the Contractor shall not be entitled to delay the works because of the EM's failure to agree to subcontracting. The Contractor shall be liable for all acts and omissions of his subcontractors, including further subcontractors, as for his own acts and omissions.
- 5.3 The Contractor shall stipulate in his agreements with his subcontractors that in the event of insolvency of the Contractor or termination of the Contract between the Contractor and the EM, the Contractor may by unilateral declaration to the subcontractor step into the subcontract in place of the Contractor.
- 5.4 The Contractor shall be obliged to submit to the EM certified true copies of the concluded subcontracting agreements, the subject of which are construction works and the subject of which are supplies and services, within 5 days of their conclusion.
- 5.5 When the Contractor uses subcontractors or suppliers or service providers to perform his services for the EM, the following shall apply:
  - a) The maturity of any payment due to the Contractor under the Contract shall be subject to the Contractor providing the EM with documents confirming that the Contractor's payment obligations to his subcontractors (including further subcontractors), suppliers and service providers have been met;
  - b) In the event of non-payment by the Contractor of amounts owed to his subcontractors (including further subcontractors), suppliers or service providers, the EM shall be entitled to settle them and to deduct the amounts paid from the payments due to the Contractor, plus handling costs in the amount indicated in the Contract Deed or Negotiation Protocol. In addition, the Contractor shall indemnify the EM against the consequences of any damages and claims of subcontractors (including further subcontractors), suppliers or service providers. In order to secure these obligations, the EM may use any financial security established by the Contract.

## 6. Services

- 6.1 Insofar as not otherwise stipulated by mandatory legal provisions, the Contractor shall be obliged to comply with the agreed norms and standards in the performance of his services. In all cases, the Contractor's services must correspond to the current state of technical knowledge.
- 6.2 The place of performance of all services of the Contractor shall be the Construction Site unless the EM specifies another place for the delivery of project services or documents.
- 6.3 The Contractor shall have the right to issue instructions to the Contractor which are necessary for the performance of the services in accordance with the Contract. If the Contractor has objections to the Contractor's instructions or to the Contractor's deliveries (materials, objects) or to the services of other contractors, insofar as these services are connected with the Contractor's services, the Contractor must immediately communicate these objections to the Contractor in writing together with a proposal for remedial action. The EM shall inform the Contractor in due time of its decision regarding the objections and the proposal for remedial action communicated by the Contractor.
- 6.4 Prior to the commencement of his services, the Contractor shall be obliged to check with due diligence the correctness of services already completed that are relevant to the Contractor's services. Any defects that are found which, in the opinion of the Contractor, may have a detrimental effect on the Contractor's services must be pointed out to the Contractor in writing before the work begins.
- 6.5 Prior to the commencement of his services, the Contractor shall obtain the approval of the materials and equipment forming the subject of the Contract and the design documentation, insofar as it is within the scope of the Contractor's services, from the EM in good time.
- 6.6 Within the scope of the remuneration and prices stipulated in the Contract, the Contractor shall also be obliged to perform services that are not expressly mentioned in the contract documents, but which are necessary for the comprehensive performance of the subject of the Contract, including the completeness and operability of his services, taking into account the quality standard applicable to the entire Project. To

this extent, the Contractor shall provide a guarantee of completeness. The agreed quality standards shall apply to these services. The same shall apply to ancillary services, which he shall be obliged to perform within the scope of the remuneration and prices stipulated in the Contract. Ancillary services are services which, according to custom or technical knowledge, must be performed even if they are not mentioned in the contract documents, but which are indispensable for the complete, proper, and professional performance of the contractual services and are directly connected with them.

- 6.7 The EM shall be entitled to inspect at any time the compliance of the service with the Contract, as well as the storage of materials and objects. The Contractor shall ensure that this inspection is also possible with regard to its subcontractors.
- 6.8 At the request of the EM, the Contractor shall place at the disposal of the EM in due course the documents connected with his services necessary for the preparation of reports on the progress of the construction, in the form and language requested by the EM, in particular lists of the personnel employed and the equipment used on site on each working day of the reporting period, the progress of the Contractor's services in relation to his total service and an overview of the services to be performed by the Contractor in the following month. The details shall be determined by the EM.
- 6.9 The EM shall be entitled to change the type, scope, and manner of delivery of the agreed services or the circumstances of the delivery of the services or to request additional services that were not provided for in the Contract.
- 6.10 If one of the Parties to the Contract deems it necessary to change the type, scope, or manner of performance of the agreed services and/or the performance of additional services, it shall notify the other Party to the Contract without delay. Should the Contractor deem it necessary to make the aforementioned changes, he shall be obliged to justify the necessity to do so and to submit the relevant documents. The Contractor may not commence the performance of the relevant services until he has obtained the written consent of the EM, with the exception of actions designed to prevent the risk of damage to person or property.
- 6.11 If a change in the type, scope or manner of performance affects the remuneration agreed in the Contract, or additional services are agreed, the changes in remuneration and/or remuneration for additional services must be notified to and approved by the EM before the relevant service commences. To this end, the Contractor shall be obliged to submit a supplementary offer developed on the price basis of the Contract to the EM as early as possible. If the Contractor's offer is accepted by the EM, the Parties shall amend the Contract accordingly in writing under pain of nullity.
- 6.12 No remuneration shall be payable for services that the Contractor has performed without assignment, without the EM's approval or in breach of the Contract, unless the EM agrees to pay after such services have been performed. If this does not occur, these services must be removed or performed anew at the EM's request, otherwise the EM shall be entitled to apply substitute performance or other measures reserved in the Contract in case of improper performance.
- 6.13 In the event that the EM performs services or supplies personnel, materials, equipment or items for the performance of services which the Contractor was obliged to perform or supply pursuant to the Contract, and the Contractor fails to perform or supply them for reasons attributable to the Contractor (substitute performance), the costs of placing personnel, materials, equipment or items at the disposal of the Contractor, together with the handling costs indicated in the Contract, shall be borne by the Contractor and shall be deducted from payments due to the Contractor or from the security established by the Contract or reimbursed by the Contractor at the request of the Contractor.
- 6.14 Services outside the scope of the Contract, as well as all works billed at hourly rates, shall require the prior written order from the EM. Commissioned works billed on an hourly rate basis must be submitted to the EM's site manager for approval on a daily basis and shall only be recognised if the Contractor provides the EM's site manager with all requested certifications in the form, manner and number required by the site manager. In the case of works billed on an hourly basis, no payment shall be made for supervisory staff and allowances for work carried out outside normal working hours. Payment shall be made only for actual working time (not including commuting time) and for actual material used and actual engagement of heavy equipment. The price for the material also includes its transportation to the construction site, loading and unloading, proper storage and security, and all other related costs and expenses.
- 6.15 If the Contractor shall be obliged to perform design services and if he himself, according to the regulations of the Project Country, is not authorised to do so, he must use an authorised subcontractor for this purpose,

who shall at least confirm that the design complies with the currently applicable laws of the Project Country and the principles of technical knowledge.

The Contractor shall coordinate design deliverables with all relevant trades and submit them to the EM for approval sufficiently in advance so that the deliverables can be completed on time. The EM reserves a review period of at least two (2) weeks, unless otherwise regulated in other contract documents. Responsibility for the documentation shall rest solely with the Contractor, even after approval by the EM. Additional costs incurred by the EM as a result of incorrect or untimely data or errors or omissions in the documentation shall be borne by the Contractor.

- 6.16 The Contractor warrants that the materials and items of equipment supplied by him are his unrestricted property and are not encumbered by third-party rights.

## **7. Legislation**

7.1 In the performance of his services, the Contractor shall be obliged to know and comply with all laws applicable in the Project Country. The Contractor guarantees that these laws shall also be complied with by his personnel and his subcontractors.

7.2 The Contractor shall document upon request from the EM that he or his employees or subcontractors have fulfilled the obligation to obtain all permits, registrations and approvals required by the applicable laws of the Project Country.

## **8. Training**

8.1. The Contractor shall, at his own expense, train the personnel appointed by IN in the handling, use and maintenance of the technical installations and other equipment supplied by him to such an extent that these personnel are able to take over and operate the Project from the time of acceptance. It is assumed that the personnel have general knowledge of the handling of equipment and installations that are similar to those for which training is to be provided. The location, scope and timing of the training shall be communicated to the EM.

## **9. Prices, Remuneration**

9.1. The Contractor shall only receive remuneration for the performance of the services payable on an hourly basis (price per man-hour) if the EM has commissioned them in writing at the hourly rates agreed in the Contract Deed or the Negotiation Protocol or has agreed in writing to perform them on an hourly basis and the Contractor has documented this in accordance with Article 6.14.

9.2. Unless expressly agreed otherwise, the agreed remuneration and prices are fixed until the end of the Contract and are not subject to adjustment, in particular not subject to adjustment due to changes in labour costs, material costs or other costs. The above shall apply to remuneration and prices on a flat-rate, unit, and hourly basis.

9.3. The agreed remuneration and prices include all taxes, fees, levies, import duties, surcharges and compulsory contributions to representative organisations or similar bodies (hereinafter referred to as "fees") levied in the Project Country or elsewhere in connection with the conclusion and performance of the Contract. The Contractor shall submit to the relevant authorities all documents produced by him in accordance with the applicable regulations and pay the applicable fees. If the EM pays a fee that the Contractor shall be obliged to pay, the Contractor shall compensate the EM for the fee incurred within 14 days.

9.4. Unless a separate payment has been expressly agreed, the agreed remuneration and prices shall constitute payment for everything to be performed by the Contractor in connection with the performance of the services pursuant to the Contract, including labour, surcharges for labour costs (in particular accommodation and catering costs, overtime, night work, work on Sundays and public holidays where this is necessary to meet contractual deadlines), costs for materials transport, equipment, construction facilities, costs for auxiliary works and costs of protective and weather-related activities necessary for the proper execution of the described works in accordance with the Contract, in a correct manner, complying with all legal provisions, the standards of the Project Country and the current state of technical knowledge, even if the necessary details have not been included in the description of the works.

9.5. The Contractor confirms that he has familiarised himself with the local conditions on and off site, including ground conditions, water conditions, topography of the site and working conditions on the Site and has taken these into account in the remuneration (unit prices) payable under the Contract. The Contractor also confirms that in agreeing the remuneration and price, the nature and scope of the service were sufficiently known to him. Any mistakes made by the Contractor in the valuation of the services shall not result in a

change in the remuneration and price. Impediments caused by weather conditions shall not be separately remunerated.

- 9.6. Unless otherwise agreed, interruptions of up to 30 days - including those caused by the EM - shall not affect the remuneration (including unit prices) payable under the Contract and shall not entitle the Contractor to pursue claims.
- 9.7. If settlement is based on a cost estimate with unit prices (cost remuneration), the measurement of the performed services shall be carried out jointly by the Contractor and the EM. In the case of services, the exact measurement of which is no longer possible or difficult to ascertain in the course of the further works, the Contractor shall be obliged to submit a request for joint measurement to the EM well in advance. If the Contractor has neglected to do so, he shall at his own expense take steps to enable the subsequent determination of the measurements. The quantities of services shall be calculated on the basis of the Parties' joint taking of measurements. The basis for invoicing shall be the calculated quantity of the service provided multiplied by the agreed unit price of the service in question.
- 9.8. Measurements which, for justifiable reasons, have been made by only one of the Parties to the Contract must be presented in writing to the other Party as soon as possible. They shall be deemed accepted by the other Party if it does not object in writing within 30 days of receipt of the notification. If one of the Parties to the Contract refuses to accept the unilaterally agreed measurements, the Parties shall carry out a new joint measurement. If the renewed joint measurement is consistent with the unilateral measurement, the cost of the renewed measurement shall be borne by the Party that refused to accept it. If the joint re-measurement is not in accordance with the unilateral measurement, the costs of the re-measurement shall be borne by the Party that took the unilateral measurement.

## 10. Invoicing

- 10.1. Invoicing shall take place in accordance with the laws of the Project Country. If these laws provide for a different type of invoicing than described below, the Contractor shall also submit the documents listed below to the EM together with the invoices complying with the Project Country's laws.
- 10.2. VAT invoices issued by the Contractor must: (i) be verifiable (the documents on which the invoice is based must be attached), (ii) be issued in form and number in accordance with the Contract and the requirements of the EM's site management, (iii) include the Contract designation (Contract number) and a brief description of the services provided. If there are separately contracted services, these services shall be billed separately.
- 10.3. Each Contractor invoice issued to the EM shall be endorsed with the words "*No assignment of receivables*" unless the EM gives its prior written consent (on pain of invalidity) to the assignment of receivables. The absence of the above endorsement, or the existence of any endorsement of assignment of claims, shall entitle the EM to refuse to accept the invoice and shall render the invoiced claim null and void.
- 10.4. Unless separately agreed in the Contract, payments to the Contractor shall be made on the basis of monthly partial invoices. The partial invoices shall cover the services provided during the previous calendar month. The basis for settling the services and issuing a partial invoice is, apart from other documents specified in the Contract, a report, approved and signed by the EM, confirming the completion of works, drawn up in accordance with a model agreed with the EM. Settlements made on the basis of partial invoices do not constitute confirmation of the quantity or correctness of the services provided by the Contractor.
- 10.5. If a lump-sum price for the entire service has been agreed and in the absence of any other understanding between the Parties on payment, the Contractor may settle for the previous calendar month that part of the total price which corresponds to the share of the value of the service performed in relation to the total value of the service.
- 10.6. Where a payment schedule is agreed, providing for certain partial payments at certain times, the EM shall be entitled to withhold the relevant partial amount should a disproportion arise between the progress of the Contractor's works and the advancement of payments. The withholding of payments may last as long as such a disparity persists.
- 10.7. The Contractor shall issue a final invoice (the "final invoice") upon proper completion of his services and their acceptance by the EM. Along with the final invoice, the Contractor shall provide the EM with a statement that all services have been accounted for therein in accordance with the Contract. Subsequent settlements for services rendered shall be excluded. The final invoice shall be submitted to the EM not later than 30 days after the acceptance of the works and the signing of the final services provision report.



- 10.8. The Contractor shall attach to each invoice, and whenever requested by the EM, a statement of payment by the EM to the Contractor using a template provided by the EM or a template attached to the Contract.
- 10.9. If the invoice or the underlying documents are incorrect or incomplete, the EM shall be entitled to send back the invoice without posting for it and the receivable covered by the invoice shall not be due. In this situation, the Contractor shall be obliged to correct the invoice, complete the relevant documents, and resubmit them to the EM within 30 days.
- 10.10. Wherever reference is made in the Contract to a price, amount or remuneration, the Parties shall mean the net prices, amounts or remuneration specified in the Contract plus VAT at the rate appropriate to the type of service, in accordance with the applicable legislation, irrespective of which Party charges VAT.

## 11 Payment

- 11.1 The due date of invoices is regulated in the Contract. The payment time limit shall commence upon receipt by the EM of a duly issued invoice. Payment shall be deemed to have been made on the date on which the EM's bank account is debited with the payment amount.
- 11.2 In the situation referred to in Article 10.9, the time limit for payment shall start to run with the submission of a new duly issued invoice. If the checking of the invoice has been stopped for reasons attributable to the Contractor, the due date for payment shall be extended by the period during which the checking of the invoice is suspended.
- 11.3 In the case of early performance of a service, the time limit for payment shall commence at the earliest on the date on which the service would have been performed in accordance with the Contract. However, if the EM has agreed to early performance of the service or has started to use the service, the time limit shall start to run when the invoice is received.
- 11.4 The EM shall be entitled to deduct from the accepted amount of each invoice all claims of the EM under the Contract, including its pro rata share in the advance payment (Article 12.2.), liquidated damages (Article 15) and other counterclaims of the EM.
- 11.5 Payment of invoices shall not imply recognition of the quantity and quality of the services indicated therein.
- 11.6 If the payment differs from the amount of the invoice, the EM shall be obliged to inform the Contractor of the reasons for this difference.
- 11.7 Acceptance by the Contractor of the final payment on the basis of the final invoice and the Contractor's failure to make a reasoned objection in writing to the amount of the payment received within 7 days of receipt shall constitute a waiver by the Contractor of any and all claims for services rendered in accordance with or pursuant to the Contract, with the exception of claims for the return of securities provided by the Contractor.
- 11.8 If the Contractor assigns (cedes) rights or obligations under this Contract on the basis of consent received from the EM, the Contractor shall be obliged, under pain of the transfer (assignment) being ineffective against the EM, to inform the EM of this in writing. The EM shall be entitled to charge the Contractor, unless the Contract Deed or the Negotiation Protocol provides for a different rate, a rate of 1% (one percent) of the value of the assigned rights or obligations as handling costs and to deduct these costs from the remuneration to which the Contractor is entitled or from the financial securities established by the Contract.
- 11.9 The EM shall be entitled to unilaterally set off the Contractor's claims for payment against the EM's counterclaims against the Contractor, even if neither the EM's counterclaims nor the Contractor's claims are yet due at the time of such set-off (contractual set-offs). In the event of a transfer (assignment) of receivables under the Contract by the Contractor (based on the consent received from the EM), the EM may set off its own counterclaims towards the Contractor regardless of when they arose and are due, against the claims for payment of the buyer of the receivables.
- 11.10 In the event of defective performance by the Contractor, including non-performance or improper performance of his obligations under the Contract, the EM shall be entitled to retain, until the defect has been rectified or the obligations properly performed, in addition to the security used to cover claims up to the time of acceptance, three times the value of the costs estimated by the EM for rectification of the defect or performance of the obligations.
- 11.11 In the event that the IN identifies defects in the Contractor's service and withholds payments to the EM for that reason, the EM shall be entitled to withhold from payments to the Contractor a corresponding amount in respect of the Contractor's service. This entitlement shall cease to exist once the Contractor has demonstrated the absence of defects in his services.

- 11.12 The EM shall make payment of the amounts presented on the VAT invoices, duly issued by the Contractor, by means of the *split* payment mechanism, obligatorily, in any case provided by law. In addition, the EM shall be entitled to pay the amounts presented by the Contractor on VAT invoices by means of the split payment mechanism in any other case it deems appropriate.
- 11.13 The Contractor acknowledges that the EM shall only make payments to bank accounts registered on the so-called white list and therefore the Contractor undertakes to hold such a bank account during the term of the Contract in order to enable the EM to make payments. In the absence of a bank account registered on the so-called white list, the EM shall not be obliged to make payment to the Contractor and the payment due to the Contractor shall be considered as not due until the Contractor has fulfilled the obligation referred to in the first sentence and informed the EM thereof in writing.
- 11.14 The Contractor represents that he is the beneficial owner of the payments made under this Contract within the meaning of Article 4a(29) of the Corporate Income Tax Act. In the event of a change in the beneficial owner of the payments made under this Contract, the Contractor undertakes to immediately inform the EM of the identity of the beneficial owner.

## 12. Security

- 12.1 In order to secure the performance of his contractual obligations, the Contractor shall provide the EM with a good performance bond within 14 days of signing the Contract in the form of a bank or insurance guarantee issued by a bank or insurance company previously accepted by the EM.

The amount of the good performance bond is stated in the Contract Deed or Negotiation Protocol as a percentage of the contractual remuneration at the time of signing the Contract. In the event of an increase in the contractual remuneration, the amount of the good performance bond shall be increased accordingly. The good performance bond in the form of a bank / insurance guarantee must be unconditional, irrevocable, payable at the first demand of the EM without checking the legal basis of the request and correspond to the model text in Article 28. It must be issued with a validity period of 60 days longer than the expiry of the longest warranty and guarantee period according to Article 21.2. and in case of postponement of time limits the validity period of the security must be extended accordingly. The amount of the bank / insurance guarantee may be reduced 30 days after final acceptance by the IN to the value indicated in the Contract Deed or Negotiation Protocol.

If the good performance bond in the form of a bank/insurance guarantee is not handed over within 14 days of the signing of the Contract, then the Contractor shall be obliged to pay a guarantee deposit in the same amount. The guarantee deposit shall become due as soon as there is a delay in handing over the good performance bond in the form of a bank/insurance guarantee. Payment of the guarantee deposit shall be made by deducting the amount of the deposit from the Contractor's receivables arising from invoices issued until the amounts deducted reach the amount of the good performance bond.

The amount of the guarantee deposit shall remain interest-free with the EM until the good performance bond is provided in the form of a bank / insurance guarantee subject to the following provisions.

If the Contractor delays the provision of the good performance bond in the form of a bank / insurance guarantee, the EM shall furthermore be entitled, after setting an additional time limit of 7 days, to withdraw from the Contract.

Provided that there are no circumstances entitling the EM to use the guarantee deposit, it shall be refunded as follows:

- a) the part of the guarantee deposit specified in the Contract Deed or Negotiation Protocol shall be refunded upon written demand made by the Contractor within 30 days of IN's acceptance of the EM's services,
- b) the part of the guarantee deposit specified in the Contract Deed or the Negotiation Protocol shall be returned to the Contractor - subject to the successful rectification by the Contractor of any defects reported during the warranty and guarantee period - not earlier than 60 days after the expiry of the longest warranty and guarantee period in accordance with Article 21.2, and after the Contractor has sent a written request to the EM for its return.

If the EM has availed itself of the security referred to in this Article, the Contractor shall be obliged to replenish the security immediately.

- 12.2 If an advance payment has been agreed upon, it shall be due upon submission of an advance repayment security issued by a bank approved in advance by the EM and upon submission of the good performance security (Article 12.1) at the earliest 30 days after the signing of the Contract. The aforementioned advance

repayment security in an amount equal to the amount of the advance payment must be irrevocable, unconditional, payable on first demand by the EM without checking the legal grounds for the demand and correspond to the model text in Article 29. It must be issued with a validity period of 30 days longer than the date of acceptance by the IN foreseen in the Contract, and in case of postponement of the time limits the validity period of the security must be extended accordingly. With each payment of a partial invoice against which part of the advance payment shall be settled, the EM may agree to reduce the amount of the advance repayment security accordingly. If, according to the legal order of the Project Country, the advance payment is subject to value added tax, the advance repayment security must be issued with the addition of this tax.

- 12.3 If the Contractor fails to comply with the obligation to extend the run or to increase the amount of the security, then the EM shall be entitled to use the security. In addition, the EM shall be entitled to use any security received from the Contractor if the Contractor fails to fulfil any of his contractual obligations, in particular to make the required payment.
- 12.4 The set-off provisions of this Article 12 shall constitute a declaration of set-off by the EM, effective for all set-offs made by the EM under this Article 12 against the claims of the Contractor under the Contract, without the need for any further declaration of set-off, to which Contractor hereby consents.
- 12.5 The amount of the securities listed in Article 12 is to be calculated on a gross basis.
- 12.6 The EM shall be entitled to use some or all of the amounts of security provided by the Contractor pursuant to this Article 12 to satisfy or secure any claim by the EM for non-performance or improper performance by the Contractor of his obligations under the Contract, including, but not limited to, costs associated with the remedy of defects, contractual penalties owed by the Contractor, costs of substitute performance, remuneration paid by the EM to the Contractor's subcontractors and other entities through which the Contractor performs his obligation.
- 12.7 The Parties agree that, in the event of a petition for the bankruptcy of the Contractor, the security referred to in this Article shall not be returned to the Contractor and shall constitute an agreed compensation for the costs associated with the rectification of defects and faults during the warranty and guarantee period.

### **13. Deadlines**

- 13.1 For the performance of services entrusted to the Contractor, agreed performance deadlines apply.
- 13.2 Unless otherwise agreed, the Contractor shall be obliged to commence his services on the Construction Site on the date specified in the Contract Deed or Negotiation Protocol or upon receipt of a written request from the EM to commence the works and to perform them in such a way that the contractual deadlines are met. The Contractor shall be obliged to perform his services in accordance with the requirements of the construction progress, also in stages if necessary. The instructions of the EM construction management shall be binding on the Contractor. Specific deadlines shall be agreed weekly between the EM and the Contractor. The representative of the Contractor listed in Article 4.4 and the construction manager of the EM shall be authorised to agree detail deadlines in writing on behalf of the Contractor and the EM, respectively. Changes to the deadlines specified in the Contract shall require the signing of an addendum to the Contract by the persons authorised to represent the EM and the Contractor in order to be valid. Any disassembly and reassembly or postponement of deadlines as a result of insufficient time coordination between the Contractor and other EM subcontractors or the EM construction management shall be the responsibility of the Contractor.
- 13.3 If the commencement of service performance is delayed or if delays or interruptions occur during performance so that compliance with the performance deadline appears to be endangered, the Contractor shall do everything that can be required of him in order to avoid exceeding the service performance deadline.
- 13.4 If the exceeding of the contractual deadlines is clearly unavoidable, the Contractor shall only be entitled to an appropriate extension of the services performance deadlines and an appropriate remuneration for the documented and reasonable costs if the reason for this is due to circumstances attributable to the EM. This right shall exist in particular if the EM has demanded additional services in accordance with Article 6.10, which has become the reason for the exceeding of the deadlines.
- 13.5 The Contractor shall only be entitled to an extension of the contractual deadlines if he has promptly notified the EM of the reasons for and planned duration of the postponement and is not responsible for the impediment and it is not in his power to prevent or reduce the impediment and it is not due to circumstances that should have been foreseen.

13.6 Extensions of contractual deadlines shall be determined in accordance with the extent and duration of the impediment and its consequences, and new deadlines shall be set in writing in an addendum to the Contract. If, as a result of an extension of the deadline, service performance falls on a more favourable or less favourable time, this shall be taken into account in the calculation of the extension of the deadline and in any agreements on cost increases or reductions. If the deadline is extended by means of an addendum to the Contract, the consequences of delay shall only occur if the extended deadline is exceeded.

13.7 Immediately after the cessation of the impediment, the Contractor shall be obliged to directly resume performance on his own initiative, without a separate call, and to immediately notify the EM of the resumption of service performance. If, however, the impediment was on the part of the EM, the EM shall be obliged to notify the Contractor immediately of its cessation.

#### **14. EM Rights**

14.1 In the event that the Contractor performs his services in such a way that, in the opinion of the EM, meeting the agreed performance deadline, the deadline set by the IN or the performance deadline of other subcontractors performing their services after the Contractor's services appears to be seriously jeopardised, in particular in the event that the Contractor commits an insufficient number of employees, equipment, scaffolding, materials or components, the EM shall be entitled to require the Contractor to take appropriate remedial action without delay or to submit a detailed schedule for accelerating the works (remedial schedule) that shall realistically allow the works to accelerate and meet the deadlines.

14.2 In the event that the Contractor's service performance is defective (including incomplete), the Contractor shall at his own expense replace the defective service with a non-defective one. If the Contractor is responsible for the defect, he shall be obliged to compensate for the resulting damage. If the Contractor fails to fulfil his obligation to remedy the defect or any other obligation under the Contract, the Contractor may be given a reasonable deadline by the EM to remedy the defect or fulfil the obligation.

14.3 If the Contractor fails to comply with the request of the EM pursuant to Article 14.1 or fails to comply with the deadline set by the EM pursuant to Article 14.2, the EM shall be entitled to:

- a) engage, at the Contractor's expense and risk, additional personnel and/or subcontractors and/or equipment and/or materials, etc., or rectify the defect itself or have this done by a third Party (substitute performance); or
- b) rescind the Contract in whole or in part pursuant to Article 17.1 and charge the increased costs of completing the subject of the Contract to the Contractor,

insofar as the EM has threatened to exercise the aforementioned rights either in a demand issued in accordance with Article 14.1 or when setting a deadline in accordance with Article 14.2, in the event that the Contractor fails to comply with the demand or fails to meet the deadline.

14.4 In the event of applying measures pursuant to Article 14.3, the EM shall not be obliged to collect competing bids. Any costs that arise on the part of the EM due to the application of one of the measures pursuant to Article 14.3 shall be borne by the Contractor. The EM shall be entitled to deduct these costs from the next payment due to the Contractor or the security provided by the Contractor in accordance with Article 12.

14.5 With regard to yet-to-be-started partial services, the EM shall be entitled to the rights under Article 14.3(a) and (b) if the EM has a reasonable concern that the Contractor will not be able to properly perform the yet-to-be-started partial services.

#### **15 Contractual Penalty**

15.1 A default on the part of the Contractor occurs when a service under the Contract (including the obligations under the Contract) is not fulfilled within the contractual deadlines and the Contractor fails to prove that the reason for this situation lies with the EM.

15.2 If the Contractor exceeds one or more of the binding deadlines set out in the Contract, in particular in the Contract Deed, the Negotiation Protocol, an Annex to the Contract, a supplementary order to the Contract or those arising from the warranty and guarantee provided, without being able to prove that the EM is responsible for the Contractor's exceeding the deadlines, the EM shall be entitled to claim from the Contractor a contractual penalty for each day of delay, the amount and the upper limit of which are set out in the Contract.

15.3 The EM shall also be entitled to a contractual penalty for withdrawal from the Contract if the reason for withdrawal lies with the Contractor. The amount of the contractual penalty is specified in the Contract Deed or the Negotiation Protocol.

- 15.4 If the contractual penalty is expressed as a percentage, it shall be calculated on the gross remuneration/price listed in the Contract including all ancillary orders.
- 15.5 The contractual penalty may be claimed by the EM at any time and shall become payable on any day after the occurrence of a default by the Contractor or any other basis for the penalty under the Contract and may be deducted from any payment due to the Contractor or security granted by the Contractor in accordance with Article 12.
- 15.6 The EM shall be entitled to claim damages from the Contractor in excess of the contractual penalty.

## 16 Insurance

- 16.1. Prior to the commencement of works on the Construction Site, the Contractor shall take out third party liability insurance, maintaining its validity for the duration of the Contract, and submit it to the EM upon request. The sum insured and the extent of the insurance cover shall be in accordance with customary practice in the industry and, unless otherwise agreed, shall be at least EUR 200,000 (or equivalent) for material damage and personal injury.
- 16.2. If the EM has taken out construction insurance (not including liability) in the form of Contractor's-All-Risk (CAR) insurance and the Contractor bears the cost of that insurance, the Contractor has been included as a co-insured and the Contractor shall then be entitled to request a copy of the policy from the EM. The inclusion of the Contractor in the insurance taken out by the EM shall not limit the liability of the Contractor under this Contract. The Contractor must assess for himself whether the insurance taken out by the EM is sufficient for him or whether he needs to take out additional insurance.
- 16.3. In the event of a loss in the Contractor's services covered by the CAR insurance policy, the Contractor shall be obliged to report it immediately in writing and provide all the necessary data for reporting to the insurer. In the event of theft, a police report shall be necessary. The liquidation of the loss with the insurer shall be carried out through the EM.
- 16.4. The insurance benefits received by the EM for losses in the Contractor's services shall be paid to the Contractor with deduction of the deductible if the Contractor has remedied the loss in a documented way at his own expense. The deductible retained by the insurer shall be borne by the Contractor.

## 17 Withdrawal from the Contract

- 17.1 In addition to the other cases specified in the Contract, the EM shall be entitled to withdraw from the Contract if:
- a) there are reasonable grounds for the opening of bankruptcy proceedings against the Contractor or the court refuses to open such proceedings due to a lack of assets sufficient to cover the costs of the bankruptcy proceedings;
  - b) circumstances have arisen which manifestly prevent the proper performance of the Contract (in particular the events indicated in Article 26);
  - c) the Contractor has taken steps aimed at damaging the EM, in particular when he has colluded with other traders to the EM's detriment, *contra bonos mores* or in violation of fair competition;
  - d) the IN or the EM has withdrawn from the Master Contract;
  - e) Contractor does not have the authority to lawfully implement its benefits;
  - f) the Contractor is late with payments to his subcontractors, service providers or suppliers;
  - g) the Contractor delays the commencement, performance or completion of the services that are the subject of the Contract by more than 7 days;
  - h) the Contractor engages a subcontractor to perform the services under the Contract without obtaining the prior written consent of the EM;
  - i) for any reason, the demand for the established services of the Contractor or a part thereof has ceased, in particular in the event of the exclusion of a given scope of works by the IN in connection with the performance of the Master Contract concluded with the EM;
  - j) the IN objected to Contractor's involvement (did not accept the Contractor);
  - k) the Contractor performs the subject of the Contract defectively or contrary to the terms of the Contract or fails to fulfil any other obligations under the Contract and, after the EM has set an additional deadline, continues to perform the subject of the Contract incorrectly or fails to fulfil his obligations under the Contract.

Withdrawal from the Contract may relate to all of the Contractor's services or only part of them.

- 17.2 The Contractor shall be entitled to withdraw from the Contract if:

- a) circumstances have arisen which manifestly prevent the proper performance of the Contract for which the EM is solely responsible;
- b) the EM is more than 30 days in arrears in the payment of the due remuneration owed to the Contractor for the services properly performed and accepted.

The Contract may only be rescinded upon the ineffective expiry of an additional time limit of 28 days set in writing to the EM.

- 17.3 The declaration of withdrawal from the Contract must be made in writing.
- 17.4 In the event that one Party to the Contract is at fault for the withdrawal from the Contract, it shall be liable to pay compensation to the other Party for the resulting damage, with the exception of lost profit. In the case of withdrawal pursuant to Article 17.1.d), the EM shall not be obliged to pay compensation to the Contractor if the cause of IN's withdrawal from the Master Contract is also to be attributed to the Contractor. In the event of withdrawal pursuant to Article 17.1.i) or j), the EM shall not be obliged to pay damages to the Contractor.
- 17.5 Subject to the provisions of Article 21.6, withdrawal from the Contract shall be with future effect (*ex nunc*), which means that the provisions of the Contract shall apply to the services performed by the Contractor up to the date of withdrawal.
- 17.6 In the absence of a provision to the contrary in the Contract Deed or the Negotiation Protocol, the Parties shall have the right to contractually withdraw from the Contract within a period of 6 months from the date on which they become aware of the circumstance giving rise to the withdrawal.
- 17.7 Without prejudice to the other provisions of the Contract, the following shall apply in the event of withdrawal from the Contract:
- a) Partial services already accepted shall be settled in accordance with the Contract;
  - b) Services not yet accepted but already properly performed must be accepted and accounted for;
  - c) At the request of the EM, the Contractor shall be obliged to leave scaffolding, equipment, machinery, and other devices on the construction site, as well as supplied construction materials, etc. for the continuation of the works, with appropriate compensation, or, at the request of the EM, to remove them immediately from the construction site. If the Contractor fails to comply with this request, the EM may remove them or have them removed by third parties at the Contractor's expense and risk (substitute performance);
  - d) Where the circumstances leading to the EM's withdrawal from the Contract are the responsibility of the Contractor, the Contractor shall be obliged to compensate the EM for the damage arising therefrom, in particular to compensate the EM for the additional costs that arise as a result of the EM completing the service with the assistance of third parties;
  - e) In the event of partial withdrawal from the Contract, the Contractor shall only be entitled to remuneration for the duly performed services in the part not covered by the withdrawal.

## 18. Tests

- 18.1 The Contractor shall carry out in due course, depending on the progress of the works, tests (trials) agreed with the EM or necessary under the laws of the Project Country, but in any case before the acceptance of the service by the EM. The Contractor shall give the EM at least 48 hours' written notice of these activities. The EM shall have the right to request from the Contractor at any time, at the Contractor's expense, evidence, tests, examinations of materials, auxiliary materials, and samples, etc., as well as to carry out, at the Contractor's expense, visual inspections and checks of the Contractor's production facilities and his subcontractors / service providers / suppliers and on the construction site. The result of the test shall be recorded in writing and communicated to the EM.
- 18.2 Tests ordered by the EM itself shall not relieve the Contractor of his obligation under Article 18.1.
- 18.3 Insofar as neither the Contract nor the type of service implies a specific deadline for the test, this deadline shall be determined by the EM. If it is only possible to carry out the stipulated test at a certain stage of service performance, the Contractor shall be obliged to give sufficient notice of the reaching of this stage so that the test can take place without hindrance.
- 18.4 In addition to the tests, the Contractor shall be obliged to carry out, prior to acceptance of the service by the EM, trial operation of all installations and equipment installed by him. At the time of acceptance by the IN, all installations and equipment must be fitted with new filters.

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- 18.5 The costs of testing, provision of evidence, certification, etc., together with expenditure on personnel, materials (including consumables), equipment, etc., and associated fees and charges, etc., are included in the agreed prices (contract remuneration).
- 18.6 If one of the Contracting Parties has doubts about the veracity of the test result, it may request a further test to be carried out by a testing institution authorised in the Project Country or by an expert chosen by mutual consent. The costs of the subsequent test shall be borne by the Party requesting the additional test unless the result of the test proves unfavourable to the other Party.
- 18.7 Parts of the service deemed inappropriate during the test must be replaced immediately by the Contractor with appropriate ones without the right to claim costs or extend the service performance deadlines specified in the Contract. Failed tests must be repeated without the right to claim costs or extend the performance deadlines specified in the Contract.

## 19 Acceptance

- 19.1 Upon completion of all of his services, the Contractor may request acceptance by the EM with the proviso, however, that acceptance of the Contractor's services may not be made prior to acceptance of all services by the IN (except in the circumstances referred to in Article 19.2. The expected date of acceptance by the IN is stated in the Contract Deed or the Negotiation Protocol.
- 19.2 At the written request of the Contractor, the acceptance of the Contractor's services may be made prior to the acceptance by the IN:
- insofar as the acceptance of the Contractor's services by the IN has been delayed in relation to the stipulated deadline by more than 90 days and none of the reasons for this delay is, at least partly, the Contractor's fault,
  - where the period between the actual completion of the Contractor's services and the scheduled acceptance of the Contractor's services by the IN exceeds 90 days.
- In the case of a), the acceptance shall take place 90 days after the date that was originally envisaged for the acceptance of the Contractor's services by the IN, and in the case of b), it shall take place after all the Contractor's services have been completed.
- 19.3 In the event that the EM accedes to the acceptance of the Contractor services before the acceptance of the Contractor services by the IN has taken place, the acceptance shall be subject to the proviso that the EM shall only be entitled to claim defects of any kind during the warranty or guarantee period, even if the defects were recognisable or were discovered upon acceptance by the EM.
- 19.4 With the acceptance of the Contractor's services by the EM, the service risk shall be transferred and the warranty and guarantee shall begin to run.
- 19.5 The EM shall, within 14 days of the request for acceptance by the Contractor, carry out the acceptance or notify the Contractor of the refusal to perform the acceptance.
- 19.6 Acceptance can only be made on the basis of a written statement from the EM (statement of acceptance) or in the form of an acceptance report to be signed by the EM and the Contractor.
- 19.7 The EM acceptance statement must be delivered to the Contractor. The Contractor may take a position on the findings made in this statement within 14 days. If the Contractor fails to take a position, the findings made shall be deemed to have been accepted by the Contractor.
- 19.8 The acceptance report may specify defects in the service performed by the Contractor and deadlines for their rectification. A fictitious or implied acceptance in the form of use, commissioning, official acceptance, acceptance by the IN, by notification to the Contractor of the completion of the works or by such notification to the IN by the EM or otherwise shall be excluded. Partial acceptance shall be excluded if not expressly agreed in the Contract.
- 19.9 The EM shall be entitled to refuse acceptance if the service contains defects, in particular material defects. If the EM refuses to accept the service, it shall be obliged to notify the Contractor in writing, stating the reasons.
- 19.10 Significant defects are defects that prevent or significantly hinder the use of the service as agreed in the Contract or have become a reason for the IN to refuse acceptance or are contrary to the characteristics of the service specified in the Contract. The following are also material defects: lack of or errors in the complete as-built documentation, lack of or errors in the user, operation or maintenance manual, lack of or errors in the technical descriptions or documents confirming the specific characteristics of the machinery, equipment or materials supplied or other documentation that must be provided in accordance with the Contract.

19.11 Partial payments made by the EM shall not imply that the settled partial services are deemed to have been accepted by the EM.

## **20. Risk and Liability**

20.1 The Contractor shall be fully liable for all damage of any kind caused by him or by persons with whose assistance he performs his obligations and which is caused to the EM, the IN or third parties, including damage resulting from product liability. The Contractor shall also be liable for the acts and omissions of his subcontractors, service providers and suppliers, as well as other persons remaining on the construction site with the Contractor's consent. In particular, the Contractor shall be liable for any damage resulting from a delay whose cause lies on his part or on the part of the persons with whose assistance he performs his obligations or is due to the inadequate quality of the solution, technology, equipment, materials used or lies in his service. The Contractor shall fully indemnify the EM against any and all liability that the EM may incur in connection with the aforementioned acts and omissions, and against the obligation to provide any resulting damages and legal actions. This provision shall also apply if claims, including damages against the EM are subject to legislation other than that of the Project Country.

20.2 Until acceptance, the Contractor shall be liable for his services on a strict liability basis. This shall apply in particular to destruction (total or partial), damage or theft. This shall also apply to supplied materials, components, and other goods which the Contractor has taken over in accordance with the Contract from the EM or from other contractors/subcontractors. The fact of any paid protection of the Construction Site shall not limit the liability of the Contractor.

20.3 The case of damage must be reported immediately to the EM and the extent of the damage agreed immediately by both Parties.

20.4 The Contractor shall be liable to the affected third parties for unauthorised entry or destruction of neighbouring plots of land, for unauthorised extraction or storage of materials or other objects outside the areas designated for this purpose by the EM, and for the consequences of unauthorised closure of roads or streets, in accordance with the relevant legal provisions. If claims are raised against the EM on this account, the Contractor shall indemnify the EM against liability and performance obligations on this account.

20.5 The Contractor shall be liable for the infringement of any industrial property rights and copyrights of third parties made in connection with the Contractor's performance and undertakes to indemnify the EM against liability and performance obligations in this respect.

20.6 The Contractor shall bear any and all costs associated with determining and proving the cause of the defects in the subject of the Contract (including costs associated with the inspection, expert reports, etc. performed by the EM and the Contractor), unless the Contractor proves that he is not responsible for the defects.

20.7 Wherever substitute performance is referred to in the Contract, it shall be deemed to be carried out by the EM at the expense and risk of the Contractor. Each time the costs of substitute performance shall be increased by the EM's handling costs in the amount indicated in the Contract Deed or Negotiation Protocol, and shall be charged in full to the Contractor.

## **21. Warranty for Defects and Guarantee**

21.1 The Contractor guarantees that at the time of acceptance his services shall be free from defects and shall have the qualities expressly stipulated in the Contract and customarily assumed and shall correspond to the current state of technical knowledge (warranty and guarantee). In the case of services performed according to a design (e.g. sample, mock-up, reference object), the guarantee of the properties of the design shall apply. Warranty and guarantee claims shall cover all defects that emerge during the warranty and guarantee period, including defects that exist at the time of the transfer of risk with the acceptance of the services by the Contractor or that arise from a cause inherent in the Contractor's services. The Contractor's warranty and guarantee shall not be limited by the existence of supervision by the EM.

21.2 The warranty and guarantee period shall commence upon acceptance by the EM. The duration of the warranty and guarantee shall be 60 days longer than the warranty and guarantee period of the EM towards the IN, as mentioned in the Contract Deed or the Negotiation Protocol. The Contractor shall be liable under the warranty and guarantee to the EM at least to the extent that this liability is borne by the EM towards the IN.

21.3 In the event that the acceptance of the Contractor's services by the EM prior to the acceptance of the Contractor's services by the IN, the warranty and guarantee period shall be further extended by the time elapsing between the acceptance by the EM and the acceptance of all the Contractor's services by the IN.



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- 21.4 If the defect has been caused by an instruction from the EM, by documentation provided by the EM, by materials supplied by the EM, or is due to the prior service of other EM contractors, the Contractor shall be released from the warranty and guarantee in respect of that defect, provided that the Contractor has raised objections in writing in accordance with the Contract and the EM has not accepted the objections raised.
- 21.5 Failure to report a defect during acceptance shall not exclude reporting the defect during the warranty and guarantee period.
- 21.6 In the event of a material irremovable defect, the EM shall be entitled to withdraw from the Contract with ex tunc effect (with restoration of all services to their previous state) or to demand a second performance of the service. However, if the restoration to a previous state is technically impossible or would be economically inexpedient, the EM may demand a reduction in the contractual remuneration. A defect, the removal of which would be associated with a disproportionately high outlay, shall also be deemed irremovable.
- 21.7 In the event of the occurrence of a material, removable defect, the Contractor shall be obliged to remove the defect at his own expense within a reasonable deadline set by the EM. After the lapse of the deadline set, the EM may, at the cost and risk of the Contractor, remove the defect itself or have it removed by third parties (substitute performance). If the removal of the defect is urgently necessary for the EM in order to reverse the material damage and immediate removal by the EM is not possible, the EM shall be entitled to remove the defect immediately, at the cost and risk of the Contractor, by itself or by commissioning third parties (substitute performance). The Contractor must be notified of this in writing without delay.
- 21.8 In the event of a non-material, irremovable defect, the EM may demand an appropriate reduction in the contractual remuneration.
- 21.9 In the event of a non-material removable defect, the Contractor shall be obliged to remove the defect within a reasonable deadline set by the EM. After the lapse of the deadline set, the EM may, at the cost and risk of the Contractor, remove the defect itself or by third parties (substitute performance).
- 21.10 If, in connection with the Contractor's liability under warranty and guarantee, the EM is entitled to more than one right, the selection of the individual rights shall be made by the EM according to its free choice.
- 21.11 The EM, when exercising its power of substitute performance, shall not be obliged to collect competitive bids in advance.
- 21.12 If the EM requests the Contractor to remedy the defects, the Contractor shall do so immediately if it is necessary to prevent danger, and otherwise within a reasonable deadline set by the EM.
- 21.13 The Contractor shall submit a proposal for the method of repair to the EM in good time before proceeding to rectify the defect. The EM's consent to the proposed method of repair shall not relieve the Contractor of his sole liability for the rectification of the defect.
- 21.14 The Contractor shall reimburse the EM for any and all costs associated with the discovery of the defect (e.g. expert costs) and the rectification of the defect (e.g. design costs, repair, replacement of components, substitute performance) within seven days of the EM's request.
- 21.15 In the event that the EM is held liable due to defects and damages by the IN or a third party, the Contractor shall indemnify the EM against liability and performance obligations in this respect.
- 21.16 For the purpose of inspection or rectification of the defect, the EM shall be obliged to allow the Contractor access to the site of the defect at the agreed times.
- 21.17 As from the date the defect is remedied, the warranty and guarantee period for those parts of the service that replace the defective service or are connected with it shall start anew. If, however, as a result of such a defect, it is also impossible to use other parts or the entire service in accordance with the Contract, the warranty and guarantee period for these parts or the entire service shall start anew.
- 21.18 If the Contractor's services consist wholly or partly of deliveries that do not take place at the construction site, the EM may require the Contractor to rectify a defect subject to warranty and guarantee at the construction site if rectification at the place of delivery is not possible or involves a disproportionately high outlay.
- 21.19 It is resolved that the EM shall be entitled to make claims under the warranty and guarantee provided by Contractor's subcontractors, service providers and suppliers. To this end, the Contractor undertakes each time to include a provision in his contracts with subcontractors that the EM shall be entitled to make direct use of the rights and claims under the warranty and guarantee provided by the Contractor's subcontractors. In case of failure to include a clause of the above content in the contract with a subcontractor, the

Contractor shall pay the EM a contractual penalty in the amount of PLN 100,000, while the EM shall be entitled to claim compensation exceeding the amount of the reserved penalty.

## **22. Language**

22.1 Any and all correspondence between the Contractor and the EM connected with the Contract shall be conducted in the language of correspondence set out in the Contract Deed or the Negotiation Protocol, which shall also apply to all documents drawn up in connection with the Contract.

22.2 All documents and drawings to be submitted to the authorities of the Project Country or the IN shall be executed in or translated into the language of documentation mentioned in the Contract Deed or the Negotiation Protocol (or in several languages of documentation); if several languages of documentation are given, the drawings shall be described in those languages.

## **23. Correspondence**

23.1 Working correspondence connected with the performance of the Contractor's services shall be addressed to the EM's construction management, the address of which the EM shall provide to the Contractor prior to the commencement of the works, provided that it is not already included in the Contract Deed or the Negotiation Protocol.

23.2 All other correspondence between the Contractor and the EM regarding the Contract shall be sent to the address of the EM's registered office, unless the EM has provided the Contractor with a different address in writing.

23.3 The Contractor shall inform the EM in writing of any change of his address or else correspondence sent to the last address of the Contractor known to the EM shall be deemed to have been duly delivered.

## **24. Other Provisions**

24.1. If the Contractor is a consortium, the member companies of the consortium shall be jointly and severally liable to the EM. The EM may make payments in discharge of the debt to any member of the consortium and, in case of doubt, any member of the consortium shall be entitled to represent the consortium.

24.2. In the event of a dispute or difference of opinion between the Contractor and the EM, the Contractor shall not be entitled to withhold or abandon the performance of the contracted services or to retain the design documentation or other documents connected with the Project.

24.3. In the event of bankruptcy of the EM or termination or cancellation of the Master Contract between the IN and the EM, the Contractor accepts that the IN may, by unilateral written declaration to the Contractor, enter into the Contract in place of the EM. If the IN joins the Contract in place of the EM, the Contractor shall not be entitled to raise any claims against the IN he has against the EM, and the Contractor shall only be entitled to claims for payment against the IN for services performed after IN's entry into the Contract.

24.4. The display of Contractor's corporate or advertising signs may only take place with the written consent of the EM and against payment.

24.5. The failure of the EM to respond to a breach of the Contract by the Contractor shall not constitute a waiver of the EM's rights under the Contract or an acceptance by the EM of such state of affairs.

24.6. Offsetting by the Contractor of claims owed to him by the EM against claims owed by the EM to the Contractor shall be excluded.

24.7. The assignment, pledge, or other encumbrance of any (existing or future) claim of the Contractor against the EM arising from the Contract shall require the prior consent of the EM expressed in writing under pain of nullity. The Contractor shall be obliged to obtain said consent before entering into an assignment agreement with a third party or an agreement resulting in the establishment of an encumbrance. The consent of the EM shall only be deemed to have been effectively given if the terms and conditions contained in the EM's statement of consent are accepted in writing by the buyer of the claim or the person in whose favour the claim is encumbered.

24.8. The EM represents that it has the status of a large entrepreneur within the meaning of the provisions of the Act of 8 March 2013 on the Prevention of Excessive Delays in Commercial Transactions.

24.9. The unenforceability or ineffectiveness of individual provisions of the Contract shall not affect the binding force of the remaining provisions of the Contract. The ineffective or unenforceable provisions shall be replaced by the EM and Contractor with effective and enforceable provisions corresponding to the purpose of the Contract.

## **25. Settlement of Disputes**

25.1. The Contract shall be governed by the laws of the Project Country.

25.2. The court with exclusive jurisdiction for disputes arising in connection with the Contract shall be the common court having jurisdiction over the registered office of the EM.

**26. Force Majeure**

- 26.1. If either Party to the Contract suffers an impediment to the performance of its services in accordance with the Contract due to a force majeure event, it shall be relieved of performance for the duration of the event.
- 26.2. In the event of a force majeure event, the Contractor shall only be relieved of his performance obligations to the extent that the EM is also relieved by the IN under the Master Contract. The Contractor shall notify the EM of a force majeure event as soon as he becomes or may become aware of such an event.
- 26.3. If the works have to be interrupted due to one or more force majeure events for more than 45 days, the EM shall have the right to withdraw from the Contract.

**27. Anti-corruption Measures**

27.1. The Contractor acknowledges that the EM has a Code of Conduct to guide its activities. The Contractor has reviewed the EM's Code of Conduct as published at: [www.porr-group.com](http://www.porr-group.com) and [www.porr.pl](http://www.porr.pl) and is committed to adhering to the resulting rules of conduct.

**28. Protection of Personal Data**

- 28.1. The Contractor undertakes to process the personal data made available to him by the EM in the performance of the Contract, in accordance with the provisions of the Regulation of the European Parliament and of the Council (EU) 2016/679 of 27 April 2016 on the protection of natural persons in relation to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (hereinafter the "GDPR").
- 28.2. The Contractor undertakes to inform all individuals associated with the performance of the Contract (including sole traders) whose personal data in any form are to be shared with the EM of the fact that their personal data have been transferred to the EM and of the EM's processing of those personal data.
- 28.3. The obligation referred to in Article 28.2 shall be performed for the benefit of the EM by the Contractor providing the persons whose data are to be processed by the EM with the wording of the Information Sheet annexed to the Contract and carrying out any other acts necessary to perform on behalf of the EM the information obligation set out in the GDPR towards those persons.
- 28.4. The Contractor shall be fully liable to the EM for non-performance or improper performance of the obligations indicated above.

**29. Text of the Good Performance Bond**

To ...[the EM].

.....date .....

Subject: Guarantee No. ....

Dear Sirs,

We are aware that on the basis of the Contract concluded by you with ..... [CO] ..... in connection with the construction project " .....", the submission of a good performance security is required.

By order of ... [CO]... we take over towards you this irrevocable and unconditional guarantee in the amount of ...[insert amount and currency] and at the same time undertake, at your first written request, without verification of the legal basis for the request and waiving any reservations, to pay you up to the amount mentioned above within five working days [of the bank]. You may also make use of this guarantee in the event of the bankruptcy of ...[CO].

We hereby waive the placing of the amount payable by us in the court deposit.

For identification purposes, your guarantee payment request must be submitted to our bank via your bank, which shall confirm that the signatures on the payment request have been affixed by persons authorised to contract financial obligations on your behalf.

Any payment made by our bank under this guarantee automatically reduces the amount of our obligation until the guarantee amount is fully utilised.

This guarantee takes effect on the date of issue and remains valid until ..... and expires automatically and completely in the event of:

- 1. your request for payment under the guarantee not being received by our bank within the validity period of the guarantee, or
- 2. the return the original of this guarantee to our bank.

Any claims under this guarantee shall be forwarded to us by registered letter, courier service or keyed SWIFT via your bank, not later than on the last day of validity of this guarantee.

This guarantee shall be returned to our bank upon expiry of its term of validity. However, the obligation under this guarantee shall also expire upon the lapse of that term despite the failure to return the original to us.

This guarantee shall be governed by the laws of Poland and the place of jurisdiction shall be Warsaw.

..... Bank

**30. Text of Security for the Repayment of the Advance**

To ...[the EM].

.....,date .....

Subject: Guarantee No. ....

Dear Sirs,

We are aware that on the basis of the Contract concluded by you with ..... [CO] ..... in connection with the construction investment " .....", an advance payment shall be made against the submission of a bank guarantee in the same amount.

By order of ... [CO]... we take over towards you this irrevocable and unconditional guarantee in the amount of ...[specify amount and currency] undertaking, at your first written request, without verification of the legal basis for the request and waiving any reservations, to make payment to you up to the above-mentioned amount within five working days [of the bank]. You may also make use of this guarantee in the event of the bankruptcy of ...[CO]. We hereby waive placing the amount payable by us in the court deposit.

For identification purposes, your guarantee payment request must be submitted to our bank via your bank, which shall confirm that the signatures on the payment request have been affixed by persons authorised to contract financial obligations on your behalf.

Any payment made by our bank under this guarantee automatically reduces the amount of our obligation until the guarantee amount is fully utilised.

This guarantee takes effect on the date of issue and remains valid until ..... and expires automatically and completely in the event of:

1. your request for payment under the guarantee not being received by our bank within the validity period of the guarantee, or
2. the return the original of this guarantee to our bank.

Any claims under this guarantee shall be forwarded to us by registered letter, courier service or keyed SWIFT via your bank, not later than on the last day of validity of this guarantee.

This guarantee shall be returned to our bank upon expiry of its term of validity. However, the obligation under this guarantee shall also expire upon the lapse of that term despite the failure to return the original to us.

This guarantee shall be governed by the laws of Poland and the place of jurisdiction shall be Warsaw.

..... Bank

**31. Text of Security for Claims During the Guarantee and Warranty Period**

to ...[the EM].

.....date .....

Subject: Guarantee No. ....

Dear Sirs!

We are aware that on the basis of the Contract concluded by you with ..... [CO] ..... in connection with the construction project " .....", you are retaining a guarantee deposit, which is subject to release against the submission of a bank guarantee.

By order of ... [CO]... we take over towards you this irrevocable and unconditional guarantee in the amount of ...[specify amount and currency] .... This guarantee may also be invoked in the event of the bankruptcy of ...[CO]. We hereby waive placing the amount payable by us in the court deposit.

For identification purposes, your guarantee payment request must be submitted to our bank via your bank, which shall confirm that the signatures on the payment request have been affixed by persons authorised to contract financial obligations on your behalf.

Any payment made by our bank under this guarantee automatically reduces the amount of our obligation until the guarantee amount is fully utilised.

This guarantee takes effect on the date of issue and remains valid until ..... and expires automatically and completely in the event of:

1. your request for payment under the guarantee not being received by our bank within the validity period of the guarantee, or
2. the return the original of this guarantee to our bank.

Any claims under this guarantee shall be forwarded to us by registered letter, courier service or keyed SWIFT via your bank, not later than on the last day of validity of this guarantee.

This guarantee shall be returned to our bank upon expiry of its term of validity. However, the obligation under this guarantee shall also expire upon the lapse of that term despite the failure to return the original to us.

This guarantee shall be governed by the laws of Poland and the place of jurisdiction shall be Warsaw.

..... Bank