

***B. DRAFT CONTRACT AND SPECIAL CONDITIONS,
INCLUDING ANNEXES***

DRAFT CONTRACT

SUPPLY CONTRACT FOR EUROPEAN UNION EXTERNAL ACTIONS

No <Contract number>

FINANCED FROM THE [GENERAL BUDGET OF THE UNION] [EDF]

<Full name and address of the contracting authority [if direct management: The European Union, represented by the European Commission on behalf of and for the account of the government of <name of partner country/countries>] >

(‘The contracting authority’),

of the one part,

and

<Full official name of contractor>

[<Legal status/title>]¹

[<Official registration number>]²

<Full official address>

[<VAT number>]³, (‘the contractor’)

of the other part,

have agreed as follows:

PROJECT <Title and reference in the financing agreement/decision>

CONTRACT TITLE <Contract title>

Identification number <Publication reference>

Article 1 Subject

1.1 The subject of the contract shall be:

the [supply], [delivery], [unloading], [siting and installation], [commissioning],
[maintenance], [after-sales service], [etc.],

of the following supplies:

2 vehicles

The place of acceptance of the supplies shall be Edinet the time limits for delivery shall be
<insert date and time> and the Incoterm applicable shall be [DDP] The implementation

¹ Where the contracting party is an individual.

² Where applicable. For individuals, mention their ID card or passport or equivalent document – number.

³ Except where the contracting party is not VAT registered.

period of tasks shall run from <Specify the date on which implementation of the tasks is to commence> to <date for provisional acceptance>.

- 1.2 The contractor shall comply strictly with the terms of the special conditions and the technical annex.
- 1.3 [The supplies which form the [subject of the contract] [lots No <insert number>] must be accompanied by the spare parts described by the contractor in its tender] [and by the accessories and other items necessary for using the goods over a period of <period>, as specified in the instructions to tenderers].

Article 2 Origin

The rules of origin of the goods are defined in Article 10 of the special conditions.

A certificate of origin for the goods must be provided by the contractor at the latest when it requests provisional acceptance of the goods. Failure to comply with this condition may result in the termination of the contract and/or suspension of payment.

Article 3 Price

- 3.1 The price of the supplies shall be that shown on the financial offer (specimen in Annex IV). The total maximum contract price shall be [EUR] [<ISO code of national currency>] only for indirect management in the following cases: (i) when legal or local constraints exceptionally impose using the national currency; (ii) when needed, for contracts within the imprest component of a programme estimate].<insert price>
- 3.2 Payments shall be made in accordance with the general and/or special conditions (Articles 26 to 28).

Article 4 Order of precedence of contract documents

The contract is made up of the following documents, in order of precedence:

- the contract agreement;
- the special conditions
- the general conditions (Annex I);
- the technical specifications (Annex II [including clarifications before the deadline for submission of tenders and minutes from the information meeting/site visit];
- the technical offer (Annex III [including clarifications from the tenderer provided during tender evaluation]);
- the budget breakdown (Annex IV);
- [specified forms and other relevant documents (Annex V)];

The various documents making up the contract shall be deemed to be mutually explanatory; in cases of ambiguity or divergence, they shall prevail in the order in which they appear above.

Article 5 Other specific conditions applying to the contract

[For the purpose of Article 44 of the general conditions, for the part of the data transferred by the contracting authority to the European Commission:

(a) the controller for the processing of personal data carried out within the Commission is

[For DG NEAR the head of contracts and finance unit R4 of DG Neighbourhood and Enlargement Negotiations][For any other DG <please add the function of your controller >.]

(b) the data protection notice is available at <http://ec.europa.eu/europeaid/prag/annexes.do?chapterTitleCode=A>.

If necessary and after having obtained prior approval/derogation by the competent services:

The following conditions to the contract shall apply:<specify conditions>]

Done in English in [two] [three] originals, [For direct management: [one] [two] originals being for the European Commission] [For indirect management: one original being for the contracting authority, one original being for the European Commission,] and one original being for the contractor.

For the contractor

Name:

Title:

Signature:

Date:

For the contracting authority

Name:

Title:

Signature:

Date:

SPECIAL CONDITIONS

CONTENTS

These conditions amplify and supplement, if necessary, the general conditions governing the contract. Unless the special conditions provide otherwise, those general conditions remain fully applicable. The numbering of the articles of the special conditions is not consecutive but follows the numbering of the articles of the general conditions. In exceptional cases, and with the authorisation of the appropriate Commission departments, other clauses may be added to cover specific situations.

How to complete these special conditions:

Where you see < ... >, enter the information relevant to the special conditions. The phrases in square brackets [] should only be included if relevant. The paragraphs shaded in grey should only be amended in exceptional cases, depending on the requirements of particular tender procedures.

Note that the special conditions provide for allowed deviations from the general conditions. The use of further deviations from the general conditions requires an exception to be granted by the relevant services of the European Commission.

Please remember to delete this paragraph and all pointed and square brackets in the final version of the special conditions.

Article 2 Language of the contract

- 2.1 The language used shall be English or Romanian

Article 4 Communications

- 4.1 <Indicate here the contact persons, addresses of the parties and their contact details the documents to provide and the procedure to be used by the Parties for communication.>

- 4.2 An electronic system will be used by the contracting authority and the contractor for all stages of implementation including, inter alia, management of the contract (amendments and administrative orders), reporting (including reporting on results) and payments. The contractor will be required to register in and use the appropriate electronic exchange system to allow for the e-management of the contract.

The electronic management of the contract through the aforementioned system may commence on the date on which implementation of the contract starts, as described in Article 18 below, or at a later date. In the latter case, the contracting authority will inform the contractor in writing that he will be required to use the electronic system for all communications within a maximum period of 3 months.

[Article 6 Subcontracting]

- 6.3

Article 7 Supply of documents

<Indicate here the documents, drawings to be supplied and, if necessary, the procedure to be used by the contracting authority and the project manager to approve drawings and other documents provided by the contractor>

Article 8 Assistance with local regulations

<Specify the procedures for obtaining permits, visas, authorisation or licences or, at least, specify the relevant reference texts, if necessary>

Article 9 General obligations

- 9.9 all equipment have to have the stickers with EU logo according Communication and Visibility Manual for EU External Actions published on the website of DG International Cooperation and Development: https://ec.europa.eu/europeaid/funding/communication-and-visibility-manual-eu-external-actions_en .>

Article 10 Origin

10.1

<Specify any authorised derogation from the rules of origin>

Article 11 Performance guarantee

- 11.1 [No performance guarantee is required.]

Article 12 Liabilities and insurance

- 12.1(a) <Specify here the specific requirements of liability for damage to the supplies>

[If you find it necessary to set a limit other than that referred to in the general conditions, add the following clause :

‘By way of derogation from Article 12.1(a), paragraph 2, of the general conditions, compensation for damage to the supplies resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to <complete with an amount that can be a multiple or fraction of the contract value.>.’]

- 12.1(b) <Specify here the specific requirements of liability for damages to the contracting authority>

[If you find it necessary to set a limit other than that referred to in the general conditions, add the following clause :

‘By way of derogation from Article 12.1(b), paragraph 2, of the general conditions, compensation for damage resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to <complete with an amount that can be a multiple or fraction of the contract value>.’]

- 12.2(a), paragraph 1 <Specify here specific requirements on when the requirements of proof of completion of adequate insurance must be provided>

[If you find it necessary to tailor differently when the requirements for proof of insurance must be met, add the following clause :

By derogation from Article 12.2(a), paragraph 1, of the general conditions, [indicate when], the contractor shall ensure that itself, its staff, its subcontractors and any person for which the contractor is answerable, are adequately insured with insurance companies recognized on the international insurance market, unless the contracting authority has given its express written consent on a specific insurance company.]

12.2(a), paragraph 2 <Specify here specific requirements on when the requirements of communication of cover notes and/or insurance certificates must be fulfilled>

[If you find it necessary to tailor differently the moment cover notes and/or insurance certificates must be communicated, add the following clause :

By derogation from Article 12.2(a), paragraph 2, of the general conditions it is [state when] that the contractor shall provide the contracting authority with all cover notes and/or insurance certificates showing that the contractor's obligations relating to insurance are fully respected.]

12.2(b), paragraph 2 <Specify any specific insurance requirements to cover the transport of supplies >

This type of insurance will vary depending on the nature of transport (land, air or sea) and the nature of the risks to be covered: loading, intermediate storage, unloading, including stowage and protection, theft, damage, loss, wetting, etc.

In the case of use of Incoterms, the contractor shall provide transport insurance to the extent that it assumes transportation risks. The question of the extent of the risks assumed by the contractor (seller) depends in particular on the Incoterms used:

- **DDP - Delivered Duty Paid:** Incoterm which imposes on the seller maximum obligations vis-à-vis transportation and loss risks and damage associated with the goods:
*'the seller delivers the goods when the goods are placed at the disposal of the buyer, cleared for import on the arriving means of transport ready for unloading at the named place of destination. The seller bears all the costs and risks involved in bringing the goods to the place of destination and has an obligation to clear the goods not only for export but also for import, to pay any duty for both export and import and to carry out all customs formalities.'*⁴ The transfer of risks and costs occurs at the place of unloading of the goods at the agreed place of destination.

Article 13 Programme of implementation of tasks

13.2 [If required <specify the timetable for submission and approval of the programme of implementation of the tasks, with dates and deadlines>]

Article 14 Contractor's drawings

14.1 <Specify the drawings and/or samples required from the contractor, the procedures for approving them and any requirements relating to manuals.>

⁴ See <http://www.iccwbo.org/incoterms/>

Article 15 Sufficiency of tender prices

- 15.1 <Specify any additional provisions regarding Article 15 of the general conditions>

Article 16 Tax and customs arrangements

- 16.1 <Specify if the delivery conditions are DAP instead of DDP as mentioned in the general conditions>

Article 17 Patents and licences

- 17.1 <Specify whether there is a derogation from Article 17 of the general conditions>

Article 18 Commencement order

- 18.1 [<Specify the date on which implementation of the tasks is to commence>]

Or

- 18.1 [The contracting authority shall inform the contractor by administrative order of the date on which implementation of the tasks shall begin.]

Article 19 Period of implementation of the tasks

- 19.1 60 days

Article 24 Quality of supplies

- 24.2 a preliminary technical acceptance is required>

Article 25 Inspection and testing

- 25.2 <Specify the places/goods to be inspected and tested in accordance with Article 25 of the general conditions and the practical arrangements for testing>

Article 26 General principles for payments

- 26.1 Payments shall be made in MDL at the exchange rate of the beneficiary's bank .

Pre-financing is not applicable to this contract

Payments shall be authorised and made by Edinet municipality city hall

- 26.3 By derogation, the final payment to the contractor of the amounts due shall be made within 90 days after receipt by the contracting authority of an invoice and of the application for the certificate of provisional acceptance.]

- 26.5 In order to obtain payments, the contractor must forward to the authority referred to in paragraph 26.1 above:

b) For the 100 % balance] the invoice(s) in triplicate together with the request for provisional acceptance of the supplies.

- 26.9 no price revision

Article 28 Delayed payments

28.2

By derogation from Article 28.2 of the general conditions, once the deadline laid down in Article 26.3 has expired, the contractor shall, upon demand, be entitled to late-payment interest at the rate and for the period mentioned in the general conditions. The demand must be submitted within two months of receiving late payment.]

Article 29 Delivery

29.3

The packaging shall remain the property of the contractor subject to environmental considerations].

29.5/6/7 <Set out requirements as regards documents to accompany each delivery and markings on the packaging>

Article 31 Provisional acceptance

The certificate of provisional acceptance must be issued using the template in Annex C11. <Specify the detailed arrangements for provisional acceptance>

be considered included in the time limit for payments indicated in Article 26.3.]

Article 32 Warranty obligations

32.6 <Specify any additional obligations under the warranty, e.g. commercial warranty>

32.7 The warranty must remain valid for <period to be specified, maximum one year> after provisional acceptance.

Article 33 After-sales service

33.1 <Give details of any after-sales service that the contractor must provide and specify the proportion of the performance guarantee assigned to that activity.>

Article 40 Settlement of disputes

40.4 [Any disputes arising out of or relating to this contract which cannot be settled otherwise shall be referred to the exclusive jurisdiction of Republic of Moldova in accordance with the national legislation of the state of the contracting authority.]

(a) in the case of a national contract, be settled in accordance with the national legislation of the state of the contracting authority; and

(b) in the case of a transnational contract, be settled either:

(i) if the parties to the contract so agree, in accordance with the national legislation of the state of the contracting authority or its established international practices; or

(ii) by arbitration in accordance with the procedural rules on conciliation and arbitration of contracts financed by the European Development Fund, adopted

by Decision 3/90 of the ACP-EEC Council of Ministers of 29 March 1990 (Official Journal No L 382, 31.12.1990, Annex a12 to the practical guide)
Please attach Annex A12 of the practical guide to the present contract.]

Article 44 Data protection

[The following text is to be inserted for indirect management]

[1. Processing of personal data related to the implementation of the contract by the contracting authority takes place in accordance with the national legislation of the state of the contracting authority and with the provisions of the respective financing agreement.

2. To the extent that the contract covers an action financed by the European Union, the Contracting Authority may share communications related to the implementation of the contract, with the European Commission. These exchanges shall be made to the Commission, solely for the purpose of allowing the latter to exercise its rights and obligations under the applicable legislative framework and under the financing agreement with the Partner country – contracting authority. The exchanges may involve transfers of personal data (such as names, contact details, signatures and CVs) of natural persons involved in the implementation of the contract (such as contractors, staff, experts, trainees, subcontractors, insurers, guarantors, auditors and legal counsel). In cases where the contractor is processing personal data in the context of the implementation of the contract, he/she shall accordingly inform the data subjects of the possible transmission of their data to the Commission. When personal data is transmitted to the Commission, the latter processes them in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC⁵ and as detailed in the specific privacy statement published at ePRAG.]

[Article 45 Further additional clauses

<Add other clauses approved by the competent Commission departments.>

* * *

⁵ OJ L 205 of 21.11.2018, p. 39