**VOLUME 2**

**SECTION 3**

**SPECIAL CONDITIONS**

**CONTENTS**

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

**Article 2 Language of the contract**

2.1 The language used shall be English.

**Article 4 Communication**

4.1 **For Contracting Authority:**

Contact name: Tahir Demirel - Project Coordinator and Pelin Sençper Biçer – Forest Engineer

Address: Yukarı Zaferiye Mahallesi, İlyas Bey Cad. No: 23 Keşan, Edirne, postal code: 22800, Turkey

Tel.: +90 544 586 16 97 and +90 284 714 11 85/1262

E-mail: kulturisleri@kesan.bel.tr

**For the Contractor**

Contact person:

Address:

Tel:

Fax:

E-mail:

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

The electronic management of the contract through the aforementioned system may commence on the date on which implementation of the contract starts, as described in Article 33 of the general conditions to the contract, or at a later date. In the latter case, the contracting authority will inform the contractor in writing that he will be required to use the electronic system for all communications within a maximum period of 3 months.

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

5.2 The supervision will be done by the experts ensured by the Contracting Authority.

5.3 The site supervisor and its representatives have the powers and responsibilities described in the relevant for construction works national legislation of the Contracting authority.

5.4 Instructions, acts and/or protocols and/or orders issued in writing by the Supervisor and/or Contracting authority shall be made in the compliance with relevant for construction works national legislation of the Contracting authority and shall be considered an administrative order. Such orders shall be dated, numbered and entered by the supervisor in a register, and copies thereof delivered by hand, where appropriate, to the contractor's representative.

**Article 8 Documents to be provided**

8.1 Within 15 days of the signing of the contract, the Contracting Authority shall provide to the Contractor and the Supervisor, free of charge, a copy of the drawings, documents for approval of the investment design by the respective companies for utilities, specifications and other contract documents.

**Article 9 Access to the site**

9.1 The Contracting Authority shall, in 15 days of contract signature and in conformity with the progress of the works, place the site and access thereto at the disposal of the Contractor in accordance with the approved programme of implementation of tasks and in conformity with relevant for construction works national legislation of the Contracting authority. The Contractor is obliged to give to representatives of the Contracting Authority, Site supervisor, Ministry of Regional Development and Public Works of the Republic of Bulgaria, Managing authority of the Interreg-IPA CBC Bulgaria–Turkey Programme and Directorate for EU Affairs, General Directorate of Financial Cooperation and Project Implementation, National Authority (NA) of the Programme, other EU, state, regional and local authorities, which are authorised by international agreements, Turkish law or other administrative act to inspect the site, free access to the site of construction, factories, workshops, etc. on the site, and generally assist them in the performance of their duties.

**Article 12 General obligations**

12.9 The contractor is obliged to place temporary information board during the construction process and permanent information boards at the end of the construction process at the site of the construction. The boards will be provided by the Contracting Authority and will comply with its minimum obligation toward visibility laid down in the Communication and Visibility Guidelines of Interreg-IPA CBC Programme Bulgaria - Turkey 2014-2020, which are published on http://www.ipacbc-bgtr.eu/.

**Article 15 Performance guarantee**

15.1 The amount of the performance guarantee will be 6% of the amount of the contract and any addenda thereto.

15.8 Within 60 days after the deliverance of the certificate of provisional acceptance in accordance to the relevant for construction works national legislation of the contracting authority and according to Article 60.1 and the completion of any outstanding work or reservation, 0 % of the amount of the performance guarantee may be released. The 100% of the performance guarantee may be released upon the expiration of the Defects liability period stipulated in the Article 61, paragraph 61.7 of the current special conditions.

**Article 16 Liabilities and insurance**

16.1 a) “By way of derogation from Article 16.1, a) paragraph 2, of the general conditions, compensation for damage to the works resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to the amount equal to the contract value.

16.1 b) “By way of derogation from Article 16.1(b), paragraph 2, of the general conditions, compensation for damage resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to the amount equal to the contract value.

**Article 17 Programme of implementation of tasks**

Provisions of General conditions fully apply.

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

19.1 Provisions of General conditions fully apply.

19.7 The language of the manuals and drawings can be different than the language of the contract, namely Turkish.

**Article 20 Sufficiency of tender prices**

Provisions of General conditions fully apply.

**Article 21 Exceptional risks**

21.4 Provisions of General conditions fully apply.

**Article 24 Interference with traffic**

24.1 Provisions of General conditions fully apply.

24.2 Provisions of General conditions fully apply.

**Article 27 Demolished materials**

27.2 All demolition materials which are to be reused in accordance to the investment working design become property of the Contracting authority. For all other demolition materials the provisions of General conditions fully apply.

27.4 Provisions of General conditions fully apply.

**Article 29 Temporary works**

29.2 Provisions of General conditions fully apply.

**Article 30 Soil studies**

30.1 Provisions of General conditions fully apply.

**Article 32 Patents and licenses**

32.1 Provisions of General conditions fully apply.

**Article 34 Period of implementation of tasks**

34.1 The period of implementation of tasks under the contract is up to 240 days (8 months) from the issuing of contract, provision of access to the sites of construction and the provision of necessary construction documentation and permissions.

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

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

**Article 39 Work register**

39.1 The Contractor is obliged to implement work register/ order book. Instructions of the person exercising construction supervision recorded in the logbook of the construction/ order book/ be binding on the Contractor.

39.2 Along with the work register, the contractor shall provide pictures of the work progress and progress reports should be prepared by the contractor.

The progress reports will be handed in by the contractor along with the progress payments.

Upon completion of the works the Contractor shall issue written notice to the Contracting Authority to inspect and accept the work performed.

The delivery of the completed work is done with a bilateral protocol, which describes the work: Works amount, quality and value of the work done and the materials available deficiencies and the terms of the contract.

In the minutes preceding the paragraph may be given deadlines to remedy the shortcomings noted and these terms do not affect the deadline agreed in this contract.

The site shall be deemed finally submitted to the Contracting Authority by signing a protocol of acceptance of work under the requirements of the relevant for construction works national legislation of the Contracting authority.

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

## 40.1 All goods purchased under the contract must originate in any eligible source country as defined in Project Implementation Manual of Interreg IPA CBC Bulgaria – Turkey programme, CCI No 2014TC16I5CB005. However, the goods to be purchased may originate from any country, whenever the total price of the estimated quantity of those goods, as reflected in a separate item of the Bill of quantities (Volume 4.3.2) is below EUR 100 000.

A category of similar goods to be purchased shall not be broken down over more than 1 item of the bill of quantities (Volume 4.3.2).

For these purposes, ‘origin’ means the place where the goods are mined, grown, produced or manufactured and/or from which services are provided. The origin of the goods must be determined according to the EU Customs Code or the applicable international agreement.

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

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

(\*) the specifications set in the detailed design project.

(\*) the requirements of the detailed design project.

40.3 N/A.

**Article 41 Inspection and testing**

Provisions of General conditions fully apply.

**Article 43 Ownership of plant and materials**

43.2 The equipment, temporary structures, plant and materials on the site shall for the duration of the execution of the works, be vested in the contracting authority.

**Article 44: General principles for payments**

44.1 Payments shall be made in EUR.

44.3 Payment to the Contractor shall be done as follows:

a) By derogation, pre-financing payments shall be made within 30 days of receipt by the Contracting Authority of the Contractor's invoice and the documents referred to in Article 46.3. The date of payment shall be the date on which the paying account is debited.

b) By derogation, payments to the Contractor of the amounts due under each of the interim payment certificates and the final statement of account issued by the Supervisor shall be made within 30 days of such certificate of statement accompanied by the Contractor's invoice being delivered to the Contracting Authority. The date of payment shall be the date on which the paying account is debited.

**Article 46 Pre-financing**

46.2 The amount of the pre-financing is 10% of the original contract price for the lump-sum referred to in Article 46.1 (a).

46.3(c) By derogation from Article 46.3(c) of the general conditions, no pre-financing guarantee is required.

46.8 Repayment of the pre-financing shall take the form of deductions based on monthly claims.

1. The flat‑rate pre-financing (maximum of 10 %) shall be repaid by means of deductions from instalments and, if necessary, the balance due to the contractor. This repayment shall begin with the first instalment and be completed, at the very latest, by the time 80 % of the amount of the contract has been paid.

Repayment shall be made in the same currency as the pre-financing.

The amount to be deducted from each instalment shall be calculated using the following formula:



where:

R = the amount to be repaid

Va = the total amount of pre-financing

Vt = the initial contract amount

D = the amount of the instalment.

The result is rounded up to two decimal places.

1. The pre-financing for plant, machinery and tools — and the pre-financing for other major prior outlays (20 % maximum) — shall be repaid by means of deductions from instalments and, if necessary, the balance due to the contractor. Repayment shall begin with the first instalment and end, at the very latest, by the time 90 % of the amount of the contract has been paid.

The amount to be deducted from each instalment shall be calculated using the following formula:



where:

R = the amount to be repaid

Va = the total amount of pre-financing

Vt = the initial contract amount

D = the amount of the instalment.

**Article 47 Retention monies**

47.1 No money shall be retained from interim payments.

**Article 48 Price revision**

1. Except as provided in Article 48.4 the contract shall be at fixed prices which shall not be revised.
2. 48.2 Not applicable

**Article 49 Measurement**

49.1 This is a unit-price contract.

**Article 50 Interim payments**

50.1 The Contractor shall submit an invoice for interim payment to the Contracting Authority at the end of each period referred to in Article 50.7 based on works progress report for works actually executed approved by the Contracting Authority. The invoice shall include the following items, as applicable:

a) the estimated contract value of permanent and temporary works already fulfilled implemented up to the end of the period in question as per the works progress report for works actually executed but still respecting the approved Bill of Quantities and any official amendments as per Article 37;

b) an amount to be deducted on account of the pre-financing repayment under the provisions of Article 46.8 and

c) any other sum to which the Contractor may be entitled under the contract.

50.2. The Contractor shall be entitled to such sums as the Supervisor and the Contracting Authority may consider proper in respect of plant and materials intended for, but not yet incorporated in, the permanent works provided that:

a) the plant and materials conform with the specifications for the permanent works and are set out in batches in a way that they may be recognized by the Supervisor;

b) such plant and materials have been delivered to the site, and are properly stored and protected against loss or damage or deterioration to the satisfaction of the Supervisor and the Contracting Authority;

c) the Contractor's record of requirements, orders, receipts and use of plant and materials under the contract are kept in a form approved by the Supervisor and such records are available for inspection by the Supervisor and the Contracting Authority;

d) the Contractor submits with its statement, the estimated value of the plant and materials on site together with such documents as may be required by the Supervisor and the Contracting Authority for the purpose of valuation of the plant and materials and providing evidence of ownership and payment therefor; and

e) ownership of the plant and materials referred to in Article 43 shall be deemed to be vested in the contracting authority.

50.3. Approval by the Supervisor and the Contracting Authority of any interim invoice certified by them in respect of plant and materials pursuant to Article 50 shall be without prejudice to the exercise of any power of the Supervisor and the Contracting Authority under the contract to reject any plant or materials which are not in accordance with the provisions of the contract.

50.4. The Contractor shall be responsible for any loss or damage to, and for the cost of storing and handling of, such plant and materials on site and shall effect such additional insurance as may be necessary to cover the risk of such loss or damage from any cause.

50.5. Within 30 days of receipt of the said invoice for interim payment, the Contracting Authority and the Supervisor (both) shall:

a) verify that, in their opinion, the invoice for interim payment reflects the amount due to the Contractor in accordance with the contract. In cases where there is a difference of opinion as to the value of an item, the Supervisor's and Contracting Authority’s view shall prevail.

b) on determination of the amount due to the Contractor, issue and transmit to the Contracting Authority for payment and to the Contractor for information, an interim payment certificate for the amount due to the Contractor and shall inform the Contractor of the works for which payment is being made.

50.6. The Supervisor and the Contracting Authority may, by an interim payment certificate, make any corrections or modifications to any previous certificate issued by them, and has power to modify the valuation in or withhold the issue of, any interim payment certificate if the works or any part thereof is not being carried out to its satisfaction.

50.7. The frequency shall be one interim payment per every 30 days if required by the Contractor.

**Article 51 Final statement of account**

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

51.2 Within 30 days after receipt of the draft final statement of account and of all information reasonably required for its verification, the Supervisor shall prepare and sign the final statement of account, which determines:

a) the amount which in its opinion is finally due under the contract; and

b) after establishing the amounts previously paid by the Contracting Authority and all sums to which the Contracting Authority is entitled under the contract, the balance, if any, due from the Contracting Authority to the Contractor, or from the Contractor to the Contracting Authority, as the case may be.

**Article 60 Provisional acceptance**

60.1 In complement to Article 60.1 of the general conditions.

**Article 61 Defects liability**

61.1 The defects liability period is defined as the period commencing on the date of provisional acceptance, during which the contractor is required to make good any defect in, or damage to, any part of the work which may appear or occur during this period as notify by the supervisor or the contracting authority. The rights and obligations of the parties with regard to this defects liability period are laid down in Article 61 of the general conditions.

61.6 No maintenance is to be executed by the Contractor.

61.7 The defects liability is in accordance with the related to construction works national legislation of the Contracting authority. The defects liability period shall commence on the date of provisional acceptance and may recommence in accordance with Article 61.2.

**Article 68 Dispute settlement**

68.4 Any dispute arising out of or relating to this contract which cannot be settled otherwise shall be referred to the exclusive jurisdiction of Edirne Basic Court in accordance with the national legislation of the state of the contracting authority.

**Article 72 Data protection**

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

2. To the extent that the contract covers an action financed by the European Union, the Contracting Authority may share communications related to the implementation of the contract, with the European Commission. These exchanges shall be made to the Commission, solely for the purpose of allowing the latter to exercise its rights and obligations under the applicable legislative framework and under the financing agreement with the Partner country – contracting authority. The exchanges may involve transfers of personal data (such as names, contact details, signatures and CVs) of natural persons involved in the implementation of the contract (such as contractors, personnel, experts, trainees, subcontractors, insurers, guarantors, auditors and legal counsel). In cases where the contractor is processing personal data in the context of the implementation of the contract, he/she shall accordingly inform the data subjects of the possible transmission of their data to the Commission. When personal data is transmitted to the Commission, the latter processes them in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC[[1]](#footnote-1) and as detailed in the specific privacy statement published at ePRAG.

**Article 73 Further additional clauses**

N/A

\* \* \*

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