

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(77) 651 final.

Brussels, 7 December 1977.

## COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

Commission Proposal on the General Conditions for public supply contracts  
financed by the European Development Fund

---

COM(77) 651 final.



COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

Commission Proposal on the General Conditions for public supply contracts financed by the European Development Fund

The draft General Conditions for public supply contracts form an integral part of the "common rules" referred to in Article 22 of Protocol No 2 to the Lomé Convention:

"The general provisions and conditions applicable to the placing and performance of public contracts financed by the Fund shall be the subject of common rules adopted, on a proposal by the Commission, by a decision of the Council of Ministers at its second meeting following the date of entry into force of the Convention".

The Commission has already transmitted to the Council the draft General Conditions for public works contracts (COM(76)715 final, Brussels, 7 January 1977) and the draft General Conditions for public services contracts (COM(77)257 final, Brussels, 14 June 1977).

The General Conditions for public supply contracts is the last volume in the trilogy of "common rules" governing public contracts financed by the EDF.

The purpose of this Communication is to present the General Conditions for public supply contracts to the Council, ultimately leading to an offer from the Community to the ACP States and a decision by the EEC-ACP Council of Ministers.

\*

\*\*

The purpose of these General Conditions, like that of the General Conditions for public works contracts, is to provide the general contractual conditions, in each of the six Community languages, designed to encourage healthy competition between

suppliers in the Community and ACP countries by enabling them to compete on equal terms for contracts financed by the EDF.

We will begin with a few words on the structure of the document, and then trace the main guidelines.

\*  
\* \*

## I. Structure

The structure of the General Conditions for supply contracts, like that adopted for works and services contracts, is based on the following fundamental distinction: the first part, Title I, is made up of regulations from which it is not possible to derogate; the second part, Title II, contains contractual provisions which may be derogated from and adapted.

The purpose of adopting this structure is to facilitate the application of the General Conditions for supply contracts in both English-speaking and French-speaking countries. To do this, it was necessary to draw up model conditions which were sufficiently flexible to be implemented in countries with legal systems as different as those in force in English-speaking and French-speaking countries. It was essential, furthermore, that these model conditions should provide absolute guarantees for suppliers from Member States and from ACP States wishing to participate in contracts financed by the EDF.

Finally, it was necessary to satisfy two imperatives which, to a certain extent, are contradictory: flexibility to take account of the operation of different legal institutions, but at the same time certainty of legal relations and guarantees for foreign firms. The distinction between regulations and contractual provisions meets this objective. Certainty is ensured by the part containing the regulations, in which the basic rules of the contract which cannot be derogated from and the rules governing the placing and awarding of contracts are laid down. Flexibility is determined by contractual implementing provisions which may be adjusted when a contract is being drafted to meet the special requirements of that contract.

## II. Guidelines

The guidelines are the same as those adopted for the General Conditions for public works contracts. Accordingly reference should be made to the Commission Communication to the Council concerning the General Conditions for public works contracts (COM(76)715 final, Brussels, 7 January 1977).

It should be emphasized, however, that account has been taken in the draft of the alterations made to the General Conditions for public works contracts subsequent to the first reading of this document by the ACP/FIN Working Party.

\*  
\* \*

### 1. Scope of the General Conditions

The General Conditions cover a large number of fields, including the delivery of supplies (e.g. fertilizer and agricultural machinery), the delivery of equipment plus on-site assembly (e.g. metal sheds) and the manufacture plus delivery of industrial supplies. Since they cater for such a wide range of eventualities, many of the provisions (contract guarantees, methods of inspection, payment, acceptance etc.) must avoid being too specific. The specific requirements relating to individual contracts must therefore be dealt with in the Special Conditions.

### 2. Methods of payment

Article 97 of the draft is deliberately worded in a very general fashion. The Special Conditions may therefore stipulate methods of payment very similar to those generally used in normal commercial practice for contracts dealing with just the delivery of goods. They may equally well stipulate methods of payment more in line with those used in works contracts if industrial manufacture is involved.

### 3. Transfer of ownership

Under Article 110 of the draft, ownership shall pass when the supplies are accepted.

This is a basic legal provision by virtue of which the acceptance of supplies acquires full significance, that is to say the approval by the contracting authority of the supplies after verification that they are of the quality and quantity specified in the Conditions.

#### 4. Maintenance and after-sales service

These two obligations which are incumbent on the supplier are of prime importance to the contracting authority. They are perfectly distinct from one another. The maintenance (Article 111 of the draft) of the supplies which the supplier undertakes to carry out for a period of time specified in the contract (the maintenance period) entails the obligation to maintain, repair and replace the supplies, subject to normal conditions of use, for no extra charge. This means that the maintenance is a free service.

The after-sales service (Articles 28 and 80), on the other hand, guarantees that the supplier will maintain and repair the supplies and provide spare parts, against suitable payment for these services, irrespective of the use to which the supplies have been put by the contracting authority.

#### Conclusion

The General Conditions for Public Supply Contracts should be an important instrument of competition policy where projects financed by the EDF are involved, and also provide an administrative tool for the Commission departments responsible for ensuring that projects are efficiently carried out, from both the technical and financial angles.

D R A F T

GENERAL CONDITIONS FOR PUBLIC SUPPLY CONTRACTS

FINANCED BY THE EUROPEAN DEVELOPMENT FUND

Title I Regulations

Chapter I Principles and definitions

- Art. 1 Conditions
- Art. 2 General conditions
- Art. 3 Special conditions
- Art. 4 Definitions
- Art. 5 Competition
- Art. 6 Origin of supplies
- Art. 7 Equality of conditions for participation
- Art. 8 Preferences for national firms
- Art. 9 Agreed prices
- Art. 10 Payments for services rendered
- Art. 11 Annulment of a tendering procedure
- Art. 12 Amendment of the contract
- Art. 13 Classification of contracts
- Art. 14 Fixing of prices in provisional price contracts
- Art. 15 Computation of time limits

Chapter II Procedure for preparation and placing  
of contracts

- Art. 16 Method of placing contracts
  - I - Contracts based on invitation to tender
- Art. 17 Types of invitation to tender
  - 1 Rules in the technical field
- Art. 18 Technical specifications and standards
  - 2 Rules governing publication
- Art. 19 Notice of invitation to tender
- Art. 20 Publication of notices
- Art. 21 Invitation to tender
- Art. 22 Time limit on the submission of tenders
  - 3 The invitation to tender dossier
- Art. 23 Contents of the invitation to tender dossier



- 4 Qualitative criteria for participation
- Art. 24 Standing and ability required of tenderers
- Art. 25 Proof of standing and ability
- Art. 26 Preselection of candidates
- 5 Detailed rules for the drawing up of tenders
- Art. 27 Language
- Art. 28 Contents of the tender
- Art. 29 Signature and number of copies
- Art. 30 Agent
- Art. 31 Consortia
- Art. 32 Alterations and amendments
- Art. 33 Calculation of the price
- Art. 34 Accuracy of unit prices
- Art. 35 Checking of prices
- Art. 36 Taxation
- Art. 37 Wording of tenders
- Art. 38 Currency of payment
- 6 Obligations of the State
- Art. 39 Temporary residence permit
- Art. 40 Right of transfer
- 7 Submission and opening of tenders
- Art. 41 Submission
- Art. 42 Withdrawals, additions and amendments
- Art. 43 Period during which tenders are binding
- Art. 44 Opening of tenders
- Art. 45 Invalidity of tenders
- Art. 46 Comparison of tenders
- Art. 47 Work of the committee responsible for the examination of tenders
- 8 Selection of contractor and drawing up of the contract
- Art. 48 Selection of contractor
- Art. 49 Notification of acceptance of contract
- Art. 50 Letter of contract

Art. 51	Contents of the letter of contract
Art. 52	Order of precedence of the documents relating to the contracts
	9 Special cases
Art. 53	Grouping into lots
Art. 54	Variations
Art. 55	Invitation to tender with competition
	II - Mutual agreement contracts
Art. 56	Definition and characteristics of mutual agreement contracts
Art. 57	Cases where a mutual agreement procedure may be followed
	Chapter III Applicable law and settlement of disputes
Art. 58	Law applicable to the contract
Art. 59	Amiable settlement of disputes
Art. 60	Arbitration
	Title II Contractual, administrative and technical provisions
	I. Preliminary provisions
Art. 61	Administrative orders
Art. 62	The engineer
Art. 63	The engineer's representative
Art. 64	Free access to the place of manufacture
Art. 65	Address for service of the contractor
Art. 66	Assignment, sub-contracting
Art. 67	Documents and items to be supplied to the contractor
Art. 68	Documents to be supplied by the contractor
	II. Guarantees of contract
Art. 69	Provisional deposit
Art. 70	Guarantee of contract by means of a deposit or a directly liable guarantor
Art. 71	Failure to establish a final deposit or to provide a directly liable guarantor
Art. 72	Right of the contracting authority over the deposit or directly liable guarantor

Art. 74	Sums retained by way of guarantee
Art. 75	Insurance
	III. General obligations
Art. 76	Basic rules for the determination of prices
Art. 77	Overlapping contracts
Art. 78	Simultaneous contracts
Art. 79	Patents and licences
Art. 80	After-sales service
	IV. Commencement of performance - Period of performance
Art. 81	Order to commence performance of contract
Art. 82	Period of performance
	V. Inspection and supervision
Art. 83	Quality of supplies
Art. 84	Supervision and inspection of goods
Art. 85	Tests and check tests
Art. 86	Preliminary technical acceptance
Art. 87	Identification
	VI. Modifications to the contract
Art. 88	Variation in quantities
Art. 89	Technical modifications during performance
	VII. Payment of contracts
Art. 90	General provisions
Art. 91	Payment on a contract for which the price is not fixed
Art. 92	Advances
Art. 93	Reimbursement of advances
Art. 94	Partial payments
Art. 95	Ownership of materials
Art. 96	Revision of prices
Art. 97	Rules for payment
Art. 98	Payment in the event of attachment
Art. 99	Interest in respect of delay in payments

Art. 100	Substantial delay in payment
Art. 101	Payment for the benefit of third parties
Art. 102	Notification of third parties
	VIII. Developments affecting performance of the contract
Art. 103	Cessation or postponement of performance of contract
Art. 104	Death
Art. 105	Specific grounds for rescission
	IX. Delivery, acceptance and maintenance period
Art. 106	Delivery
Art. 107	Verification operations
Art. 108	Postponements, price reduction penalties, rejections
Art. 109	Marking and removal of postponed or rejected supplies
Art. 110	Acceptance
Art. 111	Maintenance period: maintenance, repair and replacement
	X. Claims and exceptional risks
Art. 112	Claims by the contractor and exceptional risks
Art. 113	Remission of damages for delay
	XI. Non-performance of contract and sanction thereof
Art. 114	Non-performance of contract by contractor
Art. 115	Sanction for the breach of contract on the part of the contractor
Art. 116	Recovery of damages

TITLE I

REGULATIONS

CHAPTER I

PRINCIPLES AND DEFINITIONS

Article 1

Conditions

Public supply contracts financed by the European Development Fund shall be governed by:

1. These General Conditions;
2. The Special Conditions.

Article 2

General Conditions

These General Conditions comprise:

1. Regulations laying down the principles and conditions for the preparation and award of contracts; no derogation may be made from these provisions.
2. General contractual provisions of an administrative and technical nature, relating to the performance of contracts. These provisions shall apply to all contracts.

### Article 3

#### Special Conditions

The Special Conditions comprise:

- (a) special contractual clauses applicable to each contract;
- (b) all references to the common specifications applicable to contracts relating to the same type of supplies;
- (c) an indication of those contractual provisions referred to in Article 2(2) which are not applicable in view of the special requirements of the contract concerned.

### Article 4

#### Definitions

For the purpose of implementing these general conditions the following definitions shall apply:

1. Contract: any contract for valuable consideration, concluded between a contracting authority and a supplier (a natural or legal person), the object of which is the provision of movable property which may be used either in its existing state or in conjunction with works, the nature and value of which are of secondary importance in relation to the main object of the contract;
2. Member States: the Member States of the European Economic Community;
3. ACP States: the African, Caribbean and Pacific States which are recipients of aid from the European Development Fund;
4. Contracting Authority: the State, regional or local authority, body or any legal person governed by public law which concludes the contract or on behalf of which the contract is concluded;
5. Supervisor: the administrative department or the natural or legal person designated by the contracting authority as having responsibility for the performance of the contract;

6. Engineer: the person designated by name by the supervisor to direct or supervise the performance of the contract and to check the quantities delivered.
7. Engineer's representative: any person designated by name by the engineer to supervise the performance of the contract and, where specially authorized by the engineer, to participate in directing the performance of the contract;
8. Tenderer: any natural or legal person submitting a tender with a view to concluding a contract;
9. Contractor: the tenderer with whom the contract is concluded;
10. Price schedule: the document containing, in the case of a unit price contract, an itemized breakdown of the supplies to be provided, together with statement of the unit prices applicable in respect of each of the various items in question;
11. Bill of quantities: the document containing, in the case of a unit price contract based on a detailed estimate, an itemized breakdown of the supplies to be provided, indicating an estimated quantity for each item and the corresponding unit price as given in the price schedule.  

The bill of quantities and the price schedule may form one document.
12. Breakdown of the overall price: the document containing, in the case of an overall price contract, an itemized breakdown of the supplies to be provided, compiled on the basis of the nature of the supplies to be provided, with or without a statement of quantities.

Article 5

Competition

Contracts shall be awarded on the basis of competition.

Article 6

Origin of supplies

Without prejudice to the provisions of Article 56(3) of the Lomé Convention concerning third countries, the supplies tendered must originate in the European Economic Community or one or more ACP States. Evidence of the origin of the supplies shall be furnished, on importation into the country for which they are intended, by presenting a certificate issued by the customs authorities of the country exporting the supplies.

Article 7

Equality of conditions for participation

1. Without prejudice to Article 56(3) of the Lomé Convention concerning third countries, any natural or legal person having the nationality of a Member State or an ACP State shall be eligible to participate on equal terms in tendering procedures and contracts financed by the European Development Fund.
2. Tenders shall be compared on equal terms in order to avoid any obstacle to participation in tendering procedures and the award of contracts.

To this end, documents inviting tenders may not contain any specification such as may give rise to discrimination between tenderers.



Article 8

Preferences for national firms

1. A 15% price preference shall be taken into account in favour of the industrial production or small-scale firms of the ACP States where tenders of equivalent economic and technical quality are compared.

This preference shall be confined to national firms of the ACP States which provide an adequate margin of added value.

2. Where two tenders are acknowledged to be equivalent on the basis of the criteria set out in Article 48(1), preference shall be given to the one which permits the greatest possible utilization of the physical and human resources of the ACP States.

Article 9

Agreed prices

1. Contracts shall be placed on the basis of agreed prices. These prices may be unit prices or an overall price.
2. The fact that contracts are to be placed at an agreed price shall not preclude prices being revised in the light of specific fiscal, economic or social factors. The price revision procedures shall be expressly laid down in the contract documents.
3. In addition, and by way of exception, contracts may be placed without prices being fixed by agreement:
  - (a) for supplies of a complex nature or involving a new technique presenting considerable technical hazards which necessitate the commencement of work before all the conditions of execution can be determined;

- (b) in the event of exceptional and unforeseeable circumstances, where the contracts relate to urgent supplies, the nature and the means of execution of which are difficult to determine.

#### Article 10

##### Payment for services rendered

1. Contracts may not provide for instalments on account except where a service has been rendered and accepted.

Instalments on account shall be allowed in respect of the following, according to the provisions laid down in the Special Conditions:

- (a) work done by the contractor, as and when such work is completed;
  - (b) supplies provided for the performance of the contract, the quantities of which are approved and inspected by the engineer.
2. Nevertheless, advances may be granted in accordance with the conditions and procedures laid down in these General Conditions.
  3. The payment of advances and instalments on account does not have the character of final payment discharging the recipient from his obligations.

#### Article 11

##### Annulment of a tendering procedure

1. Before placing the contract, the contracting authority may:
  - (a) notwithstanding the completion of a procedure prior to the conclusion of the contract, either decide not to place the contract or order that the procedure be recommenced, if necessary using another method;
  - (b) in the event of the invitation to tender providing for a contract comprising two or more lots, award only certain of the lots and, possibly, decide that the others are to be the subject of another contract or other contracts, if necessary using another method.

2. The annulment of a tendering procedure provided for in paragraph 1 may take place only in the following cases:

- if no tender is received which meets the conditions set out in the invitation to tender dossier;
- if no tender is received which satisfies the criteria for the award of the contract as set out in Article 48(1);
- if the economic or technical data of the project have been fundamentally altered;
- if exceptional circumstances render normal performance of the contract impossible;
- if the tenders received do not correspond to the financial resources designated for the contract;
- if the tenders received contain serious irregularities resulting in particular in interference with the normal play of market forces, or
- if no competition is present.

3. In the event of annulment of a tendering procedure, tenderers who are still bound by their tenders shall be informed thereof by the contracting authority. Tenderers shall not be entitled to compensation; they shall be entitled to the immediate reimbursement of any provisional deposits or the release of directly liable guarantors whose guarantees replace such deposits.

#### Article 12

##### Amendment of the contract

The contracting authority may unilaterally modify the initial project in the course of performance of the contract, provided that it does not change the purpose of the contract and that it gives fair compensation where appropriate in accordance with Articles 88 and 89.

Article 13

Price of contracts

The Special Conditions shall indicate whether the contents are:

- lump-sum contracts;
- unit price contracts based on bills of quantities;
- cost plus contracts;
- composite contracts.

1. In lump-sum contracts, an all-in price shall cover the whole of the works and services which are the subject of the contract. The all-in price shall, if necessary, be calculated on the basis of the breakdown of the total price defined in Article 4 point 13. In the latter case an all-in price shall be given for each separate element of the itemized breakdown. The total price shall be calculated by adding together the various all-in prices for all such elements.

Where items are accompanied by quantities, these shall be firm quantities drawn up by the contracting authority. The firm quantity shall be the quantity for which the contractor has submitted an all-in price, which shall be paid to him irrespective of the quantity actually carried out.

If the contract is modified during performance, the modifications introduced shall be evaluated so far as the price thereof is concerned, in accordance with Articles 88 and 89.

2. In unit price contracts based on bills of quantities, the works and services shall be broken down, on the basis of bills of quantities drawn up by the contracting authority, into different items and the proposed unit price for each item shall be inserted by each tenderer. The unit price for the contract shall be predetermined.

The amounts due under the contract shall be calculated by applying the said unit prices to the quantities actually carried out.

If the contract is modified during performance, the modifications introduced shall be evaluated so far as the price thereof is concerned, in accordance with Articles 88 and 89.

3. In cost plus contracts, the works and services carried out shall be paid for after inspection of the engineer on the basis of the reimbursement of actual costs with the addition of profit as defined in the Special Conditions.
4. In composite contracts, the prices shall be fixed by two or more of the methods referred to in subparagraph 1, 2 and 3 above, as laid down in the Special Conditions.

#### Article 14

##### Fixing of prices in provisional price contracts

1. In the cases provided for in Article 9(3), the contract shall be concluded:
  - (a) on a cost plus basis in accordance with Article 13, point 4; or
  - (b) initially, on the basis of provisional prices and then of agreed prices. The agreed prices shall be determined not later than the time at which the conditions for performing the contract are known; or
  - (c) partly on a cost plus basis and partly on an agreed prices basis.
2. The contractor shall be obliged to supply any information enabling the settlement prices to be checked.

#### Article 15

##### Computation of time limits

The time limits referred to in these General Conditions, the Special Conditions and the contract documents shall run from the beginning of the day following the date of the act or deed which serves as the point of commencement for the said time limit.

Where the time limit is fixed in days, it shall expire at the end of the last day of the period laid down.

Where the time limit is fixed in months, it shall end on the day having the same number as the day on which it began. In the event of the last month of a time limit fixed in months not having a day with the same number as the date on which it began, the time limit shall expire on the last day of that month.

If the last day of a time limit falls on a Sunday or a public holiday established by law, the time limit shall be extended until the end of the next working day.

CHAPTER II

PROCEDURE FOR PREPARATION AND PLACING OF CONTRACTS

Article 16

Methods of placing contracts

Contracts shall be awarded on the basis of an invitation to tender. By way of exception, they may be awarded by mutual agreement in the cases provided for in Article 57.

I. CONTRACTS BASED ON INVITATION TO TENDER

Article 17

Types of invitation to tender

An invitation to tender shall be open or restricted.

Open invitations to tender shall consist of a public invitation to tender; any interested supplier may tender.

Restricted invitations to tender used in those cases referred to in Article 19 of Protocol No 2 to the Lomé Convention shall be open only to those applicants which the contracting authority decides to consult.

Such consultation may follow a preselection procedure decided on with particular reference to the special nature or the quantity of the works or services to be carried out, as set out in Article 18 of Protocol No 2 to the Lomé Convention.

1. Rules in the technical field

Article 18

Technical specifications and standards

1. The technical specifications and the description of testing, checking, acceptance and calculation methods which appear in the documents relating to each contract may be defined by reference to the appropriate standards. In

such a case reference shall be made in the following order of priority:

- the international standards accepted by the beneficiary ACP State;
- the national standards of the beneficiary ACP State;
- any other standard.

2. Unless such specifications are justified by the subject of the contract, the incorporation in the documents relating to each contract of technical specifications which mention products of a specific make or source or a particular process and which therefore favour or eliminate certain firms shall be prohibited. Trade marks, patents or types, or a specific origin or production may be indicated in cases where the contracting authority is unable to give a description of the subject of the contract using specifications which are sufficiently precise and intelligible to the parties concerned. However, such particulars shall be given only for guidance and the tenderer shall have the opportunity of proposing any similar or equivalent supply.

## 2. Rules governing publication

### Article 19

#### Notice of invitation to tender

A contracting authority wishing to place a contract by open tendering procedure or by restricted tendering procedure with preselection shall make known its intention by means of a notice.

1. In an open tendering procedure the notice of invitation to tender shall state in particular:
  - (a) the subject of the contract, in particular the nature and extent of the services to be provided and the general nature of the supplies; if the contract is subdivided into several lots: the order of magnitude of the different lots and the possibility of tendering for one, for several, or for all of the lots; the possibility of submitting variations where



authorized; if the notice concerns an invitation to tender with competition which, in addition to the provision of supplies, also involves the preparation of a project, only the information needed by suppliers to understand the purpose of the contract and to tender accordingly;

- (b) the place of delivery and/or installation of the supplies, the source of financing and the period of performance;
- (c) the contracting authority and, more particularly, the address of the department awarding the contract;
- (d) the place where the invitation to tender dossier may be inspected and the terms on which it may be acquired;
- (e) the final date for the receipt of tenders, the address to which they must be sent and the language or languages in which they must be drawn up;
- (f) the period, reckoned from the final date for the receipt of tenders, during which tenderers shall remain bound by their tenders; except in special cases, this period shall be of two months' duration;
- (g) the date, time and place of the opening of the tenders, together with a statement to the effect that the tenders will be opened in public in accordance with Article 44(1);
- (h) possibly, an approximate estimate of the supplies total;
- (i) the deposits required by the contracting authority upon submission of the tender or following notification of acceptance of the contract, and the amount thereof, possibly as a percentage of the contract, for the deposits referred to in Article 70;
- (j) the address of the departments from which suppliers may obtain any further information it would be in their interest to obtain;

2. In a restricted tendering procedure with preselection, the notice shall state in particular:

- (a) the information given in paragraph 1(a), (b), (c) and (g);
- (b) the terms on which the dossier may be acquired;
- (c) the final date for the receipt of requests to participate, the address to which they must be sent and the language in which they must be written;
- (d) possibly, the final date for the issue of invitations to tender by the contracting authority;
- (e) the information to be given in the request to participate, in the form of statements and documents concerning the supplier's situation and the economic and technical conditions which the contracting authority requires suppliers to fulfil in order to be selected; these requirements shall be those specified in Article 25.

#### Article 20

##### Publication of notices

1. In the case of an open invitation to tender, the notice shall be published in accordance with such rules as will ensure the widest distribution of information. To this end it shall be published in the Official Journal of the European Communities and the official gazette of the ACP State in accordance with Article 18(2)(a) of the Protocol No 2 to the Lomé Convention.
2. In the case of a restricted invitation to tender, if a preselection procedure is envisaged, the notice of invitation to tender shall set out the terms of the procedure and shall be published in accordance with paragraph 1.

#### Article 21

##### Invitation to tender

In a restricted procedure with preselection, the candidates selected in accordance with Article 26 shall receive an invitation to tender stating in particular:

- (a) the information given in Article 19(1)(e), (f) and (g);
- (b) a reference to the notice mentioned in Article 19(2).

Article 15

Time limit for the submission of tenders

1. In an open tendering procedure, four months shall elapse between the date of publication of the notice of invitation to tender and the final date for the receipt of tenders.

Nevertheless, this period may be reduced or extended depending on the subject of the contract.

2. In a restricted tendering procedure, the period between the date of the invitation to tender and the final date fixed for the receipt of tenders shall be determined on a case-by-case basis according to the subject of the contract. It may not be less than three months.

3. The invitation to tender dossier

Article 23

Contents of the invitation to tender dossier

The invitation to tender dossier shall as a rule contain the following:

- the notice of invitation to tender, or the notice of preselection and the invitation to tender;
- these General Conditions;
- the Special Conditions, the annexes thereto containing, if necessary, the plans and period of performance of the contract, the procedure for payment and a model tender;
- for a unit price contract: an outline price schedule and an outline bill of quantities;
- for an overall price contract: an outline breakdown of the overall price;
- possibly by way of information, and without being binding upon the contracting authority, a note concerning carriage arrangements and charges.

4. Qualitative criteria for participation

Article 24

Standing and ability required of tenderers

1. Any natural or legal person as defined in Article 5(1) who is able to prove that he meets the necessary legal, technical and financial requirements may participate in invitations to tender within the framework of the procedures laid down for that purpose by these General Conditions.
2. The following natural or legal persons shall not be entitled to participate in an invitation to tender:
  - (a) those who are bankrupt;
  - (b) those who are in a situation of suspension of payments established by judgment of a court other than bankruptcy, and resulting, in accordance with their national laws, in the total or partial loss of the right to administer and dispose of their property;
  - (c) any against who legal proceedings have been instituted involving a declaration of suspension of payments and which may result, in accordance with their national laws, in a declaration of bankruptcy or in any other situation entailing the total or partial loss of the right to administer and dispose of their property;
  - (d) any who have been convicted, under a final judgment, of any offence affecting their professional conduct;
  - (e) any who are guilty of serious misrepresentation with regard to information required for participation in an invitation to tender;
  - (f) any whom it has been decided to exclude pursuant to Article 115(2)(e).

Article 25

Proof of standing and ability

1. In order to provide proof of his standing and ability, the tenderer shall supply the following:
  - (a) any document dated less than three months previously, drawn up in accordance with the tenderer's national law certifying that he meets the conditions set out in Article 6(1);
  - (b) a declaration certifying that the proposed supplies originate in Member States or ACP States. The country of origin must be indicated.
  
2. The tenderer shall, if the Special Conditions so require, also supply the following:
  - (a) any document dated less than three months previously, drawn up in accordance with the tenderer's national law, certifying that none of the situations referred to in Article 24(2)(a), (b), (c) and (d) applies to him;
  - (b) references, balance sheets and trading accounts certifying the financial resources available to him for the performance of the contract;
  - (c) in the case of a company or firm, a copy of its memorandum and articles of association or any other document relating to its constitution, together with the credentials of the person authorized to enter into commitments on its behalf;
  - (d) a statement setting out his technical resources, indicating supplies which he has delivered or in the execution of which he has participated; he shall attach to this statement any certificates relating to and assessing his activities and, where applicable, certificates issued by a qualifying and classifying body approved by the administration of the Member State or ACP State of which he is a national or in which he has a permanent branch;
  - (e) a statement indicating the resources he intends to use to fulfil the contract.

Article 26

Preselection of candidates

In a restricted procedure with preselection, the contracting authority shall select, on the basis of the information given pursuant to Article 19(2)(e), the candidates it shall invite to tender.

5. Detailed rules for the drawing up of tenders

Article 27

Language

The tender shall be drawn up in the language stipulated in the invitation to tender.

Article 28

Contents of the tender

The tender shall contain the following documents:

- (a) the documents referred to in Article 25(1);
- (b) the documents and information referred to in Article 25(2), if the Special Conditions so require;
- (c) a detailed description of the supplies tendered, that is all the information necessary to assess the supplies tendered;
- (d) unless otherwise stipulated in the Special Conditions, an undertaking to provide an after-sales repair service and, if necessary, the details of such service in accordance with Article 80. For this purpose the tenderer shall indicate clearly in his tender the means which he intends using in order to comply with this undertaking;
- (e) where appropriate, additional guarantees as to duration, extent, etc;
- (f) the price tender as such and the procedure for payment pursuant to Articles 38 and 97.

Article 29

Signature and number of copies

This tender shall be signed by the tenderer or by his agent. It shall be drawn up in a single original bearing the word "original". The Special Conditions shall state in addition the number of copies to be supplied by the tenderer. Copies shall be signed in the same way as the original and shall bear the word "copy".

Article 30

Agents

Tenders submitted by agents must state the name or names of the principal or principals on whose behalf they are acting. No agent may represent more than one tenderer. Agents shall attach to the tender the notarial act or deed which empowers them to act on behalf of tenderers. Signatures to a deed executed under seal must be authenticated.

Article 31

Consortia

Where the tender is submitted by a consortium, without legal personality, made up of a number of natural or legal persons, it shall be signed by each of those persons, who shall, unless otherwise specified in the Special Conditions, accept joint and several liability and appoint one of their number to represent the consortium vis-à-vis the contracting authority.

The representative or representatives of such consortium must, insofar as each is concerned, provide the proof required under Article 25, as if they were themselves the tenderer.

Article 32

Alterations and amendments

Any erasures, interlineations, additions or amendments, whether in the tender or in its annexes, which could influence the basic terms of the contract, such as prices, time limits and technical conditions, shall be subject to alterations approved and signed by the tenderer or his agent.

Article 33

Calculation of the price

1. The tender shall contain the unit price, the amount per article and the total amount of each batch.

Where the invitation to tender dossier contains a bill of quantities or a breakdown of the overall price with a statement of quantities, the tenderer shall include therein the requisite information, make the necessary arithmetical calculations, sign the document and attach it to his tender, in which he shall mention the total amount of the bill of quantities.

Save where there is express authorization in the Special Conditions, the quantities set out in the bill of quantities, or in the breakdown of the overall price, may not be altered by the tenderer, regardless of whether such quantities are firm or established.

2. In order to enable tenderers to calculate their prices on comparable bases the Special Conditions may provide that tenders shall be drawn up with reference to a delivery stage other than the final place of destination. In such case the Special Conditions shall lay down detailed rules for calculating tenders without prejudice to the reimbursement of the contractor for carriage expenses not included in his tender.

Article 34

Accuracy of unit prices

Unit prices must be determined in such a way as to correspond to the relative value of each item in relation to the total amount of the tender. They must in particular not be of such a nature as to distort the comparison of tenders or to result in the payment of instalments on account which are clearly disproportionate to the normal value of the services rendered.



Article 35

Checking of prices

1. The contracting authority may, if the Special Conditions so provide, request the tenderers to provide all information enabling the prices tendered to be assessed.
2. Whatever information is provided, it shall not result in a variation of the prices tendered, save in the event of material errors or mistakes in calculation pursuant to Article 47(2).

Article 36

Taxation

The tenderer shall, when calculating his tender, exclude stamp duty and registration duty on contracts. Customs duty, entry duties and indirect charges on the import into or manufacture of the supplies in the ACP country shall be those referred to in Article            of Decision No            of the ACP-EEC Council of            on the tax and customs arrangements applicable in the ACP States to contracts financed by the Community.

Article 37

Wording of tenders

1. Tenders shall be expressed either in the currency of the recipient ACP State, in European units of account, in the currency of the Member State or ACP State of which the tenderer is a national or in which he has his registered place of business, or in the currency of the country in which the supplies are produced.
2. The total amount of the tender and the unit prices in the price schedule shall be written out in full. The same applies to the overall amount of each item of the bill of quantities if the Special Conditions so require.

Where a price is stated in figures and in words and there is a discrepancy between the two, the price expressed in words shall be authentic.

#### Article 38

##### Currency of payment

1. The currency of payment shall be that in which the tender is expressed.
2. When the tender is expressed in European units of account, payments relating to the debt shall be made where relevant, in the currency of the Member State or ACP State laid down in the contract, on the basis of the equivalent value of the EUA the day preceding payment.
3. Where payment is made in a currency other than that of the recipient ACP State or other than that of the state in which the contractor has his registered place of business, it must be deposited in a bank or with an approved agent in the country in which the contractor has his registered place of business.

#### Article 39

##### Temporary residence permit

For the purpose of carrying out studies in preparation for the drawing up of tenders, the ACP State shall grant a temporary residence permit to any person participating in an invitation to tender, or to his agent. This permit shall expire at the end of a period of one month following the publication of the name of the successful tenderer by the contracting authority in accordance with customary practice in the ACP State.

#### Article 40

##### Right of transfer

Subject to observance of the procedures adopted pursuant to the beneficiary ACP State's exchange regulations, the contractor shall be entitled to transfer sums due to him directly or indirectly in connection with performance of the contract.

The timing and amount of the transfer request or requests shall be at the contractor's discretion.

Transfers shall be made in the currency of the Member State or ACP State of which the contractor is a national or in which he has his registered place of business, at the rate of exchange in force in the beneficiary ACP State on the day the transfer is made, as fixed by the Central Bank of that State.

#### 7. Submission and opening of tenders

##### Article 41

##### Submission of tenders

The tender, the annexes to it stipulated in the Special Conditions and the supporting documents referred to in Article 28 shall be placed in a sealed envelope bearing the address indicated in the notice of invitation to tender or in the invitation to tender, the reference to the notice of invitation to tender in reply to which the tender is being submitted, where appropriate the numbers of the lots tendered for and the following words: "not to be opened before the meeting for the opening of tenders", written in the language of the invitation to tender dossier.

In the case of a restricted invitation to tender with preselection, however, the supporting documents referred to in Article 25 shall not be required unless otherwise stipulated in the Special Conditions.

Envelopes containing tenders must be sent by post or submitted by any other means. The tenderer may request advice of delivery.

On receipt, the envelopes, which must not bear any reference to the tenderer, shall be entered in a special register in the order in which they arrive. The registration number and the date and time of arrival shall be recorded on the envelope. Envelopes must remain sealed until they are opened under the conditions set out in Article 44.

Article 42

Withdrawals, additions and amendments

Any tender may be supplemented or amended prior to the final date fixed for the receipt of tenders.

Any tender may be withdrawn prior to the final date fixed in the notice of invitation to tender for the opening of tenders.

Withdrawals, additions or amendments shall be stated in writing and signed by the tenderer or his agent.

On pain of rendering the tender null and void, amendments and additions must indicate precisely the purpose and the extent of the desired change.

Withdrawal must be unconditional.

The provisions of Articles 32 and 41 relating to tenders shall be applicable to withdrawals, additions or amendments. Withdrawals may however be notified by telegram or telex; in such case, they must be confirmed forthwith by registered letter.

If a tenderer who has withdrawn his tender submits a fresh one in the proper manner, he may refer therein to the documents attached to the first tender which he intends to use in support of the second.

Article 43

Period during which tenders are binding

Tenderers shall be bound by their tenders, where necessary corrected by the Committee responsible for the examination of tenders in accordance with Article 47(2), during the period laid down in the notice of invitation to tender or in the invitation to tender.

If, during this period, the contracting authority considers that it is not in a position to make a choice, it may propose by registered letter that the period be extended. Only tenderers who have conveyed their agreement to the contracting authority by registered letter shall remain bound during this additional period.

Article 44

Opening of tenders

1. The envelopes containing the tenders, withdrawals, amendments or additions shall be opened in public at the place, on the date and at the time fixed in the notice of invitation to tender, by a Committee whose composition shall be determined by the ACP State.

Only those envelopes which have been received in accordance with the conditions specified in Articles 41 and 42 not later than final date fixed for the receipt of tenders can be taken into consideration, without prejudice to the provisions of paragraph 2.

Minutes of the envelope-opening operations shall be drawn up, giving details of:

- the number and condition of the envelopes received;
- the identity of the tenderers;
- the documents contained in the envelopes;
- the amounts of the tenders;
- any amendments or withdrawals of tenders;
- any declarations by the tenderers.

The Minutes shall be signed by the Chairman, who shall also endorse the documents contained in the envelopes and number them consecutively. These Minutes, which shall be public, shall be communicated to any tenderer who so requests.

The Chairman of the Committee shall then read aloud the names of the tenderers, the amounts of the tenders, price changes and withdrawals. After this announcement the Committee shall continue its work in camera.

2. Envelopes arriving after the final date fixed for the receipt of tenders shall be taken into consideration only if they reach the Chairman of the Committee responsible for the examination of tenders before he declares the meeting open.

If possible, envelopes which arrive late shall be entered in the register by the Committee in accordance with Article 41.

Article 45

Invalidity of tenders

Without prejudice to the invalidity of any tender the provisions of which conflict with the essential requirements of these General Conditions, in particular those set out in Article 32, the Committee may consider tenders which do not conform to the provisions of Articles 24 to 38, 41 and 42 and 53 to 55, which express reservations or which are obviously unrealistic, to be irregular and, hence, null and void.

Article 46

Comparison of tenders

If tenders received are expressed in different currencies they shall be converted, for the purpose of comparison, into the national currency on the basis of the rates of exchange between the different currencies and the EUA in force on the first working day of the month preceding the month in which the date fixed for the opening of tenders occurs, as published for this purpose in the Official Journal of the European Communities.

Article 47

Work of the Committee responsible for the examination of tenders

1. Before classifying the tenders, the Committee shall eliminate candidates not qualified to tender or whose qualifications are judged inadequate, in accordance with the provisions of Articles 24 and 25.

The Committee's reasons for acceptance or rejection or for a declaration that a tender is null and void shall be set out in the minutes provided for in Article 48(2).

2. The Committee shall then check the results of the arithmetical calculations contained in the tenders. It shall correct obvious errors or mistakes in calculation and, in case of doubt, ask the tenderer by registered letter to give further details of his tender.

The contracting authority shall not be held liable, should errors escape notice.

Article 50

Letter of contract

The letter of contract shall be the registered letter with advice of delivery referred to in Article 49(1)(b) in which the contracting authority accepts the tender of the selected supplier.

Article 51

Contents of the letter of contract

The letter of contract shall include in particular:

- a list of the documents relating to the contract, together with their references, and in particular the General Conditions, the Special Conditions and its annexes, the tender, the price schedule and the bill of quantities or the breakdown of the overall price;
- any derogations from these documents by the contract;
- the amount of the contract;
- the decisions taken by the contracting authority pursuant to Article 47(2);
- if necessary the appointment of the engineer, his powers regarding the performance of the contract and of the supervisor to whom he is responsible;
- all particulars necessary for determining the obligations arising from the contract other than those appearing in the documents referred to in the first indent hereof.

Article 52

Order of precedence of the documents relating to the contract

The order of precedence of the documents relating to the contract which are listed in the letter of contract shall be established by the Special Conditions.

9. Special cases

Article 53

Grouping into lots

1. Should it be decided to divide up an invitation to tender for economic and technical reasons, account shall be taken of the advantage of grouping the supplies into homogeneous lots which are as large as possible.

The Special Conditions shall stipulate the number of lots and the nature or size of each lot.

Unless otherwise provided in the Special Conditions, the tenderer may submit a tender for each lot, several lots or all the lots.

Each lot shall be the subject of one tender.

However, the tenderer may submit a tender relating to several lots, provided that he tenders therein for each lot separately. This condition need not be observed, however, if the lots are identical.

Unless the Special Conditions prescribe otherwise, the tenderer may supplement his tenders by referring to the overall rebate he would grant in the event of amalgamation of certain lots for which he has submitted individual tenders.

2. Each lot shall be the subject of a separate contract.

However, the Special Conditions may lay down that lots apportioned to the same tenderer, even if they differ, shall form a single contract, the period of performance of which it shall specify.

3. Where supplies lots are apportioned to different contractors, the Special Conditions may provide that the contractors shall designate one of their number to act as joint agent to ensure coordination in providing the supplies in question.



Article 54

Variations

If the Special Conditions have made provision for the submission of variant solutions, they must specify the subject, limits and basic conditions thereof; the submission of variations does not as a rule imply that the tenderer must also submit a tender based strictly on the tender dossier unless otherwise provided in the Special Conditions.

Variant solutions may not derogate from the requirements of the General Conditions. Tenders for the administrative solution and for the variant solutions shall belong to a single class; the contract shall be awarded to the tender which is economically the most advantageous.

The submission of any variant solution must comprise:

- (a) for unit price contracts:
  - an individual tender for the variation;
  - the draft of the amendments to the Special Conditions necessitated by the variation submitted by the tenderer;
  - the price schedule as modified by the variation;
  - the bill of quantities as modified by the variation;
  - a technical note on the conception of the variation.
- (b) for overall price contracts:
  - an individual tender for the variation;
  - the draft of the amendments to the Special Conditions necessitated by the variation submitted by the tenderer,
  - the breakdown of the overall price,
  - a technical note on the conception of the variation.

Article 55

Invitation to tender with competition

1. The invitation to tender may take the form of a competition.
2. A competition procedure shall be adopted where special investigations are justified for technical, aesthetic or financial reasons.

3. The competition shall take place on the basis of a schedule drawn up by the contracting authority.
4. The competition shall be for the preparation of a project and its execution.
5. The Committee responsible for the examination of tenders shall be called 'the board'. The composition of this board shall be laid down in the competition schedule.
6. The award of the contract shall be decided by the contracting authority after receiving the opinion of the board.

The schedule may make provision for a prize to be awarded for the best-placed proposals after the one adopted for execution. Such prizes shall be specified by the schedule and awarded to the originators of the said proposals in accordance with the order established by the board. Prizes may be withheld if the proposals are not judged satisfactory.

7. The schedule shall establish precisely the respective rights of the contracting authority and the competitors to the ownership and use of the proposals.
8. The notice of invitation to tender with competition and the compilation of the dossier must comply with the provisions of Articles 20, 21 and 24.
9. The preparation of tenders, the procedure for the examination, their classification and the notification of acceptance of the proposals adopted shall comply with the corresponding provisions relating to invitations to tender without competition, save where the schedule provides otherwise.

## II. Mutual agreement contracts

### Article 56

#### Definition and characteristics of mutual agreement contracts

1. A contract shall be termed a mutual agreement contract where the contracting authority enters freely into such discussions as it may consider useful and awards the contract to the supplier which it has accepted.

2. The contracting authority shall be bound to arrange a competition, as far as possible and by all appropriate means, for suppliers capable of providing the supplies which are the subject of such contract.
3. The contracting authority shall be bound to apply the provisions of Article 18.
4. Articles 50 and 51 shall apply.

#### Article 57

##### Agreement contracts

Mutual agreement contracts may be negotiated:

1. Where the minor importance of the subject of the contract does not warrant recourse to the normal procedure of prior competition;
2. In the absence of tenders, or in the event of irregular tenders being submitted following the adoption of an invitation to tender procedure, or if the tenders submitted are unacceptable, in so far as the terms of the original contract are not substantially altered;
3. For supplies, the provision of which is reserved for persons holding patents or licences for inventions, improvements or importation in respect of those works, or for works which can only be obtained from a single supplier;
4. For supplies the provision of which may, for reasons of technical necessity or substantial prior investment, be entrusted to one specific supplier only;
5. Where the supplies only take the form of research, tests, studies or improvements;
6. For supplies where, in cases of emergency, an invitation to tender procedure would take too long;
7. Where the prices submitted are not governed by the normal play of market forces;

8. For additional supplies contracts which cannot, for technical and economic reasons, be separated from the principal contract or the cost of which does not exceed 20% of that contract;
9. For supply contracts in which, pursuant to Article 13, the prices can be determined only provisionally.

CHAPTER III

APPLICABLE LAW AND SETTLEMENT OF DISPUTES

Article 58

Law applicable to the contract

The State the law of which shall govern the contract and in accordance with which the contract is to be construed shall be laid down in the Special Conditions.

Article 59

Amicable settlement of disputes

No dispute arising either between the contracting authority and a tenderer in connection with the procedure for the placing of a contract or between the contracting authority and the contractor resulting from the interpretation or performance of a contract shall be referred to arbitration unless an attempt has first been made to settle the dispute amicably.

Where the complainant is the contractor or a tenderer, the attempt to reach an amicable settlement shall be conducted before the various administrative authorities responsible if the national law applicable makes provision for the possibility of review by non-contentious administrative procedure. If national law does not provide for such possibility, the attempt to reach an amicable settlement shall be initiated by notification of the complaints to the engineer in the case of a dispute concerning the interpretation or performance of a contract, or to the contracting authority in the case of a dispute concerning the procedure for the award of a contract.

Where the complainant is the contracting authority, the attempt to reach an amicable settlement shall in all cases involve a procedure under which complaints are notified to the opposing party (the contractor or tenderer).

The amicable settlement stage shall be deemed to be at an end if no final decision has been taken within a period of four months from the date of the application for a review or of the notification of the complaints.

Article 60

Arbitration

If the procedures laid down in Article 59 have been exhausted and the attempt to reach an amicable settlement has failed, the dispute shall be settled by arbitration in accordance with the rules of arbitration adopted by the ACP-EEC Council of Ministers, as laid down in Article 23 of Protocol No 2 to the Lomé Convention.

A request for settlement of a dispute must, on pain of being time-barred, be submitted to the Arbitration Board within 60 days of the date of receipt of the decision closing the phase of amicable settlement provided for in Article 59, or within 60 days from the expiry of a term of four months provided for in the last paragraph of Article 59.

The parties to a dispute arising in connection with the award or performance of contracts concluded prior to the entry into force of these General Conditions may also agree to submit such dispute to the arbitration procedure referred to in the two preceding sub-paragraphs.

TITLE II

CONTRACTUAL, ADMINISTRATIVE AND TECHNICAL PROVISIONS

I. Preliminary provisions

Article 61

Administrative orders

Administrative orders must be in writing. They shall be dated, numbered and entered in a register.

The contractor shall comply on all points with administrative orders drawn up by the supervisor, the engineer or his representative.

Where the contractor considers that the requirements of an administrative order go beyond the obligations under the contract, he must, on pain of being time-barred, submit notice thereof in writing to the engineer within 15 days. Execution of the administrative order shall not be suspended because of the objection.

Article 62

The engineer

The engineer may be appointed by the supervisor in the letter notifying the contractor of the award of the contract, save where such appointment already appears in the invitation to tender dossier.

This letter of contract shall also state the powers of the engineer in accordance with Article 51.

In cases where it is unnecessary to appoint an engineer, the powers of the latter conferred by these General Conditions shall be exercised by the supervisor.

Article 63

The engineer's representative

The engineer's representative(s) responsible for supervising performance of the contract shall be made known, if necessary, by the engineer to the contractor by administrative order. If the engineer delegates to his representative(s) some of his powers for directing performance of the contract he shall inform the contractor in an administrative order of the powers thus delegated.

Article 64

Free access to the place of manufacture

The contractor shall ensure that the engineer or his representative(s) has or have free access to the place where the supplies which are the subject of the contract are executed, and shall provide them with any information that they may require. In the performance of their duties, the engineer or his representative(s) shall be subject to the obligations laid down in the last paragraph of Article 84.

Article 65

Address for service of the contractor

All notifications concerning the contract shall be sent to the address which the contractor specifies for this purpose in his tender.

If the contractor leaves this address without notifying the contracting authority thereof, all notifications concerning the contract shall be valid when they are sent to the address specified for this purpose in the Special Conditions.

Furthermore, the Special Conditions may require the contractor to select within a fixed period an address for service or designate a representative at a place specified for this purpose.

Should the contractor fail to fulfil this obligation within the period provided, all notifications concerning the contract shall be valid when they are sent to the address specified in the Special Conditions.



Article 66

Assignment, sub-contracting and sub-ordering

1. An assignment shall be an agreement by which the contractor transfers his contract to a third party.

A sub-contract shall be an agreement by which the contractor entrusts performance of a part of his contract to a third party.

A sub-order shall be an order made to a third party by the contractor or by that third party himself to another third party, with a view either to the manufacture of intermediate items or materials to be incorporated in the works carried out or to the performance of certain operations affecting the carrying out of such works.

2. The contractor may not assign the contract without the express authorization of the contracting authority.

Sub-contracts may be placed freely subject to notification by the contractor to the supervisor of the supplies sub-contracted and the identity of the sub-contractor(s). Such notification shall be made by registered letter with advice of delivery. The contracting authority may exercise its right to withdraw within 15 days of the date of the advice of delivery.

Assignees or sub-contractors must meet the conditions set out in Article 6(1).

Sub-orders may be placed freely in accordance with the provisions of Article 56 of the Lomé Convention. Nevertheless, the Special Conditions may stipulate that the prior authorization of the contracting authority is required in respect of certain sub-orders.

3. The contracting authority shall acknowledge no legal connection with the sub-contractors and persons with whom sub-orders are placed. The latter may not claim settlement from the contracting authority in respect of supplies which they would have provided, unless otherwise provided in the Special Conditions.

The engineer may avail himself of the rights laid down in Article 84 with regard to services carried out or provided by sub-contractors or persons with whom sub-orders are placed.

4. If, without being authorized to do so, the contractor has assigned his contract, concluded a sub-contract or placed a sub-order for which authorization was necessary, the contracting authority may, without giving formal notice thereof, supply as of right the measures provided for in Article 115 point 2.

Article 67

Documents and items to be supplied to the contractor

1. Within 15 days after notification of acceptance of the contract has been given, the supervisor shall provide the contractor, free of charge, with a checked and, where necessary, corrected copy of the tender, the Special Conditions and the annexes thereto.

At the request of the contractor, the supervisor shall forward to him free of charge and postage paid an additional copy of the documents referred to in the preceding sub-paragraph, together with, if necessary, a complete set of copies of the plans drawn up by the said supervisor for the performance of the contract. The supervisor shall be responsible for ensuring that such copies are in conformity with the originals.

2. The Special Conditions shall indicate the additional documents and items which may be placed at the disposal of the contractor at his request, in order to facilitate his work.

Upon expiry of a period of 15 days following the provision of these documents and items, the contractor shall be deemed to have checked that they conform with those which served as the basis for the invitation to tender and which are retained by the supervisor for the purposes of acceptance of the works. The Special Conditions shall specify the date and conditions for the return of these documents and items.

3. The contractor may purchase additional copies of these plans, documents and items, insofar as they are available.
4. The supervisor may not hand over these plans, documents and items prior to the establishment of the deposit or the commitment of the directly liable guarantor provided for in Article 70.

Article 68

Documents to be supplied by the contractor

The Special Conditions shall, if necessary, specify the documents to be provided by the contractor.

II. Guarantees of contract

Article 69

Provisional deposit or guarantee

The Special Conditions may stipulate, where appropriate, that tenderers establish a provisional deposit as an earnest of their tenders by the commitment of a directly liable guarantor or, if they so wish, by the establishment of a provisional deposit. The amount of this guarantee may not exceed 1% of the estimated amount of the contract. The conditions governing the establishment and reimbursement of the deposit or the persons empowered to act as directly liable guarantors shall be as stipulated in Article 70(2).

Provisional deposits shall be returned or the guarantors whose guarantees replace such deposits released as soon as the contractor is designated. As regards the successful tenderer, however, the return of the provisional deposit or the release of the guarantor shall take place only when the final deposit has been established; the provisional deposit may serve as a contribution towards the final deposit.

Article 70

Guarantees of contract by means of a deposit or a directly liable guarantor

1. Unless the Special Conditions provide otherwise, the contractor shall be obliged to establish a final deposit or, if he so wishes, provide a directly liable guarantor to guarantee recovery of the sums which he owes under the contract.

The amount of the final deposit or the commitment of the directly liable guarantor may not exceed 3% of the original amount of the contract, increased where appropriate by the amount given in the riders where the contract does not provide for a maintenance period. Where the contract provides for a maintenance period, the amount of the final deposit or the commitment of the directly liable guarantor may not exceed 10%, unless otherwise provided in the Special Conditions; however, under no circumstances may it exceed 20%. Within the above limits, and in accordance with the provisions of the Special Conditions, the final deposit or the commitment of the directly liable guarantor may be established progressively as the contract is performed.

2. The final deposit shall be established in the currency in which the contract is expressed. It shall be paid in accordance with national regulations and shall be reimbursed in the same currency. However, where the contract is established in EUA, the final deposit shall be established in the national currency of equivalent value to the corresponding amount in EUA on the basis of the exchange rates defined in Article 46. It shall be reimbursed, if necessary, in the currency of the country of which the contractor is a national or in which he has his registered place of business at the exchange rate referred to above.

The directly liable guarantor shall be any body under public or private law established in an ACP State or a Member State or possibly in a third country in the cases provided for in Article 56(3) of the Lomé Convention which is able to provide such a guarantee or is empowered to do so by the authorities under whose control it operates.

3. Save where there are special provisions in the Special Conditions, the establishment of the final deposit or the commitment of the directly liable guarantor must take place within one month of the date of notification of acceptance of the contract.

No payment may be made in favour of the contractor prior to the establishment of the final deposit or the commitment of the directly liable guarantor.

4. Advances granted pursuant to Article 92 and certain interim payments referred to in Article 94 shall be guaranteed up to their full amount by the commitment of an individual directly liable guarantor approved in accordance with paragraph 2 above.

#### Article 71

##### Failure to establish a final deposit or to provide a directly liable guarantor

If the contractor fails to produce proof of the establishment of the final deposit or the commitment of the directly liable guarantor within the period laid down in Article 70(3), the contracting authority shall be entitled to apply as of right the measures provided for in Article 115, point 2.

Before applying these measures, the supervisor shall send the contractor a registered letter with advice of delivery giving formal notice regarding the establishment of the final deposit or the commitment of the directly liable guarantor. Such formal notice shall set a new time limit which may not be less than fifteen calendar days and which shall take effect from the date of the advice of delivery.

#### Article 72

##### Right of the contracting authority over the deposit or directly liable guarantor

1. The contracting authority reserves the right to require payment from the deposit of all sums which the contractor owes under the contract, in accordance with the national law.

The deposit shall be maintained so as to meet the obligations of the contractor, until the contract has been performed in full.

Should a deposit guaranteeing performance of the contract cease to be established in full and should the contractor fail to make good the deficit, a deduction equal to the amount of the latter may be made from future payments and used to re-establish the deposit.

2. The directly liable guarantor shall pay off the sums due from the contractor under the contract, in accordance with the national rules.

During the performance of the contract, if the directly liable guarantor is not able to abide by its commitments, the contracting authority shall treat it as terminated. It shall invite the contractor to provide a new guarantor which shall undertake liability within the same limits as the previous one.

Should the contractor fail to provide a new guarantor, the contracting authority may cause the provisions of Article 71 to be applied.

3. In the event of termination of the contract, regardless of its cause, the directly liable guarantor established to guarantee advances or certain interim payments specified in the Special Conditions may be called upon immediately to reimburse the balance of the advances or interim payments still owed by the contractor and may not postpone payment or raise any objection or any grounds whatsoever.

#### Article 73

##### Return of deposit or release of the directly liable guarantor

1. The deposit shall be returned or the directly liable guarantor released on the date of acceptance of the supplies where there is a sole acceptance or on the date of final acceptance where there are two acceptances.
2. However, in the light of the special feature of the contract and without prejudice to Article 74, the Special Conditions may provide that one half of the deposit be returned or one half of the commitment of the directly liable guarantor be released on the date of the provisional acceptance.
3. The Special Conditions shall specify when the directly liable guarantors referred to in Article 70(4) are to be released.

#### Article 74

##### Sums retained by way of guarantee

The Special Conditions may stipulate that an amount not exceeding the maximum amounts fixed for the final deposit by Article 70(1) shall be deducted from interim payments by way of guarantee of sums which the contractor is acknowledged

as owing under the obligations arising in connection with the maintenance period. This guarantee may, at the option of the contractor, be replaced by a directly liable guarantor. The provisions of Article 70(2) shall apply.

The Special Conditions shall specify the amount to be retained by way of guarantee and lay down the detailed rules governing it where it is deducted from the interim payments.

The establishment of a guarantee by deduction from the interim payments shall entail a corresponding reduction in the final deposit or in the commitment of the jointly liable guarantor referred to in Article 70(1) in such a way that the deposit shall be returned in full or the guarantor fully released on the date of provisional acceptance of the supplies.

The sum retained by way of guarantee shall be paid over or the directly liable guarantor shall be released on the date of final acceptance of the supplies.

#### Article 75

##### Insurance

The carriage of supplies shall be covered by a policy of insurance as laid down in the Special Conditions. The Special Conditions may also make provision for other types of insurance to be borne by the contractor.

### III. General obligations

#### Article 76

##### Basic rules for the determination of prices

1. Subject to any special terms contained in the Special Conditions, the contractor shall be deemed to have included in his prices all expenses affecting the supplies, and in particular:
  - (a) carriage and insurance expenses;
  - (b) the costs of packing, transshipment, unloading, transit, unpacking and installation at the place of delivery;

(c) the cost of documents relating to the supplies where such documents are required by the contracting authority.

2. The cost of assembling and placing the supplies in working order shall be borne by the contractor where the Special Conditions so stipulate.

#### Article 77

##### Overlapping contracts

Where the contractor has been awarded several contracts for identical supplies, the deliveries which he makes shall be set against the appropriate contract in the order in which the delivery dates fall due.

#### Article 78

##### Simultaneous contracts

1. Subject to the application of such rules governing legal compensation as may be established by national law or usage, each supply contract and its performance by the contractor shall be independent of all other contracts of which the contractor is holder.
2. Any difficulties arising with regard to one contract may in no case entitle the contractor to amend or delay performance of other contracts; similarly, the contracting authority may not take advantage of such difficulties to suspend payments due under another contract.

#### Article 79

##### Patents and licences

Save as otherwise provided in the Special Conditions, the contractor shall indemnify the contracting authority against any claim resulting from the use, for the purposes of the performance of the contract, of patents, licences, drawings, models, or factory or trade marks.



Where the contracting authority gives a description of all or part of the supplies, without referring to the existence of a patent, licence, drawing, model, trade mark or trade name whose use if necessary for execution of such supplies, it shall bear all costs and charges; in that event it shall indemnify the contractor against any claim by the holder resulting from such use.

Article 80

After sales service

Save as otherwise provided in the Special Conditions, the supplier must provide, undertake to provide or arrange in the country for which the supplies are intended an after sales service for the maintenance and repair of the supplies and the speedy supply of replacement and duplicate parts.

IV. Commencement of performance - Period of performance

Article 81

Order to commence performance of contract

The notification of acceptance of the contract shall be deemed to constitute the order to commence performance of the contract.

Article 82

Period of performance

The contractual period of performance shall be fixed by the Special Conditions without prejudice to extensions of time limits which may be granted pursuant to these General Conditions. It shall begin to run on the date of signature of the advice of delivery of the letter of notification of acceptance of the contract referred to in Article 49.

If provision is made for a separate period of performance for each batch, such periods shall not be aggregated in cases where one supplier is allocated more than one batch. In such case the period of performance for each batch shall be separate.

V. Supervision and inspection.

Article 83

Quality of supplies

Without prejudice to Article 18 the supplies must meet the technical specifications laid down in the Special Conditions and in the tender. They must conform in all respects with the plans, drawings, surveys, models, samples, patterns, etc. which have been held at the disposal of the contractor for identification, in accordance with the Special Conditions.

Where materials and objects to be supplied are defined at the same time by plans, samples and models, and if the Special Conditions contain no stipulation to the contrary, the plan shall determine the form of the object, its dimensions and the material from which it is made; the model shall be taken into consideration only in respect of the finished article and the sample in respect of the quality of the material.

Article 84

Supervision and inspection of goods

The engineer may arrange for the supervision and inspection of any supply being prepared and manufactured for delivery under the contract.

To this end, he may apply such tests as he considers necessary from among those provided for in these General Conditions, supplemented or amended, where appropriate,

by the Special Conditions, in order to establish whether the materials and objects are of the requisite quality and quantity. It may require the replacement or repair, as the case may be, of items which do not conform with the contract, even after their installation.

The contractor may not rely on the fact that such supervision and inspection have been exercised in order to avoid his responsibility in the event of the supplies being rejected by reason of any defect.

The contractor shall place at the disposal of the engineer, provisionally and free of charge, the patterns and instruments specified in the Special Conditions or which are considered necessary for verifying and inspecting the supplies and other objects to be provided.

The engineer or his representatives, informed by reason of their supervision and inspection of the methods of manufacture and operation of the undertakings, shall be under an obligation not to disclose such information except to those members of the administration who need to know thereof.

#### Article 85

##### Tests and check tests

##### 1. Tests

The tests required for technical verification of materials and supplies shall be laid down in the Special Conditions. These shall specify whether the tests are to take place:

- (a) at the manufacturer's factories,
- (b) in the contracting authority's laboratories,
- (c) in laboratories approved by the contracting authority.

In the case of verification at the factory as provided for under (a), the test samples or parts, which shall be in a condition ready for testing, shall be made available to the engineer within five calendar days of being marked out for that purpose. The tests shall be carried out in the presence of the engineer or his representative; the contractor shall bear the cost of preparing parts, test samples, and the costs of the tests themselves.

In the case of verification in the laboratories as provided for under (b) and (c), immediately after the parts to be tested or the substances to be used in preparing the test samples have been selected and marked out for testing by the engineer or his representative, the contractor shall send them within five days, free of charge, to the laboratory responsible for the tests, under the supervision of the engineer or his representative.

The contracting authority shall bear the costs of preparing parts and test samples. It shall also bear the cost of tests carried out in its laboratories or in an approved laboratory, with the exception of tests which should have been carried out by the contractor in the manufacturer's factories. The residue of test samples, broken parts and surplus samples shall remain the property of the contracting authority. The contractor may be present when the tests are carried out in one of the contracting authority's laboratories or in a laboratory approved by the contracting authority.

In all cases the markings must be present until the time of testing.

Where tests carried out to ascertain the quality of supplies involve the destruction of certain parts of certain quantities of materials, these must be replaced by the contractor, at his expense.

The extent to which the tests may involve such destruction shall be indicated in the Special Conditions.

## 2. Test period

The period which extends from the date of despatch to the date of arrival in the establishment responsible for testing shall not be included in the period laid down in the Special Conditions for notifying the contractor of the decision of approval or rejection.

## 3. Verifications

Weighing required to verify the articles and materials for which theoretical weights or weight tolerances are laid down shall be carried out at the contractor's factory; the contractor shall place the weighing instruments at the disposal of the engineer or his representative, free of charge, in accordance with Article 84.

The same shall apply in the case of duly verified measuring equipment and test machinery required for the tests provided for in the contractor's factories or at the place of delivery.

4. Check tests

In the event of an objection by one or other party to the results of the tests, each of the parties shall be entitled to request a check test. This shall be carried out in a laboratory selected by common consent from the laboratories approved by the contracting authority.

If the objection concerns an item which is incapable of exact evaluation, each of the parties shall be entitled to request an expert opinion. The expert shall be selected by common consent. The expert shall conduct his examination at a place nominated by the expert and approved by the contracting authority.

The report drawn up by the laboratory or by the expert shall be submitted to the engineer, who shall communicate it, without delay, to the contractor by registered mail. The results of the check test or the expert opinion shall be conclusive.

The costs of the check test or the expert opinion shall be borne by the party for whom the result is unfavourable.

5. Period for check tests

Under penalty of being time-barred, the contractor shall address the request for a check test or an expert opinion to the engineer by registered letter not later than the fifteenth calendar day following the day on which the decision of rejection is notified.

Paragraph 2 shall apply to the period for notifying the decision of acceptance or rejection resulting from the check test or the expert opinion.

6. Extension of the period of performance

An extension of the period of performance may be granted to the contractor where the check test or the expert opinion is in his favour.

7. Rejects

Materials and supplies which are not of the required quality shall be rejected. A special mark may be applied to the latter; this may not be such as to alter the supplies, nor may it modify their commercial value.

Making use of rejected materials and supplies shall result in a refusal to accept the supplies.

Article 86

Preliminary technical acceptance

1. If the Special Conditions lay down technical conditions for the acceptance of materials or supplies which the contractor must incorporate for the manufacture of items that he must supply, the engineer must certify prior to their incorporation in the works that such materials or supplies meet the necessary requirements.

The same shall apply if the Special Conditions make provision for the manufacture of one or more standard items and for the examination of samples before manufacture is to commence.

Any preliminary technical acceptance shall be subject of a request sent by registered post by the contractor to the engineer; such request shall be made in accordance with the forms laid down by the engineer, who must act upon it within the period provided for in the Special Conditions.

The request shall indicate the specification of the materials, supplies, items and samples submitted for acceptance and shall also indicate the reference to the contract letter and possibly the batch number and the place where acceptance is to take place.

Even if materials, supplies or items to be incorporated in the manufacture of items to be supplied have been technically accepted in this way, they may still be rejected and must be replaced immediately by the contractor if a further examination reveals defects or faults.

2. The Special Conditions shall make provision for all the procedures relating to preliminary technical acceptance, in particular, the period of time during which the engineer must take his decision to accept or reject materials, supplies, standard items and samples.

Article 87

Identification

The Special Conditions may require all articles and supplies, where possible, to bear the contractor's mark or any other means of identification in a specified place.

VI. Modifications to the contract

Article 88

Variations in quantities

The contracting authority reserves the right, when giving notice of acceptance of the contract, to alter the quantities referred to the invitation to tender.

In the event of an increase or reduction of up to 20% in the quantities referred to in the invitation to tender, the unit prices in the tender shall apply to the quantities ordered.

Where there is an increase of more than 20% in the quantities referred to in the invitation to tender, the contracting authority must obtain the agreement of the supplier selected. The unit prices of the tender shall apply to the quantities ordered.

In the event of a reduction of more than 20% in the quantities referred to in the invitation to tender, the supplier selected shall be entitled to adjust the unit prices of his tender.

Article 89

Technical modifications during performance

During the performance of the contract the supervisor may require the contractor to make technical modifications provided that they are compatible with the technical capability of its undertaking, or agree to modifications proposed by the contractor.

The contractor must, if the supervisor so requests and within a period laid down for the purpose, provide a detailed estimate of the price increase or reduction and the changes envisaged in the period of performance.

The supervisor shall, without prejudice to the provisions of Article 61, notify its decision by administrative order sent by registered letter.

## VII. Payment of contracts

### Article 90

#### General provisions

The Special Conditions shall determine the administrative or technical conditions to which the payment of advances, interim payments or payment of the balance is subject, in accordance with the rules of entitlement set out below.

### Article 91

#### Payment of a contract for which the price is not fixed

Where the prices of supplies or the exact conditions for their determination are not immediately evident from the provisions of the contract, the contract shall, for the purpose of making funds available and for the purpose of making interim payments, state a provisional price which is either an overall price or a price corresponding with the various elements of the contract or the technical stages of execution.

### Article 92

#### Advances

1. Advances may be granted to the contractor for operations preparatory to the provision of the supplies which are the subject of the contract.



2. The amount of the advances may not exceed 30% of the amount of contract where the contract is not subject to revision and 35% where it is so subject.
3. The particular conditions for granting and reimbursing advances shall be laid down in the Special Conditions.
4. No advance may be made before the contractor has furnished proof of the establishment of the deposit or the commitment of the directly liable guarantor stipulated in Article 70(4).
5. Any advance granted must be guaranteed in its entirety by the commitment of a directly liable guarantor satisfying the conditions of Article 70(2).

#### Article 93

##### Reimbursement of advances

Reimbursement of the advances referred to in Article 92(1) shall be made by means of a deduction from the interim payments and, if necessary, from the balance owing to the contractor in accordance with the rules laid down in the Special Conditions.

In all cases of rescission of the contract, for any reason whatsoever, the contractor must immediately reimburse the outstanding balance of the advances.

#### Article 94

##### Interim payments

1. Under the conditions laid down in Article 38 and if the Special Conditions so provide, the contracting authority must make interim payments to the contractor if the latter furnishes proof that he has:
  - delivered at the place of manufacture materials which are to form part of the supplies stipulated in the contract, provided that full ownership thereof has been acquired by the contractor, that they have been paid for and have been recognized as conforming with the requirements of the contract;
  - performed operations intrinsic to the provision of the supplies which have been inspected by the engineer.

2. The Special Conditions may require certain interim payments to be fully secured by the commitment of a directly liable guarantor approved pursuant to Article 70(2).
3. The intervals at which interim payments are to be made shall be laid down in the Special Conditions on the basis of the characteristics of the supplies.

#### Article 95

##### Ownership of materials

Materials for which interim payments have been made shall remain the property of the contractor who may in no circumstances make use of them for purposes other than the performance of the contract.

However, the Special Conditions may lay down that, to set off interim payments, the ownership of the materials corresponding to such interim payments shall be transferred to the contracting authority. In this case, the contractor shall, nevertheless, assume the responsibility of trustee in respect of these materials, in accordance with the requirements of national law.

#### Article 96

##### Price revision

1. Unless otherwise stipulated in the Special Conditions, the contract shall be at fixed prices which may not be revised.
2. Where the Special Conditions provide that the contract shall be at prices which may be revised, they shall lay down the detailed rules for such revision.
3. Prices contained in the contractor's tender shall be deemed to have been arrived at on the basis of the conditions in force on the reference date. This date shall be the first working day of the month preceding that in which the final date for the receipt of tenders occurs.
4. In the event of a delay in execution of the supplies, which is attributable to the contractor, during the period between the contractual date for the completion of performance and the actual date of completion (provisional acceptance) a restricted revision shall be applied on the basis of the official indices or prices in force in the final month of the period of the contract, subject to the reservation that the later indices may be applied if they are advantageous to the contracting authority.

Article 97

Rules for payment

Payment shall be made within 60 calendar days of the date on which the account is due as stipulated in the Special Conditions.

Article 98

Payment in the event of attachment

In the event of a judgment ordering attachment for the amounts owing for performance of the contract against the contractor, and without prejudice to the period laid down in Article 97, the contracting authority shall be given a period of 15 calendar days, starting from the day when it receives notification of the lifting of the obstacle to payment, to resume payments to the contractor.

Article 99

Interest in respect of delay in payments

If the period laid down for payment has been exceeded and with the exception of disputed amounts, the contractor shall qualify automatically and without formal notice for interest calculated pro rata on the basis of the number of calendar days' delay at the rediscount rate of the issuing institute of the ACP State, increased by 1% per annum.

This supplement to the rate shall be increased to 4.5% per year as from the 71st day of delay.

However, payment of the interest on delay shall be subject to the submission by the contractor, not later than the 60th calendar day following the day for payment of the balance of the contract, of a written request having the effect of a statement of account.

A remission of the liquidated damages for delay occurring after payment of the balance may not be regarded as constituting the payment of a new balance and shall not re-open the period provided for in the preceding paragraph.

Article 100

Extended delay in payment

Any default in payment of more than 120 days as from the expiry of the time limit for payment laid down in Article 97 shall entitle the contractor to request the application of Article 112.

Article 101

Payment for the benefit of third parties

All orders for payment to third parties may be carried out only after an assignment of credit or a collateral security established under the contract.

The assignment of credit must be notified by registered letter with advice of delivery to the official responsible for authorizing disbursements. The rules applicable to the transfer of credit shall be those of the State in which the transfer is effected.

The assignment of collateral security must be notified by registered letter with advice of delivery to the official responsible for payments. The rules applicable to the assignment shall be those of the ACP State in which the contract is performed.

Article 102

Notification of third parties

The contractor and the assignees of credit and collateral securities may, during the performance of the contract, seek from the contracting authority either a summary progress report of the supplies provided, accompanied by an estimate which shall not be binding on the contracting authority, or a detailed account of the contractor's entitlement; they may also request a statement of the advances and instalments paid and a detailed report on information received relating to the contract.

If a creditor, giving evidence of his capacity as such, should make such a request by registered letter, the contracting authority shall be obliged to notify him, at the same time as the contractor, of all amendments to the contract which affect the guarantee resulting from the assignment of credit or collateral security.

Beneficiaries of assignments of credit and collateral securities may not call for any information other than that provided for in the first and second paragraphs, nor may they intervene in the performance of the contract.

III. Developments affecting performance of the contract

Article 103

Cessation or adjournment of performance of contract

1. Where the contracting authority unilaterally orders the final cessation of performance of the contract, the latter shall be rescinded forthwith. The contractor shall be entitled to an indemnity for any injury which he may have suffered by reason of any such rescission for which he is not responsible.
2. Where the contracting authority orders the adjournment of the contract, for reasons not specified in the Special Conditions, for more than six months either before or after commencement of the contract, the contractor shall be entitled to rescind the contract and shall be entitled to an indemnity for any injury which he may have suffered.

The same shall apply in the case of successive adjournments, the total duration of which exceeds six months, even if performance of the contract has been resumed in the meantime.

The request for rescission shall be valid only if it is submitted by registered letter by the contractor within two months of the date of receiving the administrative order leading to postponement of performance of the contract for more than six months, or as from the expiry of the sixth month of postponement, if such order has not fixed the duration of the postponement.

If the performance of the contract has commenced, the contractor may require that acceptance of supplies should take place forthwith.

If the contractor limits his request to an indemnity, it must be submitted by registered letter not later than 60 days after provisional acceptance of all the supplies.

3. Where the contracting authority orders the adjournment of performance of the contract for less than six months, the contractor shall be entitled to an indemnity for any injury suffered. He must submit his request by registered letter not later than 60 days after provisional acceptance of all the supplies.
4. During the period of adjournment the contractor shall take all such protective measures as may be necessary to safeguard the portion of the contract already executed.

Expenses incurred in connection with such protective measures shall be reimbursed to the contractor, without prejudice to the indemnity which he may claim in accordance with paragraphs 2 and 3.

#### Article 104

##### Death

1. Where the contract is awarded to a natural person, it shall be automatically rescinded if that person dies.

However, the contracting authority shall examine any proposal made by the heirs if they have notified it of their intention to continue the contract. The decision of the contracting authority shall be notified to those concerned within one month of receipt of such proposal.

2. Where the contract is awarded to several natural persons and one or more of them die, a report shall be agreed between the parties on the progress of the performance of the contract and the contracting authority shall decide whether to rescind or continue the contract in accordance with the undertaking of the survivors and of the heirs, as the case may be.

3. In the cases provided for in paragraphs 1 and 2, persons offering to continue to perform the contract shall notify the contracting authority thereof by registered letter within ten days of the date of death.

The nature of their liability shall be determined in accordance with the first paragraph of Article 31, supplemented where appropriate by the Special Conditions.

Continuation of the contract shall be subject to the rules relating to establishment of the deposit or the commitment of the directly liable guarantor in accordance with Article 70.

#### Article 105

##### Specific grounds for rescission

1. Without prejudice to the measures provided for in Article 115, the contracting authority may rescind the contract in the following cases:

- bankruptcy of the contractor,
- any situation involving suspension of payments, other than bankruptcy, established by judgment of a court and resulting, in accordance with his national law, in the total or partial loss of the contractor's right to administer and dispose of his property,
- any final judgment for an offence involving the professional good character of the contractor,
- any other legal disability hindering the performance of the contract,
- any organizational modification that must be notified to the contracting authority involving a change in the legal personality of the contractor, unless such modification is recorded in an endorsement to the contract.

2. In the event of rescission the contract shall be settled solely on the basis of the supplies delivered and accepted.

If however at the time of rescission supplies have been dispatched, they may be taken into consideration after acceptance.

3. The contracting authority may without waiting for the definitive settlement, and if so requested, pay the contractor up to 80% of the credit balance shown by the provisional settlement. Conversely, if the provisional settlement shows a debit balance the contractor may be required to return 80% of the amount of such balance.

IX. Delivery, acceptance and maintenance period

Article 106

Delivery

1. The supplies shall be delivered to the place, within the time limits and in accordance with the conditions stipulated in the contract.
2. The contractor must notify the engineer by registered letter of the date on which the supplies will be ready for presentation at the place of acceptance. Supplies which are ready for acceptance shall be presumed, pending evidence to the contrary, to have been thus on the date of presentation specified by the contractor.
3. Each delivery must be accompanied by a statement drawn up by the contractor. This statement, the form of which may be prescribed by the Special Conditions shall contain, in particular:
  - the date of delivery,
  - the reference number of the contract,
  - the identification of the contractor,
  - particulars of the goods supplied and, where appropriate, details of how they were divided for packing.

Each package must be clearly marked with its order number as shown on the relevant statement; in the absence of indications to the contrary, it shall contain a list of its contents. The delivery of the supplies shall be confirmed by the issue of a receipt to the contractor.

Where the supplies are delivered to an establishment of the contracting authority the latter shall bear the responsibility of bailee, in accordance with the requirements of national law, during the time which elapses between their being delivered for storage and acceptance.



Article 107

Verification operations

1. Without prejudice to Articles 83 to 87, the supplies presented by the contractor shall be subjected to qualitative and quantitative verifications intended to establish that they satisfy the contract specifications.
2. The Special Conditions shall indicate:
  - the nature of and detailed procedures for verifications,
  - the administrative authorities responsible therefor,
  - the place where they are to be carried out,
  - the period available to the engineer for effecting the verifications and notifying its decision.
3. This period shall begin on the first working day following the date of receipt of the communication from the contractor under Article 106(2) on condition that the engineer is in possession of the statement provided for in Article 106(3).

Unless the Special Conditions provide otherwise, the length of this period shall be twenty days.
4. The engineer responsible for verifications shall advise the contractor, in good time, of the date and time fixed for them so as to enable him to be present or to be represented. However, the duly notified absence of the contractor or his representative shall not prevent the verifications being carried out.

Article 108

Adjournment, price reduction penalties,  
rejections

1. Where the engineer considers that the supplies could be accepted if certain adjustments were carried out, he shall submit a report to the supervisor who may declare that delivery of the supplies is adjourned and inviting the contractor to present them again within a specific period after having carried out these adjustments. Where the Special Conditions do not specifically provide otherwise, the engineer must be informed of the contractor's acceptance within a period of 15 days from notification of the decision to adjourn.

In the event of refusal or silence on the part of the contractor within this period, or of failure to present the supplies again within the period allowed for their adjustment, such supplies shall be accepted subject to a price reduction penalty or shall be rejected in accordance with the conditions set out below.

Except in special causes, to be decided upon by the supervisor, no supplies may be the subject of more than two postponements.

2. At the end of the verifications, supplies which do not entirely satisfy the conditions of the contract but which nevertheless seems to be usable in their existing state may be accepted subject to a reduction in price which shall consist of:

- a reduction in price if the defects found affect all or part of the delivery,
- a reduction in quantities in the event that the supplies exhibit localized blemishes.

The supervisor shall inform the contractor of the reductions in price which it proposes to apply.

The supervisor must be informed of any objection of the contractor within 15 days of notification of the proposed reductions in price. At the end of that period, the administration shall make his decision. If the contractor does not accept this decision, the supplies shall be rejected.

However, where the contractor is not in a position to replace forthwith the supplies adjudged to be defective, he shall be obliged to submit to such reduction in price:

- where the supply is urgently required,
- where, because of their nature, supplies could not be stored separately in the contracting authority's warehouses.

3. Where the supplies presented give rise to reservations such that adjustments do not seem practicable and that their use in their existing state does not seem possible, the supervisor shall notify the contractor of his intention to reject them.

The supervisor must be informed of any objection of the contractor within 15 days of notification of the intention to reject the supplies. At the end of that period, the works supervisor shall make his decision.

The time limit stipulated in the preceding subparagraph shall not be taken into account when making that decision, where it follows a refusal on the part of the contractor to accept a reduction in price or where, because of their nature, supplies could not be stored separately in the contracting authority's warehouses.

4. If there should be an adjournment in respect of the supplies, the whole of the period laid down for effecting the verifications shall be available to the engineer, from the date on which the supplies are again presented by the contractor. The same shall apply in the event of rejection, where the supervisor has authorized the contractor to present new supplies.

The period available to the contractor for submitting any objections, and the period which he required to present the supplies again following postponement or rejection, do not in themselves constitute grounds for requesting an extension of the period of performance.

5. The decisions taken by the supervisor shall give reasons for the rejection, postponement or reduction in price. They shall be notified to the contractor, without delay, by registered letter with acknowledgement of receipt.

#### Article 109

##### Marking and removal of postponed or rejected supplies

1. The Special Conditions may stipulate that materials or articles deliveries of which has been postponed or which have been finally rejected will be marked with a special sign by the engineer and that, where appropriate, rejects will be denatured or destroyed.
2. The handling and transport costs which may result from postponement or rejection of supplies shall be borne by the contractor.
3. Should the verification operations have been carried out in the contracting authority's warehouses, the decision to reject the supplies shall stipulate a time limit for their removal, if the Special Conditions have not already done so.

4. On expiry of that time limit, the supervisor shall be relieved of his responsibility as bailee and may:
  - either send back as of right the supplies in question at the expense and risk of the contractor, or
  - have them sold by public auction in accordance with the national law.

The proceeds of the sale, less expenses, shall be held at the disposal of the contractor unless they should serve to pay off debts which he may be found liable to pay to the contracting authority under the contract.

#### Article 110

##### Acceptance

1. At the end of the verifications, unless otherwise provided in the Special Conditions, the engineer shall within the period of 20 days laid down in Article 107(3) draw up a statement of acceptance by which transfer of ownership is effected and shall forward a copy thereof to the contractor.  
  
However, where the supplies are accepted only subject to a reduction in price the statement of acceptance shall be drawn up only on the date of the decision to impose the said reduction.
2. Where the Special Conditions have made provision for a guarantee period, the acceptance referred to in paragraph 1 shall constitute provisional acceptance. At the end of this period, the engineer shall draw up a statement of final acceptance and shall forward a copy thereof to the contractor. The final acceptance may be tacit if the supplies have not given rise to any claim during this period.
3. Where one or more of the exceptional circumstances referred to in Article 112 make it impossible to carry out the verifications laid down in paragraph 1, a statement to that effect shall be drawn up, after the contractor or his representative have been summoned. The statement of acceptance or rejection shall be drawn up once the exceptional circumstances cease to apply.

Article 111

Maintenance period: maintenance, repair and replacement

1. Without prejudice to the Special Provisions relating to the acceptance of supplies, the contractor shall be obliged during the maintenance period to carry out maintenance, repair and replacement covering all services under the contract, subject to normal conditions of use.

Deterioration resulting from the circumstances provided for in Article 112 or from abnormal use shall be excluded from this obligation unless it reveals a fault or defect such as to justify the request for repair or replacement.

The obligation to maintain may be the subject of provisions in the Special Conditions and of technical specifications which shall determine the period and conditions thereof.

Where the Special Conditions or the contract provide for a maintenance period, they may fix the duration thereof. If not otherwise specified, the duration thereof shall be one year.

The maintenance period shall commence on the date of provisional acceptance.

The maintenance period shall be extended, where necessary, by the period of time during which it has not been possible to use the supplies or a part thereof because of deterioration for which the contractor must assume responsibility.

All items provided in replacement shall be subject to the full maintenance period.

2. The contractor shall repair or replace at his own expense any item which has deteriorated or fails to function in the course of normal use during the maintenance period.

3. Any statement regarding deterioration or failure to function must be made in the form of a report drawn up before the expiry of the maintenance period by the engineer or by any other representative authorized by the contracting authority. A copy of the report shall be sent to the contractor within one month.
  4. Should the interests of the service so require, and particularly in cases of emergency, the supervisor may have the repairs carried out at the expense of the contractor, the latter having been duly informed by the copy of the report.
- X. Claims and exceptional risks

Article 112

Claims by the contractor and exceptional risks

1. The contractor may avail himself of facts alleged against the contracting authority and/or its agents and which would involve him in delay and/or detriment in order to obtain, where appropriate, an extension of the periods of performance, the revision or rescission of the contract and/or an indemnity based on the injury suffered.
2. The contractor shall not normally be entitled to make any amendment to the contractual conditions as a result of circumstances in which the contracting authority and/or its agents had no part.

However, a derogation from this principle shall be justified by circumstances which the contractor could not reasonably foresee when the tender was submitted or the contract concluded, which he could not avoid and the consequences of which he was unable to avert even though he had taken all necessary steps to that end.

Where such circumstances make it impossible to perform the contract, the contractor shall be entitled to have the contract rescinded.

Where the circumstances do not make it impossible to perform the contract, the contractor shall be entitled to an extension of the periods of performance and/or an indemnity based on the injury suffered, or to the revision of the contract.

The contractor may invoke the default of a sub-contractor or supplier whom he has freely chosen only in so far as they avail themselves of circumstances which the contractor would have been able to invoke in a similar situation.

3. The contractor shall be obliged to report to the engineer, by registered letter, the facts and circumstances referred to in paragraphs 1 and 2 as soon as he should normally have knowledge thereof and not later than 30 days after their occurrence.
4. Claims by the contractor must, under penalty of being time-barred, be made by registered letter within the following periods:
  - (a) before expiry of the contractual time-limits in order to obtain an extension of the periods of performance or rescission of the contract;
  - (b) in order to obtain a variation of the contract or an indemnity, not later than 60 days after provisional acceptance of all supplies; however, this period for being time-barred shall not apply in the case of error, omission wrong or duplicated entry or where Articles 99, 100 or 113 apply.

#### Article 113

##### Remission of damages for delay

1. The contractor shall have the right to obtain remission of the damages for delay referred to in Article 115 point 1(c):
  - (a) in whole or in part, if he proves that the delay is due wholly or in part to acts by the contracting authority and/or its agents or to the circumstances referred to in Article 112(1) and (2);

(b) partially, if the contracting authority considers that the amount of the damages is disproportionate to the minimal importance of the supplies thus delayed, provided however that the supplies provided are capable of being used normally and that the contractor has made every effort to complete his services in the shortest possible time.

2. The contractor must, under penalty of being time-barred, submit any request for the remission of damages by registered letter not later than 60 days after the payment of the balance.

XI. Non-performance of contract and sanction therefor

Article 114

Non-performance of contract by contractor

Non-performance of the contract by the contractor occurs:

1. Where the supplies are not provided in accordance with the provisions of the contract;
2. where the supplies are not completed within the contractual period of performance or where at any time they are discontinued, in any respect whatsoever, so as to be capable of being entirely completed within this period;
3. where the contractor departs from written instructions given by the contracting authority and/or its agents.

Article 115

Sanction for breach of contract on the part of the contractor

If no reasons for breach of contract are accepted or furnished within a period of 15 days from the date on which the contractor is notified of the breach the contractor may be subject to one or more of the measures defined in, and governed by the following paragraphs:



1. Liquidated damages for delay.

The contractor shall, without formal notice, be liable to pay liquidated damages for late deliveries solely by the fact of the expiry of the period of performance.

The amount of and the detailed procedures relating to these damages shall be laid down in the Special Conditions.

2. Measures to be taken as of right

These measures shall be the following:

- (a) execution of all or part of the supplies under direct management of the administration;
- (b) rescission of all or part of the contract without compensation payable by the contractor;
- (c) rescission of all or part of the contract, decided against the contractor, with compensation payable by the contractor;
- (d) conclusion of a contract with a third party, for the account of the contractor, after prior rescission of the original contract;
- (e) temporary or permanent exclusion from the award of contracts.

3. Rules for the application of measures taken as of right

Any decision relating to the application of measures taken as of right shall be adopted by the contracting authority.

Where the contracting authority decides to apply to the contractor one or more of the measures taken as of right listed in paragraph 2, it shall first give him formal notice, by registered letter with acknowledgement of receipt, to put an end to the non-performance of the contract. The contractor may present any objections, by registered letter, within 15 days from the date of receipt of the formal notice. Upon expiry of a period of 25 days from receipt of such formal notice, the contracting authority shall inform the contractor of its decision by registered letter.

In applying one or other of these measures, the engineer shall take any appropriate steps to ensure the protection or satisfactory execution of the works.

In the event of supplies being executed under direct management of the administration or a contract with a third party for the account of the contractor, the engineer, after summoning the contractor by registered letter, shall draw up an inventory of the supplies already executed.

Additional expenses resulting from direct management by the administration or from the contract with a third party for the account of the contractor shall be borne by the latter.

If direct management by the administration or the contract with a third party for the account of the contractor results in a reduction in expenses, the contractor may not claim any part of the profit thus derived, which shall revert to the contracting authority.

4. Rules governing concurrence of sanctions for non-performance of the contract

For the application of the measures laid down in points 1 and 2, the following rules shall be applied:

- (a) direct management by the administration may be combined with liquidated damages for delay and with exclusion;
- (b) outright rescission may be combined with exclusion and liquidated damages for delay relating to the period prior to the date of rescission;
- (c) rescission decided against the contractor may be combined with exclusion and liquidated damages for delay relating to the period prior to the date of rescission;
- (d) a contract with a third party for the account of the contractor may be combined with exclusion;
- (e) exclusion may be combined with any of the sanctions for non-performance.

Article 116

Recovery of damages

Recovery of damages, disbursements or expenses resulting from the application of the measures provided for in points 2 and 3 of Article 115 shall be effected by deduction from the sums due to the contractor, from the deposit, or by contribution from the directly liable guarantor.