

ASSOCIATION  
between  
THE EUROPEAN ECONOMIC COMMUNITY  
and the  
AFRICAN AND MALAGASY STATES ASSOCIATED  
WITH THAT COMMUNITY  
(1969 Convention)

COMPILATION OF TEXTS

II

1 July 1971 - 31 December 1971



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<sup>(1)</sup> This Decision became applicable in the Community by virtue of Council Regulation (EEC) No 1251/71 of 7 June 1971 (OJ No L 135, 21.6.1971, p. 1)



DECISION No 39/71

of the Association Council  
on postal consignments  
(packets, parcels)

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THE ASSOCIATION COMMITTEE;

Having regard to the Convention of Association between the European Economic Community and the African and Malagasy States associated with that Community, signed at Yaoundé on 29 July 1969 and in particular Article 10 thereof;

Having regard to Decision No 36/71 of the Association Council of 22 April 1971 on the definition of the concept of originating products for the purpose of implementing Title I of the Convention of Association and on the methods of administrative co-operation;

Having regard to Decision No 37/71 of the Association Council of 22 April 1971 delegating powers to the Association Committee to amend or supplement Decision No 36/71;

Whereas, by means of various Decisions, and latterly by virtue of Article 1 of Decision No 33/70 of the Association Council of 18 December 1970 relating to postal consignments (packets, parcels), 30 June 1971 was laid down as the final date for issuing origin certificates pursuant to the Recommendation of the Commission of the European Economic Community, dated 10 December 1958, and 31 October 1971 as the time-limit for submitting those certificates to the competent Customs authorities;

Whereas, when adopting Decision No 36/71, the Association Council left provisionally in abeyance the examination and adoption of provisions relating, in particular, to the origin of postal consignments; and whereas, by means of Decision No 37/71, it has delegated to the Association Committee the power to amend or supplement Decision No 36/71 in the aforementioned fields;

Whereas it is now necessary to retain, for postal consignments and until 31 December 1971, the possibility of issuing origin certificates as provided for by the arrangements in existence prior to Decision No 36/71;



HAS DECIDED AS FOLLOWS:

Article 1

Origin certificates issued pursuant to the Recommendation of the Commission of the European Economic Community, dated 10 December 1958, relating to the implementation of the provisions of Article 133 of the Treaty, shall remain valid, with regard to postal consignments (packets, parcels), provided that they are issued not later than 31 December 1971 and are submitted to the Customs authorities of the importing Member States or Associated States not later than 30 April 1972.

Article 2

This Decision shall apply until 31 December 1971.

Article 3

The Associated States, the Member States and the Community shall be required, each to the extent to which they are concerned, to take the necessary steps to implement this Decision.

This Decision shall enter into force on 1 July 1971.

Done at Brussels, 30 June 1971  
For the Association Committee  
The Chairman

J.M. BOEGNER

DECISION No 40/71

of the Association Council

supplementing and amending Decision No 36/71  
of the Association Council on the definition  
of the concept of originating products  
for the purpose of implementing Title I of the Convention  
of Association and on the methods of administrative  
co-operation

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THE ASSOCIATION COMMITTEE,

Having regard to the Convention of Association between the European Economic Community and the African and Malagasy States associated with that Community, signed at Yaoundé on 29 July 1969, and in particular Article 10 thereof;

Having regard to Decision No 36/71 of the Association Council on the definition of the concept of originating products for the purpose of implementing Title I of the Convention of Association and on the methods of administrative co-operation;

Having regard to Decision No 37/71 of the Association Council delegating powers to the Association Committee to amend or supplement Decision No 36/71;

Having regard to the draft prepared by the Commission of the European Communities;

Whereas an Agreement concerning products falling under the European Coal and Steel Community was concluded at the same time as the Convention of Association;

Whereas Decision No 36/71 defines the concept of originating products for the purpose of implementing Title I of the Convention of Association and the methods of administrative co-operation;

Whereas, when adopting Decision No 36/71, the Association Council left provisionally in abeyance special provisions relating, in particular, to certain products or certain special arrangements;

Whereas agreement has been reached within the Association Committee on the problems left in abeyance, and whereas it is, in consequence, necessary to supplement or amend Decision No 36/71 and List B annexed thereto;

Whereas under the terms of Article 35 of Decision No 36/71 movement certificates A.Y.1 which comply with the model annexed to Decision No 5/66 dated 22 April 1966 on the definition of the concept of originating products for the purpose of implementing Title I of the Convention of Association and on the methods of administrative co-operation may be endorsed by the Customs authorities of the exporting Member State or Associated State and be used under the conditions laid down in Decision No 36/71; and whereas the period laid down in this text has proved to be too short and it is necessary to extend it by 12 months;

HAS DECIDED AS FOLLOWS:

Article 1

Article 6 of Decision No 36/71 should be replaced by the following:

"Originating products within the meaning of this Decision shall, in the importing Member State or Associated State, benefit from the provisions of Title I of the Convention, upon submission of a movement certificate A.Y.1, endorsed by the Customs authorities of the exporting Member State or Associated State.

Any such products, however, which form part of postal consignments (including parcels) shall, provided that the consignments contain only originating products and the value does not exceed six hundred units of account per consignment, benefit from the provisions of Title I of the Convention in the importing Member State or Associated State on the presentation of form A.Y.2."

Article 2

The following Article shall be added to Decision No 36/71:

"Article 11a

Form A.Y.2, a specimen of which is given in Annex VI, shall be completed by the exporter. It shall be drawn up in one of the official languages in which the Convention is made, and in accordance with the provisions of the domestic law of the exporting Member State or Associated State. It shall be typewritten or handwritten; in the latter case it shall be completed in ink and in block letters.

Form A.Y.2 shall be composed of two parts, each part being 210 x 148 mm. The paper used shall be sized white writing paper not containing mechanical pulp and weighing not less than 64 grams per square metre. On the front of Part 1 and the label of Part 2 a diagonal pattern of three blue stripes, each 3 mm wide, shall run from the bottom left-hand corner to the top right-hand corner.

Form A.Y.2 may be perforated mechanically so that the two parts and the label on Part 2 can be detached. The label may be adhesive.

The Member States and the Associated States may reserve the right to print the forms themselves or may have them printed by printers whom they have approved. In the latter case, each form shall carry a reference to such approval. Each form shall bear the name and address of the approved printer, or a sign by which the latter can be identified. In addition, it shall bear a special number by which it can be identified."

#### Article 2

The following Article shall be added to Decision No 36/71:

#### "Article 11b

A form A.Y.2 shall be completed for each postal consignment. After completing and signing the two parts of the form, the exporter shall insert his declaration (Part 1) in the consignment and stick the label from Part 2 on the outer packing of the consignment. However, in the case of postal consignments to the AAMS, the exporter shall send his declaration (Part 1) separately to the addressee."

Article 4

The following Article shall be added to Decision No 36/71:

"Article 11c

Unless they suspect some irregularity, the Customs authorities of the importing Member State or Associated State shall admit as benefiting from the provisions of Title I of the Convention any goods contained in a consignment bearing an A.Y.2 label."

Article 5

Article 12 of Decision No 36/71 shall be replaced by the following:

- "1. Member States and Associated States shall admit as "originating" products benefiting from the provisions of Title I of the Convention, without requiring the production of a movement certificate A.Y.1 or completion of a form A.Y.2, goods sent as small packages to private persons or forming part of passengers' personal luggage, in so far as such goods are not imported by way of trade and have been declared as meeting the conditions required for the application of these provisions, and where there is no doubt as to the veracity of such declaration.

2. Importations not by way of trade shall be importations which are occasional and consist solely of goods for the personal use of the addressee or passenger or his family, it being evident from the nature and quantity of the goods that no commercial purpose is in view. Furthermore, the total value of these goods must not exceed 60 units of account in the case of small packages or 200 units of account in the case of the contents of passengers' personal luggage."

Article 6

Article 13 of Decision No 36/71 shall be replaced by the following:

"In order to ensure proper application of the provisions of this Title, the Member States and Associated States shall assist each other, through their respective Customs administrations, for the purpose of checking the authenticity and correctness of the movement certificates A.Y.1 and exporters' declarations made on forms A.Y.2."

Article 7

The heading of Title III of Decision No 36/71 shall be replaced by the following:

"Issue of movement certificates A.Y.1 and conditions governing the use of movement certificates A.Y.1 and forms A.Y.2"



Article 8

Title III of Decision No 36/71 shall be supplemented by Section C a and by Article 28 a, worded as follows:

"C a - Postal consignments (including parcels)

Article 28a

1. It shall be for the exporter or his representative, on the exporter's responsibility, to complete and sign the two parts of form A.Y.2.

If the goods contained in the consignment have already been checked in the exporting Member State or Associated State in the light of the definition given for the concept of originating products, the exporter may refer to this check in the space reserved for "Observations" in form A.Y.2 (Part 1).

2. On the green label Model C1 or the Customs declaration C2/CP3 or C2M/CP3M, the exporter shall enter the form number "A.Y.2", followed by its serial number. He shall also mark the form number and serial number on the invoice for the goods contained in the consignment."

Article 9

Article 29 of Decision No 36/71 shall be replaced by the following:

"The production of a movement certificate A.Y.1 and the completion of a form A.Y.2 shall be waived for goods sent as small packages to private persons and forming part of passengers' personal luggage, provided such imports fulfil the conditions laid down in Article 12."

Article 10

The heading of Title III - E of Decision No 36/71 shall be replaced by the following:

"E. Retroactive check on movement certificates A.Y.1 and on forms A.Y.2."

Article 11

Article 30 of Decision No 36/71 shall be replaced by the following:

- "1. Retroactive checks on movement certificates A.Y.1 and on forms A.Y.2 shall be carried out at random, and also whenever the Customs authorities of the importing Member State or Associated State have reasonable doubt as to the authenticity of the document or the accuracy of the information regarding the true origin of the goods in question or of certain parts thereof.

2. For the purpose of implementing the provisions of paragraph 1 above, the Customs authorities of the importing country shall return the movement certificate A.Y.1 or Part 1 of form A.Y.2 to the Customs authorities of the exporting country, giving the formal or substantive reasons for an inquiry. To Part 1 of form A.Y.2 they shall attach the invoice, if it has been submitted, or a copy thereof, and they shall forward any information that has been obtained suggesting that the particulars given on the said certificate or the said form are inaccurate.

If the Customs authorities of the importing country decide to suspend execution of the provisions of Title I of the Convention of Association while awaiting the results of the check, they shall offer to release the goods to the importer subject to any conservatory measures laid down by the national legislation of that country.

3. The Customs authorities of the importing country shall be informed of the results of the check within a period not exceeding three months. These results must be such as to make it possible to determine whether the disputed movement certificate A.Y.1 or form A.Y.2 applies to the goods actually exported, and whether these goods can, in fact, qualify for the application of the preferential system.

Where such disputes cannot be settled between the Customs authorities of the importing country and those of the exporting country or where they raise a question as to the interpretation of this Decision, they shall be submitted to the Customs Co-operation Committee referred to in Article 31.

In any case, the settlement of disputes arising between the importer and the Customs authorities of the country of importation shall remain within the competence of the legislation of that country.

For the purpose of the retroactive check on certificates, the Customs authorities of the exporting country must keep all export documents, or copies of movement certificates used in place thereof, for not less than two years."

#### Article 12

Article (1) of Decision No 36/71 shall be replaced by the following:

"The Explanatory Notes, Lists A, B and C, specimen movement certificate A.Y.1 and specimen form A.Y.2 which are annexed to this Decision shall form an integral part thereof."

#### Article 13

The specimen form A.Y.2 which is annexed to this Decision shall constitute Annex VI of Decision No 36/71.

#### Article 14

Origin certificates issued pursuant to the Recommendation of the Commission of the European Economic Community, dated 10 December 1958, relating to the implementation of the provisions of Article 133 of the EEC Treaty shall, as a transitional measure, remain valid, in respect of postal consignments (packets, parcels), provided that they are issued not later than 29 February 1972 and are submitted to the Customs authorities of the importing Member States or Associated States not later than 30 June 1972.

Article 15

The following provision shall be inserted in the third column of Annex B to Decision No 36/71, before the special provision relating to heading ex 15.10:

"The incorporation of non-originating parts or spare parts in machines and tools referred to in Chapters 84 and 92 shall not have the effect of making these products lose the status of originating products, provided that the value of those parts or spare parts does not exceed 5% of the value of the finished product.

Article 16

The date 31 December 1971 shall be replaced by 31 December 1972 in Article 35 (2) of Decision No 36/71.

Article 17

The Associated States, the Member States and the Community shall be required, each to the extent to which they are concerned, to take the necessary steps to implement this Decision.

This Decision shall enter into force on 1 July 1971.

Done at Brussels. on 23 November 1971

The Chairman of the Association Committee

A. SISSOKO





REQUEST FOR CHECK	RESULT OF CHECK
<p>The undersigned Customs official requests a check on the exporter's declaration appearing on the front of this form (*)</p> <p>Place and date of signature.....</p> <p>.....  Official  stamp  .....  ..... (Official's signature)</p>	<p>A check carried out by the undersigned Customs official shows that:</p> <p>(1) the details given on this form are accurate <sup>(1)</sup>;</p> <p>(2) this form does not meet the requirements as to correctness (see notes appended) <sup>(1)</sup>.</p> <p>Place and date of signature.....</p> <p>.....  Official  stamp  .....  ..... (Official's signature)</p> <p><sup>(1)</sup> Delete where not applicable</p>

(\*) Checks on forms A.Y.2 are to be carried out at random and also whenever the Customs authorities of the importing member country have reasonable doubt as to the true origin of the goods in question or of certain parts thereof.

The Customs authorities of the importing member country are to return to the authorities responsible for checking in the exporting member country Part 1 of form A.Y.2 giving the formal or substantive reasons for an inquiry. Wherever possible they attach to this form the invoice which has been presented to them, or a copy thereof, and forward any information which it has been possible to obtain and which suggests that the particulars given on the form A.Y.2 are inaccurate.

If the Customs authorities of the importing member country decide to suspend execution of the provisions of Title I of the Convention while awaiting the results of the check, they must offer to release the goods to the importer subject to any conservatory measures laid down by the national legislation of such country.





GOODS IN RESPECT OF WHICH A MOVEMENT CERTIFICATE A.Y.1

MAY BE ENDORSED OR A FORM A.Y.2 MAY BE MADE OUT

A movement certificate A.Y.1 may be endorsed on a form A.Y.2 may be made out only in respect of those goods which, in the exporting member country(\*), fall within one of the following categories:

Category 1

Goods wholly obtained in the exporting member country.

The following shall be considered as wholly obtained in the exporting member country:

- (a) mineral products extracted from the ground thereof;
- (b) vegetable products harvested therein;
- (c) live animals born and raised therein;
- (d) products from live animals raised therein;
- (e) products obtained by hunting or fishing conducted therein;
- (f) marine products taken from the sea by its vessels;
- (f) scrap and waste resulting from manufacturing operations and used articles, provided that they have been collected therein and are fit only for the recovery of raw materials;
- (h) goods obtained therein exclusively from animals or products referred to in sub-paragraphs (a) to (f) or derivatives thereof.

Category 2

Goods obtained in the exporting member country, in the manufacture of which are used only products originally imported from another member country and which, on their exportation from such country, met the conditions required for obtaining a movement certificate A.Y.1, and also, where appropriate, products falling under category 1.

Note: Goods obtained in a Member State of the EEC from products originating in an Associated State other than the Associated State to which the goods are exported fall under category 3 except when the Associated State in which the goods originated enjoy the same treatment in the importing Associated States as is accorded to Member States of the EEC

Category 3

Goods obtained in the exporting member country, in the manufacture of which products other than those falling under categories 1 or 2 are used, provided that the said products (hereinafter referred to as "other" products) have undergone working or processing operations

- (a) which result in the goods being classified under a tariff heading (\*\*) other than the tariff heading covering each of the "other" products used, unless the operations carried out appear in list A annexed to the Decision of the Association Council on the definition of the concept of "originating products" and the methods of administrative cooperation;
- (b) or which although appearing in list A referred to in sub-paragraph (a), meet the special conditions laid down in respect of them in the said list A;
- (c) or which do not result in the goods obtained being classified under a tariff heading other than the tariff heading covering each of the "other" products used, but appear in list B annexed to the Decision of the Association Council on the definition of the concept of "originating products" and the methods of administrative cooperation.

Category 4

Goods originally imported from a member country, which on their exportation from such country, fell under category 1, 2 or 3, and which are re-exported in the same state to another member country.

This rule shall not apply, however, with regard to the Member States of the EEC to goods imported from an Associated State and re-exported to another Associated State unless the Associated State in which the said products originated enjoys the same treatment in the importing Associated State as is accorded to the Member States of the EEC.

Note: For the purpose of this rule, the member country of origin which should appear on the movement certificate is the member country from which the goods in question were originally imported.

(\*) The member countries are:

- (a) The Member States of the EEC: the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands in Europe;

(b) The Associated States:

the Republic of Burundi, the Federal Republic of Cameroon, the Central African Republic, the Republic of Chad, the Democratic Republic of the Congo, the People's Republic of the Congo, the Republic of Dahomey, the Gabon Republic, the Republic of the Ivory Coast, the Malagasy Republic, the Republic of Mali, the Islamic Republic of Mauritania, the Republic of Niger, the Republic of Rwanda, the Republic of Senegal, the Somali Republic, the Republic of Togo, the Republic of the Upper Volta.

(\*\*) Tariff headings shall mean the tariff headings in the Brussels Nomenclature.

DECISION No 41/71

of the Association Council

derogating from the definition of the concept of  
originating products in order to take into account  
the special position of Mauritania  
in respect of fishery products

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THE ASSOCIATION COMMITTEE,

Having regard to the Convention of Association between the European Economic Community and the African and Malagasy States associated with that Community, signed at Yaoundé on 19 July 1969, and in particular Article 10 thereof;

Having regard to Decision No 36/71 of the Association Council on the definition of the concept of originating products for the purpose of implementing Title I of the Convention of Association and on the methods of administrative co-operation;

Having regard to Decision No 37/71 of the Association Council delegating powers to the Association Committee to amend or supplement Decision No 36/71;

Whereas Decision No 36/71 defines the concept of originating products for the purpose of implementing Title I of the Convention of Association and the methods of administrative co-operation, in particular as regards fishery products;

Whereas, however, in order to take into account the special position of Mauritania and the fact that its fish-processing factories are supplied, in part, by Canary Islands fishermen resident in its territory, it is necessary to provide, for its benefit, for a derogation from the definition of origin laid down in the Decision referred to above;

HAS DECIDED AS FOLLOWS:

Article 1

By derogation from the rules laid down in Decision No 36/71, fishery products caught in Mauritanian waters by Canary Islands fishermen resident in the territory of Mauritania, and which are processed (freezing, cutting up or filleting) exclusively in that country, shall be considered as products originating in Mauritania for the purpose of implementing Title I of the Convention of Association.

Article 2

This derogation shall be limited to an annual quantity of 3,500 metric tons of fishery products falling under headings 03.01 (excluding tunny, sardines and small sharks), 03.02 and 03.03 of the Common Customs Tariff.

Article 3

The Mauritanian authorities shall take the necessary arrangements to keep a quantitative check on the exports referred to in Article 2.

Movement certificates A.Y.1 issued pursuant to this Decision must carry the words "originating goods pursuant to Decision No 41/71 of the Association Council". These words shall be entered in red ink under the heading "Observations".

Article 4

If imports pursuant to this derogation result in or threaten to result in difficulties taking the form of deterioration in the economic situation of a region of the Community, the latter may, in application of Article 16 (2) and (4) of the Yaoundé Convention, take, or authorise the Member State concerned to take, the necessary protective measures, including those intended to counter deflections of trade.

Article 5

The Associated States, the Member States and the Community shall be required, each to the extent to which they are concerned, to take the necessary steps to implement this Decision.

Article 6

This Decision shall enter into force on 1 December 1971. It shall apply until 31 January 1975. However, Article 2 may be amended by a decision of the Association Council.

Done at Brussels, on 23 November 1971

The Chairman of the Association Committee

Alioune SISSOKO

DECISION No 42/71

of the Association Council on the general clauses and conditions applicable to the award and performance of public works and supplies contracts financed by the European Development Fund

THE ASSOCIATION COUNCIL,

Having regard to the Convention of Association between the European Economic Community and the African and Malagasy States associated with that Community, signed at Yaoundé on 29 July 1969 and in particular Article 16 of Protocol No 6 to that Convention;

Having regard to the proposal from the Commission;

Whereas it is necessary to lay down the general clauses and conditions applicable to the award and performance of public works contracts financed by the European Development Fund;

Whereas the Association Council, in adopting this Decision, emphasises that it is important that the public opening of tenders should gradually become the rule in respect of all categories of invitations to tender;

HAS DECIDED AS FOLLOWS:

Article 1

The general clauses and conditions applicable to the award and performance of public works and supplies contracts financed by the European Development Fund are laid down in the text annexed to this Decision.

Article 2

The Associated States, the Member States and the European Economic Community shall be required, each to the extent to which it is concerned, to take the necessary steps before 31 March 1972 to implement this Decision.

They shall inform the Association Council without delay of the measures taken.

This Decision shall enter into force on 30 November 1971.

Done at Brussels, 30 November 1971

The President of the Association Committee

Charles Samba GISSOKO

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GENERAL CLAUSES AND CONDITIONS FOR PUBLIC WORKS AND SUPPLIES  
CONTRACTS FINANCED BY THE EUROPEAN DEVELOPMENT FUND

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TITLE I

REGULATIONS RELATING TO PUBLIC WORKS AND SUPPLIES CONTRACTS  
FINANCED BY THE EUROPEAN DEVELOPMENT FUND

CHAPTER I

PRINCIPLES AND DEFINITIONS

Article 1

Public works and supplies contracts financed by the European Development Fund shall be governed by:

1. These general clauses and conditions;
2. The specific clauses and conditions.

Article 2

These general clauses and conditions shall comprise:

1. Regulations laying down the principles and conditions for the preparation and award of contracts; there shall be no derogations from these provisions;
2. General administrative and technical contractual clauses relating to the execution of contracts. These clauses shall apply to all contracts and reference shall be made to them in the specific clauses and conditions.

Article 3

The specific clauses and conditions shall comprise:

- (a) special contractual clauses applicable to each contract;
- (b) all references to technical conditions applicable to contracts relating to the same type of works or supplies;
- (c) indication of those contractual provisions of the general clauses and conditions which may be waived, taking into account the special requirements of the contract concerned.

Article 4

For the purpose of implementing these general clauses and conditions, irrespective of the manner in which contracts are awarded, the following definitions shall obtain:

1. Contract: any contract awarded by the State, any regional or local authority or any legal person governed by public law, having as its objective the execution of works or the provision of supplies;

- Works contracts

Contracts, the object of which is the building of infrastructures or immovable property, in which the provision of supplies is only of secondary importance and the assessment of the value of supplies is included in the cost of the work.

- Supplies contracts

Contracts, the object of which is the provision of moveable 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. Associated States: the States, countries or overseas territories associated to the European Economic Community which are recipients of aid from the European Development Fund;
4. Administration: the State, regional or local authority or any legal person governed by public law on behalf of which or whom the contract is concluded;
5. Tenderer: any natural or legal person submitting a tender with a view to concluding a contract;
6. Successful tenderer: the tenderer with whom the contract is concluded;
7. Price list: the document containing the statement of the unit prices applicable to the undertaking in respect of each of the various categories of work to be carried out;
8. Itemised estimate: the document containing a breakdown, item by item, of the firm or estimated quantities together with a definite price, and an assessment of the total expenditure obtained either by determining the

value of each item for overall price contracts, or by applying unit prices to the quantities planned for the same items for unit-price contracts.

The firm quantity shall be the quantity stated by the administration in the itemised estimate and for which the successful tenderer has submitted an overall price, which shall be paid to him irrespective of the quantity actually supplied.

The estimated quantity shall be a quantity stated by the administration in the itemised estimate. It shall be a quantitative estimate of the work to be carried out and shall be a contributory factor in determining the unit price to be applicable to the quantities actually supplied.

#### Article 5

1. Any natural or legal person having the nationality of a Member State or Associated State shall be eligible to participate on equal terms in contracts financed by the European Development Fund.
2. The tenders shall be adjudicated on equal terms in order to avoid any obstacle to participation in invitations to tender and the allocation of contracts.

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

3. Works contracts may however be awarded by an accelerated procedure for inviting tenders when, by reason of the small amount involved, they are of principal interest to the undertakings of a benefiting Associated State or another Associated State in the same region.
4. Invitations to tender for supply contracts may lay down the degree of protection to be provided for in the adjudication of tenders of an equal economic and technical quality, in order to encourage the participation of the industrial or small craft undertakings of the benefiting Associated State or another Associated State in the same region.

#### Article 6

Contracts concluded by the administration shall be awarded on a competitive basis.

#### Article 7

1. The contracts concluded by the administration shall be awarded at an agreed price.
2. The fact that contracts are to be awarded at an agreed price shall not preclude prices being revised in keeping with specific fiscal, economic or social factors. The procedures for revising the prices shall be expressly laid down in the contract documents.
3. In addition, and by way of exception, contracts may be awarded without prices being fixed by agreement:
  - (a) for work or supplies of a complex nature or involving a new technique presenting considerable technical hazards which necessitate commencing work before all the conditions for completing it can be determined;
  - (b) in the event of exceptional, unforeseeable circumstances, when the contracts relate to work or supplies which are urgent, and for which it is impossible to determine the nature and the means of execution.

#### Article 8

1. Contracts may not provide for part payments except where a service has been given and accepted. According to the provisions laid down in the contract, part payments shall also be allowed in respect of supplies provided for the execution of the contract and verified by the administration. Nevertheless, advances may be granted in accordance with the terms and procedures laid down in these general clauses and conditions.
2. Payments for the transactions carried out by the successful tenderer shall be made either by instalment or as a final payment as and when the transactions are completed.

#### Article 9

The payment of advances or instalments shall not be regarded as final payments; the recipient shall owe them until final settlement of the contract.

#### Article 10

1. Before awarding the contract, the administration may:

- (a) notwithstanding the completion of a procedure prior to the conclusion of the contract, either decide not to award the contract or order recommencement of the procedure, if necessary using another method;
- (b) in the event of the contract comprising two or more lots, only award some lots and, possibly, decide that the other lots will be the subject of another contract or other contracts, if necessary using another method.

2. The procedure for inviting tenders provided for under paragraph 1(a) and (b) may be annulled in the following cases only:

- if no tender is received which meets the conditions set out in the invitation to tender,
- if the economic or technical data of the project have been fundamentally altered,
- if exceptional circumstances render normal execution of the contract impossible,
- if the tenders received do not correspond to the financial resources set for the contract, and
- if the tenders received contain serious irregularities preventing competition from functioning normally.

3. In the event of the procedure for inviting tenders being annulled, the tenderers shall not be entitled to compensation.

#### Article 11

While the contract is being executed, the administration may unilaterally amend the initial project, provided that it does not change the purpose of the contract and that it gives fair compensation where appropriate.

#### Article 12

The contracts may be classified as follows, according to the way in which the prices are determined:

- overall price contracts;
- unit-price contracts;
- repayment contracts, and
- composite contracts.

1. In an overall prices contract the agreed price covers all the services provided for in the contract.

2. In a unit-price contract the works or services are broken down into separate items, stating the unit-price proposed for each item.

The unit-prices shall be agreed. The price of the contract shall be determined by applying the unit-prices to the quantities of works or services provided for.

3. In a repayment contract the works or services carried out are paid for, after the administration has examined them, on the basis of the cost price and the supplements in lieu of profit.
4. In a composite contract the prices are fixed by more than one of the methods referred to under 1, 2 and 3.

#### Article 13

In the cases provided for in Article 7 (3), the contract shall be concluded:

- (a) on a repayment basis in accordance with paragraph 3 of Article 12;
- (b) or on the basis of provisional prices initially and then of agreed prices. The agreed prices shall be determined not later than the time at which the conditions for executing the contract are known;
- (c) or partly on repayment basis and partly on an agreed prices basis.

#### Article 14

1. If the invitation to tender so provides, the administration may ask tenderers to supply any information which will allow it to assess the prices tendered.

2. The successful tenderer shall be obliged to supply the administration with any information to enable the settlement price in the cases provided for in Article 13 to be verified.

#### Article 15

The time-limits referred to in these general clauses and conditions, the specific clauses and conditions and the contract documents shall commence at the beginning of the day following the date of the action or fact which serves as the point of departure for this time limit.

Where the time limit is fixed in days, it shall expire at the end of the last day of the time limit 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 end 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 AWARD OF CONTRACTS

#### Article 16

Contracts shall be awarded on invitation for tenders. By way of exception, they may be awarded by mutual agreement in the cases provided for in Article 53.

#### Section I

##### CONTRACTS BASED ON INVITATION TO TENDER

#### Article 17

The invitation to tender shall be open or restricted.

The open invitation to tender shall involve a public invitation to competition.

The restricted invitation to tender shall be made only to those applicants which the administration decides to consult, possibly following a preselection procedure decided on with particular reference to the special nature or the quantity of the services to be carried out.

#### Publication

#### Article 18

1. The notice of open invitation to tender, drawn up by the Administration, shall be published in accordance with the rules appropriate for providing the widest distribution of information.
2. In the event 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 19

The notice of invitation to tender shall state in particular:

1. the nature of the invitation to tender;

2. the purpose of the contract, the location of the works and supplies, its source of financing and the time limit within which it is to be executed;
3. the administration on behalf of which the contract is to be concluded;
4. the place where the invitation to tender may be inspected and the terms on which it may be made available;
5. the place at which and the time limit within which the tenders are to be received;
6. the time-limit, reckoned from the final date set for the receipt of tenders, during which tenderers shall remain bound by their tenders; except in special cases, this time limit shall be of three months;
7. the date, time and place of opening of the tenders;
8. the conditions for taking part in the invitation to tender;
9. the possibility of submitting variations when authorised, and
10. possibly, in the case of works contracts, the approximate estimate of the work total.

The invitation to tender

#### Article 20

The invitation to tender must contain the following:

1. the notice of the invitation to tender;
2. the special clauses and conditions, the annexes thereto, and a sample tender;
3. for a unit-price contract: an outline price-list and an outline itemised estimate;
4. for an overall-price contract: an outline of the breakdown of the overall price;
5. by way of information, and without being binding upon the administration, a "General Information Sheet" brought up-to-date at the time of publication or distribution of the invitation to tender and containing, in particular, the following points:

- geographical notes,
- notes on the climate,

- monetary system and organisation of banks;
- means of access;
- situation of the works site;
- customs and fiscal regulations, in order to allow the tenderer to calculate their repercussions on the amount of his tender, and
- wage scales, including an indication of minimum wage levels laid down by national law or in force in the place where the contract is to be executed, corresponding to the main national qualifications which the nature of the work requires; main categories of labour required for the work;

6. the address of the relevant departments from which the tenderer may obtain any additional information which it would be in his interest to obtain.

#### Article 21

Four months in the case of works contracts and three months in the case of supply contracts 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 to correspond with the nature of the invitation to tender and the subject of the contract.

#### Article 22

1. Any natural or legal person who is a national of a Member State or of an associated country and able to prove that he meets the necessary legal, technical and financial requirements, may participate in the invitation of tenders.

In the case of supply contracts, participation in the invitation of tenders is also open to any natural or legal person who is a national of a third country and who can prove that he is in possession of a contract by virtue of which, at the date of the invitation of tenders, he is sole agent for products originating in the Member States or the associated countries.

2. The following natural or legal persons shall not be entitled to participate in the invitation of tenders:

- (a) any who are bankrupt;
- (b) any who are in a state of suspension of payments established by a legal decision and other than bankruptcy, and resulting, in accordance with their national laws, in total or partial dispossession of the administration and ownership of their property;

- (c) any against whom 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 any other situation entailing the total or partial dispossession of the administration and ownership of their property;
- (d) any who have been convicted under a final judgement of any offence affecting their professional conduct;
- (e) any who are guilty of serious misrepresentation with regard to information required for participation in the invitation to tender.

#### Article 23

In order to provide proof of his standing and ability, the tenderer shall, if the administration so requires, provide it with the following:

1. any document dated not more than three months previously, which testifies, in accordance with his national law, that he meets the conditions listed in Article 22 (1), and that none of the situations referred to in Article 22 (2) (a), (b), (c) and (d) applies to him;
2. references certifying to the financial resources available to him for the purpose of executing the contract and, in the case of a company, a copy of its articles of association and the credentials of the person authorised to enter into commitments on its behalf;
3. a statement setting out his technical resources, indicating work which he has carried out and supplies which he has delivered or in the execution of which he has participated; he shall attach to this statement any certificates referring 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 associated country of which he is a national or in which he is regularly resident;
4. a statement concerning the labour force and equipment that he intends to use to fulfil the contract;
5. any relevant information about his producers, suppliers and the origin of his supplies.

#### Article 24

For the purpose of carrying out studies in preparation for the tenders, the associated country shall grant temporary



residence permit to any person, or his agent, participating in an invitation of tenders. This permit shall expire at the end of a period of one month following the publication of the name of the successful competitor by the administration.

#### Article 25

The tender, which shall be drawn up in the language prescribed in the invitation to 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 specific clauses and conditions shall state in addition the number of copies to be supplied by the tenderer. The copies shall be signed in the same way as the original and shall bear the word "copy".

#### Article 26

Tenders submitted by agents must state the name of the principal or principals on whose behalf they are acting. No agent may represent more than one tenderer. The agents shall attach to the tender the official document or the deed under private seal which empowers them to act on behalf of the tenderers. The signatures to the deed under private seal must be legalised.

#### Article 27

Where the tender is submitted by a group without legal personality, made up of several natural or legal persons, it shall be signed by each of those persons, who must enter into a commitment as a body and appoint one of their number to represent the group vis-à-vis the administration.

The representative or representatives of this group must, insofar as each is concerned, provide the proof required under Article 23, as if they were themselves the tenderer.

#### Article 28

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

#### Article 29

1. Where the invitation to tender for a works contract contains an outline itemised estimate, the latter shall specify whether the quantities indicated for each item are firm or estimated quantities. The tenderer shall make good any omissions in the itemised estimate and correct such errors as he may find in the firm quantities, taking into account the plans, the specific clauses and conditions, his knowledge or personal findings. He shall attach to his tender a note setting out the reason for such amendments.

He shall adopt a similar procedure for the correction of the estimated quantities in respect of which the specific articles and conditions authorise such a correction, provided that the proposed rectification amounts to at least 10% of the item under consideration.

The administration has the right to decide:

- (a) that the estimated quantity thus reduced becomes firm for the author of the reduction;
- (b) that the unit-price stated in the successful tenderer's itemised estimate for the quantity which has become firm does not constitute the basis for determining the deductions necessitated by modifications ordered during the execution of the contract.

The successful tenderer who is the author of the reduction shall be informed of these decisions when notification is given of approval of the contract.

2. The tenderer shall include the requisite information in the itemised estimate, make the necessary calculations, sign the document and attach it to his tender, in which he shall mention the overall amount of the itemised estimate.

3. The unit-prices must be determined in such a way as to correspond with the relative value of each item in relation to the total amount of the tender. They must not be of such a nature as to distort the comparison of tenders or to result in the payment of part payments which are clearly disproportionate to the normal value of the services rendered.

#### Article 30

1. Tenders relating to supply contracts shall state the unit price, the amount per article and the total amount of each lot.

Where the invitation to tender contains an itemised estimate, 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 overall amount of the itemised estimate.

Except for express authorisation in the specific articles and conditions, the quantities referred to in the itemised estimate may not be amended by the tenderer, whether such quantities are firm or estimated.

2. A supply contract for which the itemised estimate comprises only items with constant quantities shall constitute an overall price undertaking.

If the itemised estimate does not refer to any quantity, or if the quantities therein are only estimated, in particular where the specific articles and conditions provide for a certain margin in respect of the quantities to be supplied, or where the administration reserves the right to adapt its orders to its requirements, the contract shall be a unit price contract.

#### Article 31

Tenders in respect of public works contracts shall be expressed in the national currency.

#### Article 32

Tenders in respect of supply contracts shall be expressed either in the national currency or in the currency of the Member State or Associated State of which the tenderer is a national or in which he has his registered place of business, or in the currency of the Member State or Associated State in which the supplies are produced.

#### Article 33

For the comparison of tenders, prices submitted in a currency other than the national currency shall be converted on the basis of the parity declared to the International Monetary Fund.

However, in the absence of a declared parity or in the event of the application to current payments of rates of exchange which diverge from this parity by a margin greater than that authorised by the International Monetary Fund, prices of tenders will be compared on the basis of the rates of exchange applicable for current payments.

These parities or rates of exchange shall be those in force on the first working day of the month preceding the month in which the date fixed for the opening of tenders is situated.

#### Article 34

With regard to public works contracts, the price offered by the tenderer shall include all entry duties, charges and taxes payable in the Associated State in connection with the execution of the contract as defined in the "General Information Sheet" referred to in paragraph 5 of Article 20.

#### Article 35

With regard to supply contracts, the tenderer shall, when calculating his tender, exclude stamp duty and registration duty on contracts. Customs duties, entry duties and indirect charges on the import into or manufacture of the supplies in the Associated State shall be those referred to in Article 3 of Decision No 38/71 of the Association Council of 22 April 1971 on the fiscal and customs treatment applicable in the Associated States to contracts financed by the Community.

#### Article 36

The total amount of the tender and the unit prices in the price list shall be written out in full. The same applies to the overall amount of each item of the itemised estimate if the specific clauses and conditions so require.

Where the same 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 37

Persons tendering for a public works contract shall specify in their tender the percentage of the price of the tender for which they request payment, on the basis of the parities defined in Article 33, in the currency of the Member State or Associated State of which they are nationals or in which they have their registered place of business. They must be able to give reasons justifying the choice of this percentage.

Settlement of supply contracts shall be made in the currency of the tender.

#### Grouping into lots

#### Article 38

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 works

and supplies into homogenous lots which are as large as possible.

The specific clauses and conditions shall stipulate the number of lots, the nature or size of each lot and shall indicate, where appropriate, the minimum and maximum number which may be offered by one and the same tenderer.

A tender shall be submitted in respect of each lot.

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 specific clauses and conditions otherwise prescribe, the tenderer may supplement his offers by referring to the overall rebate he would grant in the event of certain lots for which he has submitted individual tenders being amalgamated.

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

However, the specific clauses and conditions may lay down that lots apportioned to the same tenderer, even if they differ, shall form a single contract, the period for the execution of which it shall specify.

3. Where works or supplies lots are apportioned to different successful tenderers, the specific clauses and conditions may provide for the nomination of one successful tenderer as joint agent to ensure co-ordination in the carrying out of such works or supplies.

The specific clauses and conditions shall stipulate whether the lots are the subject of separate contracts or whether they are grouped together in a single contract.

The allottees shall appoint one of their number to be the joint agent, who shall be fully responsible for the execution of the lot or lots apportioned to each.

#### Submission of tenders

##### Article 39

1. The tender, together with its annexes as laid down in the specific clauses and conditions, shall be placed in a sealed envelope called the inner envelope.

This envelope, and the supporting documents referred to in Article 23, shall be put into another sealed envelope, called the outer envelope, bearing the address

indicated in the notice of invitation to tender, the reference to the notice of invitation to tender to which it is a reply, where appropriate the number of the lots referred to, and the following words: "to be opened only during an envelope-opening session", drafted in the language of the invitation to tender.

Envelopes containing tenders must be sent by post or transmitted by any other means. The tenderer may request an acknowledgement.

On receipt, the envelopes, which must not bear any reference to the tenderer, shall be entered in a special register in the order of their arrival. The registration number and the date and time of arrival shall be recorded on the envelope. These envelopes must remain sealed until they are opened under the conditions referred to in Article 42.

2. With regard to supply contracts, the supporting documents referred to in Article 23 shall be placed in the inner envelope.

##### Article 40

Any tender may be withdrawn, supplemented or amended prior to the date fixed for the receipt 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 intention and extent of the desired change.

Withdrawal must be unconditional.

The provisions of Articles 28 and 39 relating to tenders shall be applicable to withdrawals, additions or amendments.

If a tenderer who has withdrawn his tender files a new 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 41

Tenderers shall be bound by their tenders, as possibly corrected by the administration, in accordance with Article 44 (2) and (3), during the period laid down in the notice of invitation to tender.

If, during the period, the administration considers that it is not in a position to make a choice, it may propose, by means of a registered letter, the extension of

such period. The agreement of the tenderers must be conveyed to the administration by registered letter.

#### Opening of tenders

##### Article 42

1. The envelopes containing the tenders, withdrawals, amendments or additions shall be opened at the place, on the date and at the time fixed in the notice of invitation to tender, by a committee whose composition and operating procedures shall be laid down in the regulations of the Associated State.

Only those envelopes may qualify which have been received in accordance with the conditions specified in Articles 39 and 40 not later than the final date fixed for the receipt of tenders, without prejudice to the provisions of paragraph 3.

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 amount of the tenders;
- possible amendments or withdrawals of tenders.

The Minutes shall be signed by the Chairman, who shall also endorse the documents contained in the envelopes. These Minutes may not be made public or communicated to any candidate.

2. With regard to supply contracts, the envelopes shall be opened during a public session, at the conclusion of which the Chairman of the Committee shall read aloud the names of the tenderers, the amounts of the tenders, price amendments and withdrawals. After this announcement the Committee shall continue its work in camera.

3. Envelopes arriving after the final date fixed for the receipt of tenders shall be taken into consideration only if:

- (a) they were filed by registered mail no later than ten days before the final date fixed for the receipt of tenders;

- (b) they reach the Chairman of the Committee responsible for opening the envelopes before he has declared the session open.

If possible, envelopes which arrive late shall be registered by the Committee in accordance with Article 39.

##### Article 43

Without prejudice to the invalidity of any tender, the provisions of which might conflict with the essential requirements of those general clauses and conditions, in particular those set out in Article 28, the Committee may consider tenders which do not conform with the provisions of Articles 22 to 40, which express reservations or the elements of which clearly do not correspond with reality, to be irregular and, hence, to be null and void.

#### Selection of successful tenderer

##### Article 44

1. Before classifying the tenders, the Committee shall declare the elimination of candidates not qualified to tender or whose qualifications are judged insufficient, in accordance with the provisions of Articles 22 and 23.

The reasons for acceptance or rejection given by the Committee shall be mentioned in the Minutes provided for in Article 45 (2).

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

The administration shall not be held responsible as a result of the existence of errors which have not been detected.

The tenderers may not take advantage of possible defects of form in the tender, nor of any errors or omissions that it may contain.

- 3. (a) Where a tenderer has amended the quantity of one or several items in the itemised estimate in application of Article 29, the Committee shall check such amendments, rectify them according to its own calculations and apply them to the other tenders.

Should the Committee not be in a position to verify by its own calculations the amendments to the quantities submitted for an item in a unit price contract,

the specific clauses and conditions for which have authorised the correction, it shall reduce to the presumed initial quantity tenders containing quantities greater than the presumed initial quantity, and shall leave unchanged any reductions made by the tenderers, without prejudice to the provisions of Article 29 (1) (a) and (b);

- (b) Where a tenderer, in application of Article 29 (1), has rectified omissions in the itemised estimate, the Committee shall establish that the correction was justified and, possibly, rectify it according to its own calculations.

Tenderers who have not rectified omissions shall be invited by registered letter to complete their tenders, taking into consideration the correction that has been allowed;

- (c) Where the Committee, on the basis of Article 29 (3), finds the unit prices of a tender to be apparently abnormal, it shall invite the tenderer concerned by registered letter to furnish an explanation of his unit prices.

#### Article 45

1. The Committee shall recommend the most economically advantageous tender to the administration, taking into account, in particular, the price of the services, the cost of their utilisation, their technical value and the financial guarantees.

2. The discussions of the Committee shall be the subject of Minutes which may not be made public or communicated to any candidate. These Minutes shall be endorsed by the members of the Committee.

By way of information, the administration shall notify the tenderer it has selected of its choice by registered letter, with acknowledgement of receipt, to be posted before the expiry of the period laid down in Article 41.

The selected tenderer shall remain bound by his offer for a further period of 40 days following the date of signature of the acknowledgement of receipt.

The administration shall also notify the other tenderers by registered letter of the rejection of their tenders.

The administration is not obliged to state the reasons for its choice.

The name of the selected tenderer and the overall amount of his tender shall be published by the administration.

3. The administration shall not enter into any discussion with the candidates save to request them to specify or supplement the terms of their tenders.

4. Where the administration decides not to act on an invitation to tender it shall notify the tenderers thereof. It is not obliged to give reasons for its decision.

#### Variations

#### Article 46

If the invitation to tender has made provision for the submission of variant solutions, the specific clauses and conditions must specify the subject, limits and basic conditions thereof; in particular, it must state whether or not the submission of variations exempts the tenderer from submitting a tender for the administrative solution.

Variant solutions may not derogate from the requirements of the general clauses and conditions. They shall be binding on the contestant in his capacity as author of the project.

Submission of any variant solution must include:

#### (a) for unit price contracts

- an individual tender for each variation,
- the draft amendments to the specific clauses and conditions necessitated by the variation submitted by the tenderer,
- the price list as modified by the variation,
- the itemised estimate as modified by the variation,
- the preliminary survey of works provided for in the administration draft but not affected by the variant solution,
- the preliminary survey of works affected by the variant solution,
- a technical note on the concept of the variation and, where appropriate, summary of the calculations.

If the variant solution is adopted by the administration, the preliminary survey of works to which it relates shall become contractual and firm. However, this preliminary survey shall cease to be contractual and constant in respect of variations in quantities which the implementation of the administrative solution would in any case have entailed as a result of the alteration of the basic suppositions;

(b) for overall price contracts

- an individual tender for each variant,
- the draft amendments to the specific clauses and conditions necessitated by the variant submitted by the tenderer,
- the breakdown of the overall amount,
- a technical note on the concept of the variant and, where necessary, a summary of the calculations.

Notification of approval of contract

#### Article 47

1. (a) The contract shall be concluded when the tenderer is notified that his tender has been approved. This notification must be within the period of 40 days laid down in Article 45 (2) at the latest;
- (b) This notification shall be made by registered letter with acknowledgement of receipt. It shall be deemed to have been made by the mere act of posting the letter;
- (c) The letter of contract shall include in particular:
  - a list of the documents relating to the contract, together with their references,
  - possible derogations in the contract in respect of certain documents,
  - the contractual execution period,
  - the amount of the contract and the manner of payment,
  - the decisions taken by the administration pursuant to Article 29,
  - the designation of the official instructed to direct execution of the contract, the administration to which he belongs and his authority regarding the execution of the contract,
  - all other factors necessary for determining the obligations arising from the contract.

2. After the expiry of the period laid down in paragraph 1 (a), if notification of approval of the contract has not been given, the tenderer selected shall be free to renounce the undertaking. This renunciation shall be addressed to the administration by registered letter with acknowledgement of receipt.

Should the date of the belated notification of approval of the contract be the same as that of the selected

tenderer's renunciation, the renunciation shall be deemed to precede the notification.

In the event of renunciation by the selected tenderer, the administration may apply in turn to the other tenderers according to the order of classification of their tenders or initiate a new procedure for the invitation of tenders or, if necessary, negotiate a mutual agreement contract if the contract corresponds to one of the cases referred to in Article 53.

3. If the tenderer has not taken the option of renunciation provided for in paragraph 2 before notification of approval of the contract has been given, he shall be bound by such notification. However, if such notification is given more than three months after the expiry of the period laid down in paragraph 1, the tenderer shall be bound only if he records his agreement by registered letter within a period of 15 days from the date of notification of approval of the contract.

Invitation of tenders with competition

#### Article 48

The invitation of tenders may take the form of a competition.

A competition procedure shall be adopted where special investigations are justified for technical, aesthetic or financial reasons.

The competition shall take place on the basis of a schedule drawn up by the administration.

#### Article 49

1. The competition shall be for the preparation of a project and for its execution.

2. The committee instructed to examine tenders shall be called "the board". The composition of this board shall be laid down in the competition schedule.

3. The award of the contract shall be decided by the administration after receiving the opinion of the board.

The schedule may make provision for projects which receive the best classifications, after the project adopted for the contract, to be granted bonuses. Such bonuses shall be laid down in the schedule and allotted to the authors of such projects in accordance with the order drawn up by the board. Bonuses may be withheld if the projects are not adjudged satisfactory.

4. The schedule shall establish precisely the respective rights of the administration and the competitors to the ownership and use of the projects.

#### Article 50

The notice of invitation to tender with competition and the compilation of the file must comply with the provisions of Articles 18, 19 and 20.

#### Article 51

The preparation of tenders, the procedure for their scrutiny, their classification and the notification of approval of the plan adopted shall comply with the corresponding provisions relating to invitation of tenders without competition, except for derogations provided for in the schedule.

#### Section II

#### MUTUAL AGREEMENT CONTRACTS

#### Article 52

1. The contract shall be designated a mutual agreement contract where the administration enters freely into such discussions as it may consider useful and allots the contract to the contractor or supplier whom it has accepted.
2. The administration shall be bound to arrange a competition, as far as is possible and by all appropriate means, for contractors or suppliers capable of carrying out the service which is the subject of such contract.

#### Article 53

Mutual agreement contracts may be negotiated:

1. where the minor importance of the subject of the contract does not justify recourse to the normal procedure of prior competition;
2. where no regular tenders have been received or where only unacceptable prices have been proposed;
3. for works or supplies the execution or manufacture of which is reserved exclusively for persons holding patents or invention, improvement or import licences therefor, or for works or supplies which can only be obtained from a single contractor or supplier;
4. for works or supplies the execution of which may, for reasons of technical necessity or significant

prior investment, be entrusted to one specific contractor or supplier only;

5. where the works or supplies are carried out only in the form of research, tests, studies or improvements;
6. for works or supplies for which, in cases of emergency, compliance with the time limits of the procedure for invitation of tenders is impossible;
7. where the prices submitted are, in fact, outside the normal scope of competition;
8. for additional works or supply 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 works or supply contracts in which, pursuant to Article 13, the prices can be determined only provisionally;
10. in cases where, pursuant to Article 47, the tenderer has withdrawn his tender.

#### Instrument of contract

#### Article 54

The instrument of a mutual agreement contract shall be a registered letter with acknowledgement of receipt, by which the administration accepts the tender of the contractor or supplier.

The letter of contract shall comply with Article 47 (1) (c).

#### CHAPTER III

#### SETTLEMENT OF DISPUTES

#### Article 55

1. Any dispute arising either between the administration and a tenderer in connection with the procedure for the award of a contract or between the administration and the successful tenderer resulting from the interpretation or execution of a contract shall be settled by arbitration in accordance with the rules of arbitration adopted by the Association Council.

No dispute may be submitted to arbitration if possibilities through administrative appeals, as provided for by national legislation, have not

already been exhausted. Administrative appeals shall be deemed to have been exhausted if no final decision by the administration has been taken within a period of four months from the date when the appeal was lodged by the tenderer or the successful tenderer.

The rules of arbitration provided for in the first paragraph shall fix the period during which the request for a dispute to

be settled must be introduced, under penalty of foreclosure, before the arbitrating authority.

2. The parties to a dispute arising in connection with the award or execution of contracts concluded prior to the entry into force of these general clauses and conditions may also agree to submit such disputes to the arbitration procedure referred to in paragraph 1.

## TITLE II

### CONTRACTUAL, ADMINISTRATIVE AND TECHNICAL CLAUSES

#### CHAPTER I

#### CLAUSES COMMON TO ALL CONTRACTS

##### Section I

##### EXECUTION OF CONTRACTS

Official responsible for directing execution of the contract

##### Article 56

The official responsible for directing execution of the contract shall be made known by the administration to the successful tenderer in the letter notifying him of award of the contract. This letter of contract shall also state, in accordance with Article 47 (1) (c), the authority of the official responsible for directing execution of the contract.

##### Article 57

The successful tenderer shall ensure that the official responsible for directing execution of the contract has free access to the place where the services of the contract are performed, and shall provide him with any information that he requires. In the performance of his duties, the official responsible for directing execution of the contract shall be subject to the same obligations as those laid down for the representative of the administration in the last paragraph of Article 61.

Plans, documents and objects

##### Article 58

1. After giving notification of approval of the contract, the administration shall provide the successful tenderer, free of

of charge, with a verified and possibly corrected copy of the tender, the specific clauses and conditions and the annexes thereto.

At the request of the allottee, the administration shall provide him free of charge and postage paid a complete set of copies of the plans it has drawn up with a view to the execution of the contract. The administration shall be responsible for the conformity of such copies with the originals.

2. The specific clauses and conditions shall state the documents and objects which may also be placed at the disposal of the successful tenderer, at his request, in order to facilitate his work.

3. After the expiry of eight days following the provision of these documents and objects, the successful tenderer shall be deemed to have verified that they conform with those which served as the basis for the invitation to tender and which are held by the administration for use in connection with the acceptance of the works and supplies.

4. The specific clauses and conditions shall specify the date and conditions for the return of these documents and objects.

5. The successful tenderer may purchase additional copies of these plans, documents or objects, to the extent to which quantities are available.

6. The administration may not hand over these plans, documents and objects prior to the fixing of the deposit and the pledge of the joint guarantor provided for in Article 62.

Detailed plans and execution plans

##### Article 59

Detailed plans which the successful tenderer must draw up and submit for the approval of the administration shall be



referred to in the specific clauses and conditions, which shall also state the length of time during which such approval must be given. The same shall apply to the timetable of execution and to the documents and objects which must be submitted to the administration for endorsement or acceptance.

Any delay by the successful tenderer in submitting these plans, documents and objects may, without formal notice being given, result in the application of a penalty for each day of delay, the rate for which shall be determined in the specific clauses and conditions.

Any delay by the administration in approving or accepting these plans, documents or objects shall, upon the substantiated request of the successful tenderer, result in an extension of the period of execution equal to the length of the delay. If such extension of the period of execution does not make good the injury suffered by the successful tenderer, the latter may claim a longer extension of the period of execution or possibly an indemnity.

The specific clauses and conditions may provide for a period of time during which the successful tenderer must submit all or part of these plans, documents and objects.

The specific clauses and conditions may provide that the start of execution of the contract shall be subject to the submission of all or part of the plans, documents and objects, and to the approval or acceptance thereof, without this provision affecting the initial date of the contractual period.

Except for derogations provided for in the specific clauses and conditions, the detailed plans, other documents and objects prepared by the successful tenderer may not be reproduced or used by the administration for another purpose nor communicated to third parties.

#### Quality of works and supplies

##### Article 60

The works and objects or materials to be supplied must correspond in all points to the technical specifications laid down in the specific clauses and conditions. They must conform in all respects with the plans, drawings, surveys, models, samples, patterns, etc., which have been held at the disposal of the successful tenderer for identification, in accordance with the specific clauses and conditions, during the period of one month following the date of notification of approval of the contract.

Where materials and objects to be supplied are defined at the same time by plans, samples and models, and if the specific clauses and provisions 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 is to be taken into consideration only for the finished article and the sample for the purpose of quality of the material.

#### Supervision and inspection of preparation and manufactures

##### Article 61

The administration may arrange for the preparation and manufacture of everything to be delivered to it to be supervised and inspected.

To this end, it may have recourse to such tests as it considers necessary from among those provided for in these contractual clauses, supplemented or amended, where appropriate, by the specific clauses and conditions, in order to establish whether the materials, objects and supplies 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 they have been placed in position.

The successful tenderer may not invoke the fact that such supervision and inspection have been exercised in order to claim exoneration from his responsibility in the event of the works or supplies being rejected by reason of any defect whatsoever.

The successful tenderer shall place at the disposal of the administration, provisionally and free of charge, the patterns and instruments specified in the specific clauses and conditions and which are considered necessary for verifying and inspecting the work to be carried out and the objects to be supplied.

The representative of the administration, kept informed by his supervisory and inspection activities of the methods of manufacture and operation of the undertakings, shall be obliged to divulge such information only to the hierarchical authorities entitled to receive it.

#### Guarantee of contract by means of deposit or joint guarantor

##### Article 62

Unless the specific clauses and conditions stipulate otherwise, the successful tenderer, shall be obliged to establish a deposit or, if he wishes, provide a joint guarantor as guarantee of the sums of money which he is acknowledged as owing under the contract.

The amount of the deposit or joint guarantor commitment may not exceed 3% of the original amount of the contract, increased where appropriate by the amount

of the additional clauses where the contract does not include a guarantee period and by 10% where the contract contains a guarantee period.

Within the above limits, and in accordance with the provisions of the specific clauses and conditions, the deposit or joint surety pledge may be established progressively, as the contract is executed.

#### Article 63

The deposit shall be established in the currency of the contract. It shall be deposited in accordance with national regulations.

The joint guarantor shall be constituted by any body under public or private law established in an associated country or in a Member State and empowered to issue such a guarantee by the authorities under whose control it operates.

#### Article 64

Except for special provisions in the specific clauses and conditions, the establishment of the deposit or the commitment of the joint guarantor must take place within one month from the date of the notification of approval of the contract.

No settlement may be made for the benefit of the successful tenderer prior to the establishment of the deposit or the commitment of the joint guarantor.

#### Failure to pay deposit or provide joint guarantor

#### Article 65

If the successful tenderer does not produce proof of the establishment of the deposit or the commitment of the joint guarantor within the period laid down in Article 64, the administration shall have the option of applying the ex officio measures provided for in paragraph 2 of Article 121 and Article 136 (2).

Before applying these measures, the administration shall send the successful tenderer a registered letter giving formal notice regarding the establishment of the deposit or the commitment of the joint guarantor. Such formal notice shall introduce a new time limit which may not be less than ten calendar days and which shall take effect from the date of dispatch of the letter.

#### Right of the administration over the deposit or joint guarantor

#### Article 66

1. The administration shall officially levy on the deposit any amounts due from the successful tenderer under the contract.

The deposit shall continue to meet the obligations of the successful tenderer until the contract has been executed completely.

Should a deposit guaranteeing execution of the contract cease to be integrally established and should the successful tenderer remain in default in making good the deficit, a deduction equal to the amount of the latter may be made on future payments and assigned to the re-establishment of the deposit.

2. The joint guarantor shall pay off the sums due from the successful tenderer under the contract, without being able to defer payment or raise any objection for any reason whatsoever.

During the execution of the contract, if the joint guarantor is not in a position to abide by its commitments, the administration shall revoke it. It shall invite the successful tenderer to provide a new guarantor carrying obligations within the same limits as the previous one.

Should the successful tenderer fail to provide a new guarantor, the administration may cause the provisions of Article 65 to be applied.

#### Discharge of deposit or joint guarantor

#### Article 67

1. The deposit shall be returned or the joint guarantor discharged as a result of a cancellation order issued by the administration within a period of one month following the date of final acceptance of the works or supplies, insofar as the successful tenderer has by that date fulfilled his obligations towards the administration.

At the expiry of this period, the joint guarantor undertaking shall cease to have effect, even in the absence of a cancellation order, except if the administration has stated in a registered letter addressed to the guarantor that the successful tenderer has not fulfilled all his obligations. In this case, the guarantor may be discharged only by a cancellation order issued by the administration.

2. However, in view of the special features of the contract, the specific clauses and conditions may provide that one half of the deposit will be returned or one half of the joint guarantee be discharged within one month of the date of the provisional acceptance.

In this case, the provisions of paragraph 1 shall apply to that part of the deposit not yet returned or to that part of the joint guarantee undertaking not yet discharged.

Assignment, sub-contracting and sub-ordering

Article 68

1. The assignment shall be an agreement by which the successful tenderer transfers his contract to a third party.

The sub-contract shall be an agreement by which the successful tenderer entrusts the execution of a part of his contract to a third party.

The sub-order shall be an order made to a third party by the successful tenderer or by that third party himself to another third party, with a view either to the manufacture of intermediate objects or materials which are to be incorporated in the works carried out or the supplies provided, or to the execution of certain operations affecting the carrying out of such services.

2. The successful tenderer may not assign or sub-contract the contract without the express authorisation of the administration. Assignees or sub-contractors may be only natural or legal persons who are nationals of the Member States or Associated States.

Sub-orders may be concluded freely. Nevertheless, the specific clauses and conditions may make provision for the prior authorisation of the administration in respect of certain sub-contracts.

3. In all cases of sub-contracts and sub-orders the administration shall acknowledge no legal connection with the sub-contractors and persons with whom sub-orders are placed, and the latter may not claim settlement from the administration in respect of works or supplies which they have performed.

The administration may make use of the prerogatives laid down in Article 61 with regard to services carried out or provided by sub-contractors or persons with whom sub-orders are placed.

4. If, without being authorised to do so, the successful tenderer has assigned his contract, concluded a sub-contract or placed a sub-order for which authorisation was necessary, the administration may, without giving notice thereof, apply the ex officio measures laid down in Article 121 point 2 and Article 136 (2).

Simultaneous contracts

Article 69

1. Except for the application of such rules governing legal compensation as may be laid down by national law, and without prejudice to the provisions of Article 126, each works or supplies contract and its execution by the successful tenderers shall be independent

of all other works or supplies contracts of which the successful tenderer is holder.

2. Any difficulties arising with regard to one contract may in no case authorise the successful tenderer to amend or delay execution of the other contracts; similarly, the administration may not take advantage of such difficulties to suspend payments due under another contract.

Order to commence execution of contract

Article 70

The administration may not fix the date on which execution of the contract is to commence later than the 120th day following notification of approval of the contract.

The order to commence execution of the contract shall result either from the notification of approval of the contract or from a service order.

Where the order to commence execution of the contract results from the notification of approval of the contract, a period of 20 days must elapse between the notification of approval of the contract and the beginning of the contractual period of execution.

Where the order to commence execution of the contract results from a service order, a period of at least 20 days must elapse between the date of notification of the service order and the beginning of the contractual period of execution.

If the date fixed for the beginning of execution of the contract does not fall within the period of 120 days provided for in the first paragraph, the successful tenderer may demand the cancellation of the contract and/or reparation for damage he has suffered. The successful tenderer shall forfeit this right unless he makes use of it not later than 30 days following expiry of the period of 120 days.

Service orders

Article 71

Service orders must be in writing. They shall be dated, numbered and registered.

The successful tenderer shall comply with the service orders drawn up by the official responsible for directing execution of the contract or by any other authorised representative of the administration.

Where the successful tenderer considers that the requirements of a service order go beyond the obligations under the contract, he must, on pain of preclusion, submit notice thereof in writing to the administration within 15 days. Unless the administration orders otherwise, execution of the service order shall not be suspended because of the objection.

#### Patents and licences

##### Article 72

The successful tenderer shall guarantee the administration against any appeal resulting from the use, during the execution of the contract, of patents, licences, drawings, models, or factory or trade marks.

Where the administration gives a description of all or part of the works or supplies, without referring to the existence of a patent, licence, drawing, model, factory or trade mark whose use is necessary in the execution of such works or supplies, it shall bear all costs and charges; in this case, it shall guarantee the successful tenderer against any appeal by the holder resulting from such use.

#### Payment of contracts

##### Article 73

The specific clauses and conditions shall determine the administrative or technical conditions to which payment of advances, instalments or payment of balance is subject, in accordance with the rules on allotment set out below.

##### Article 74

Where the prices of works or supplies or the exact conditions for determining them are not immediately evident from the provisions of the contract, the latter must, for the purpose of liberating its funds and the payment of instalments, state a provisional price which is either an overall price or a price corresponding with the basic services or the technical stages of execution.

#### Advances

##### Article 75

1. Advances may be granted to the successful tenderer for operations preparatory to the execution of the works or supplies which are the subject of the contract, in the cases listed hereinafter:

- (a) as a lump-sum advance enabling him to meet expenditure resulting from the start of the contract;
- (b) if he affords proof of the conclusion of a contract for the purchase or order of plant, machines, tools and materials necessary for the execution of the contract and of any other prior expenses of a major kind, such as the acquisition of patents and study costs.

2. The amount of the advances may not exceed 10% of the original amount of the contract in respect of the lump-sum allowance and 20% for all other advances.

3. The special conditions for granting and reimbursing advances shall be laid down in the specific clauses and conditions.

4. No advance may be made before the successful tenderer has furnished proof of the establishment of the deposit or the commitment of the joint guarantor.

5. Any advance granted must be guaranteed in its entirety by the joint guarantor undertaking in accordance with Article 63.

#### Reimbursement of advances

##### Article 76

Reimbursement of the lump-sum advance referred to in Article 75 (1) (a) shall begin when the amount of sums due under the contract has reached 60% of the original amount of the latter. It must be completed when 80% of this amount has been reached.

Reimbursement of the advances referred to in Article 75 (1) (b) shall be made by means of a deduction from the instalments and possibly from the balance owing to the successful tenderer in accordance with the procedure laid down in the specific clauses and conditions. Reimbursement of such advances must be completed at the latest when the amount of sums due under the contract has reached 90% of the original amount of the latter.

In all cases of rejection of the contract, for any reason whatsoever, liquidation of advances shall be carried out immediately.

The joint guarantor provided for in Article 75 (5) shall be released as and when the advances are reimbursed.

#### Partial payments

##### Article 77

Under the conditions laid down in the specific clauses and conditions, the administration must make partial

payments to the successful tenderer if the latter furnishes proof that he has carried out one of the following services:

1. delivery at the building site or place of manufacture of materials which are to form part of the works or supplies stipulated in the contract, provided that they have been fully acquired and paid for by the successful tenderer, that they have been recognised as conforming to the requirements of the contract and that they are set out in batches in such a way that they may be checked by the administration;
2. performance of operations intrinsic to the carrying out of works or supplies inspected by the administration.

#### Article 78

Materials for which partial payments have been made shall remain the property of the successful tenderer, who may in no circumstances make use of them for other works or supplies.

However, the specific clauses and conditions may lay down that, to set off partial payments, the ownership of the materials corresponding to such partial payments shall be transferred to the administration. In this case, the successful tenderer shall, nevertheless, assume the responsibility of the depositary in respect of these materials.

#### Revision of prices

##### Article 79

1. Provision may be made for the revision of prices with regard both to works contracts and supply contracts.
2. Where prices may be revised under a contract, revision shall take place either at the request of the successful tenderer or on the initiative of the administration, by applying the procedures set out in the specific clauses and conditions. Such procedures may take into account a variation in the prices of manpower, services, materials and supplies, as well as of legal or statutory charges forming part of the unit-prices.

Prices contained in the successful tenderer's tender shall be deemed to have been arrived at on the basis of the economic conditions in force on the date of reference. This date shall be the first working day of the month preceding that in which the final date for the receipt of tenders is situated.

3. In the event of a delay in execution of the works, which is attributable to the successful tenderer, the lowest of the three following coefficients will be

applied during the period between the contractual date for the completion of the works and the actual date of completion (provisional acceptance);

- arithmetical average of the monthly coefficients for the last 12 months of the contractual period;
- variation coefficient for the last month of the contractual period;
- variation coefficient established by applying the price variation procedure during the actual period of execution of the works.

#### Article 80

Application of the revision procedures shall be governed by the degree of variation of the contract price, which must be equal to or more than the percentage of variation laid down in the specific clauses and conditions. This percentage shall form the revision threshold.

Once this threshold has been exceeded, the variation resulting from application of the procedure shall be fully taken into account.

#### Article 81

Where advances have been granted and where, pursuant to the second paragraph of Article 76, they are reimbursed by deduction from sums due for partial payment or from the balance, the price revision clause shall apply only to the difference between the initial amount of the instalment or balance and the amount of the advance to be deducted.

#### Article 82

The periods for liquidating sums due in application of the price variation procedures shall be laid down in the specific clauses and conditions.

#### Methods of payment

##### Article 83

#### Payment for works

1. Payment of both the instalments and the balance of the contract shall be made only when the successful tenderer has produced a statement of credit, dated, signed and supported by a detailed work progress report which, according to the successful tenderer, justifies the requested payment.

This progress report, compiled on the basis of the daily statements of materials used and work done, may include:

- (a) quantities carried out in excess of the estimated quantities contained in the itemised estimate of a unit-price contract;
- (b) additional works performed in accordance with a service order made by the official responsible for directing execution of the contract;
- (c) works carried out at prices proposed by the successful tenderer and accepted by the administration.

2. The administration shall verify and possibly correct the work progress report; should such report contain quantities the unit prices for which have not yet been agreed by the parties, it shall establish its official prices, all rights of the successful tenderer remaining unaffected.

After receiving each statement of credit it shall prepare a certificate of payment at the earliest opportunity, setting out the amount which it considers effectively due, and shall notify the successful tenderer of the situation of works thus admitted for payment.

3. Payment of sums due to the successful tenderer shall be made within 90 calendar days of the date of receipt of the statement of credit by the administration.

#### Payment for supplies

##### Article 84

With regard to supplies, payment shall be made within 90 calendar days of the date of credit liability as laid down in the specific clauses and conditions.

#### Payment in the event of attachment

##### Article 85

In the event of an attachment ascribable to the successful tenderer, and without prejudice to the periods of 90 days laid down in Articles 83 and 84, the administration 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 successful tenderer.

#### Interest in respect of delay in payments

##### Article 86

If the period laid down for payment has been exceeded, although the contract has not given rise to dispute, the successful tenderer shall benefit fully

and without formal notice from interest calculated on a pro rata basis on the number of days of delay (calendar days) at the rate of rediscount of the issuing institute of the Associate State, increased by 1% per year.

This additional rate shall be increased to 4.5% per year as from the 91st day of delay.

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

A remission of the penalties 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.

#### Payment for benefit of third parties

##### Article 87

All orders for payment in the hands of a third party may be carried out only after a transfer of credit or a collateral security, in accordance with the relevant provisions of the laws of the Associate State where the contract is executed.

The transfer of credit or the collateral security shall be brought to the notice of the administration in the form of a notification by registered letter with acknowledgment of receipt.

#### Notification to third parties

##### Article 88

The successful tenderer and the beneficiaries of transfers of credit and collateral securities may, during the execution of the contract, seek from the administration either a summary progress report of the work and supplies carried out, accompanied by an estimate which shall not be binding upon the administration, or a detailed account of rights enjoyed by the successful tenderer; they may also request a statement of the advances and instalments paid and a detailed report on information received relating to such contract.

Should the creditor make such a request by registered letter, giving supporting evidence, the administration shall be obliged to notify him, at the same time as the successful tenderer, of all amendments to the contract which affect the guarantee resulting from the transfer of credit or collateral security.

Beneficiaries of transfers of credit and collateral security may not call for any information other than that provided for

in the first and second paragraphs, nor may they intervene in the execution of the contract.

#### Preliminary technical acceptance

##### Article 89

1. If the specific clauses and conditions lay down technical conditions for the acceptance of materials or items which the successful tenderer must implement in connection with the works to be carried out or for the manufacture of objects that he must supply, such materials or items must be received by the administration prior to their implementation.

The same shall apply if the specific clauses and conditions make provision for the manufacture of one or several standard items and the examination of samples before manufacture is to commence.

Any preliminary technical acceptance shall be the subject of a request sent by registered post by the successful tenderer to the administration; such request shall be made in accordance with the forms laid down by the administration, which must act upon it within the period provided for in the specific clauses and conditions.

The request shall indicate the specification of the materials, items or samples submitted for acceptance and shall also indicate the number of the specific clauses and conditions, the number of the lot and the location where acceptance is to take place.

Even if materials or items to be implemented in connection with the works to be executed or with the manufacture of objects to be supplied have been accepted in this way, they may still be rejected and must be replaced immediately by the successful tenderer if a further examination reveals defects or faults.

2. The specific clauses and conditions shall make provision for all the procedures relating to preliminary technical acceptance, in particular, the period of time during which the administration must take its decision to accept or reject materials, standard items and samples, and also, in the event of this period being exceeded, the administration's option to extend such period of execution at the request of the successful tenderer.

#### Claims by the successful tenderer

##### Article 90

1. The successful tenderer may avail himself of facts which are imputed to the administration and which would involve him in delay and/or detriment in obtaining, where appropriate, an extension of the periods of execution, the revision or rejection of the contract and/or damages.

2. In principle, the successful tenderer shall not be entitled to make any amendment to the contractual conditions as a result of circumstances which remain unknown to the administration.

However, an extension of the periods shall be justified by circumstances which the successful tenderer could not reasonably foresee when the tender was filed or the contract concluded, or which he could not avoid and the consequences of which he was unable to avert even though he had taken every necessary step to that end.

Furthermore, if the successful tenderer has suffered very considerable detriment, he may avail himself of the same circumstances to obtain the revision or cancellation of the contract.

Various natural phenomena and their consequences, where they are recognised by the administration as being abnormal for the place or the season, shall, in particular, be regarded as circumstances within the meaning of the second and third paragraphs.

The successful tenderer may invoke the default of a sub-contractor or a person with whom a sub-order has been placed only insofar as the latter would avail himself of the circumstances which the successful tenderer would have been able to invoke in a similar situation.

3. The successful tenderer shall be obliged to report to the administration, by registered letter, the facts and circumstances referred to in (1) and (2) as soon as he would normally expect to be aware of them and not later than 30 days after their occurrence.

4. Claims by the successful tenderer must, on pain of preclusion, be made by registered letter within the following periods:

(a) before expiry of the contractual periods, in order to obtain an extension of the periods of execution or rejection of the contract;

(b) not later than 60 days, in order to obtain a revision of the contract or the damage;

- after provisional acceptance of all works or supplies,

- after acceptance of all supplies, where the contract provides only for one acceptance.

##### Article 91

1. The successful tenderer shall have the right to obtain remission of the penalties for delay referred to in Article 121, point 1 (c) and Article 136 (1):

- (a) totally or partially, if he proves that the delay is due wholly or partly to acts by the administration or to the circumstances referred to in Article 90 (1) and (2);
  - (b) partially, if the administration considers that there is a disproportion between the amount of the penalties and the minimum importance of the works or supplies thus delayed, provided however that the works and supplies carried out are capable of being used normally and that the successful tenderer has made every effort to complete his services in the shortest possible time.
2. The successful tenderer may, on pain of preclusion, submit his request for the remission of penalties by registered letter within a period of 60 days of:
- the payment of the balance, in the case of works contracts,
  - the payment of the invoice to which the penalty was applied, in the case of supply contracts.

Period of guarantee: maintenance, repair and replacement

Article 92

1. Without prejudice to the special provisions relating to the acceptance of works and supplies, the successful tenderer shall be obliged during the period of guarantee to carry out maintenance, repair and replacement covering all services under the contract, subject to normal conditions of use.

Deteriorations resulting from the circumstances provided for in Article 90 or from abnormal use shall be excluded from the guarantee unless they reveal a fault or defect such as to justify the request for repair or replacement.

The guarantee may be the subject of stipulations in the specific clauses and conditions and of technical specifications which shall determine the period and conditions thereof.

Where the specific clauses and conditions of the contract provide for a period of guarantee, they may fix the duration thereof. If not otherwise specified, the duration of this period shall be one year.

The period of guarantee shall commence as from the provisional acceptance of the works and supplies contracts. Where a supplies contract accompanied by a period of guarantee includes one acceptance only, the period of guarantee shall commence as from that acceptance.

Where necessary, the period of guarantee shall be extended by the time during which a product or an element of the contract has not been used because of

deterioration for reasons for which the successful tenderer must assume responsibility.

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

2. The successful tenderer 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 period of guarantee.

3. Any statement regarding deterioration or failure to function must be made in the form of a report drawn up by the official in charge or by any other representative authorised by the administration, before the expiry of the period of guarantee. A copy of the report shall be sent to the successful tenderer within one month.

4. Should the interests of the service so require, the administration may cause the repairs to be carried out at the expense of the successful tenderer, the latter having been duly informed by the copy of the report.

Cessation or postponement of implementation of contract

Article 93

1. Where the administration unilaterally orders the final cessation of implementation of the contract, the latter shall be immediately cancelled. The successful tenderer shall be entitled to an indemnity for any injury which he may have suffered by reason of such cancellation for which he is not responsible.

2. Where the administration orders the postponement of the contract outside the specific cases that may be provided for in the specific clauses and conditions, for more than six months either before or after implementation has commenced, the successful tenderer shall be entitled to the cancellation of the contract and an indemnity for any injury which he may have suffered.

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

The request for cancellation shall be acceptable only if it is submitted by registered letter by the successful tenderer within two months of the date of receiving the service order involving the postponement of performance of the contract for more than six months, or as from the expiry of the sixth month of postponement if such service order has not fixed the duration of the postponement.

If performance of the contract has commenced, the successful tenderer may require that acceptance of services should take place forthwith.



If the successful tenderer limits his request to an indemnity, it must be submitted by registered letter not later than 60 days:

- after provisional acceptance of all works or supplies,
- after acceptance of all supplies, where the contract provides only for one acceptance.

3. Where the administration orders the postponement of performances of the contract for less than six months, the successful tenderer shall be entitled to an indemnity for any injury which he may have suffered. He must submit his request by registered letter not later than 60 days:

- after provisional acceptance of all works or supplies,
- after acceptance of all supplies, where the contract provides only for one acceptance.

4. During the period of the postponements, the successful tenderer 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 successful tenderer, without prejudice to the indemnity which he may claim in accordance with paragraphs 2 and 3.

## Section II

### COMPLETION OF CONTRACTS

#### Non-performance of contract

##### Article 94

In the event of non-performance of the contract, the successful tenderer shall be subject to the measures laid down in the special contractual clauses relating to the works and supplies provided for in this Title and in the specific clauses and conditions.

Recovery of outstanding sums in connection with these measures shall be made by means of levies on amounts due to the successful tenderer, on the deposit or by contribution from the joint guarantor.

##### Decease

##### Article 95

1. Where the contract is given to one natural person, it shall be automatically cancelled if that person dies.

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

2. Where the contract is given to several natural persons and one or several of them die, a control report shall be prepared on the progress of the works and supplies and the administration shall decide whether to cancel or continue the contract in accordance with the undertaking of the survivors and possibly of the heirs.

3. In the cases provided for in paragraphs 1 and 2, persons offering to continue to perform the contract shall notify the administration thereof within ten days of the date of decease.

They must enter into the commitment as a body in accordance with the first paragraph of Article 27.

Continuation of the contract shall be subject to the rules relating to establishment of the deposit or the joint guaranty undertaking in accordance with Article 62.

#### Certain grounds for cancellation

##### Article 96

1. Without prejudice to the measures provided for in Articles 121 and 136, the administration may cancel the contract in the following cases:

- bankruptcy of the successful tenderer,
- any situation involving cessation of payment, other than bankruptcy, established by legal decision and entailing the total or partial dispossession of the administration and disposal of the successful tenderer's property in accordance with his national law,
- any definitive legal decision by the legal authorities of the Associated State justifying the cancellation of public contracts in accordance with national law,
- any other legal disability hindering implementation of the contract,
- any structural modification that must be notified to the administration involving a change in the legal personality of the successful tenderer, unless an additional clause is drawn up to take such modification into account.

2. In the event of a works contract being cancelled:

- (a) The successful tenderer or his dependents being present or duly convened, a report shall be drawn up of work performed and inventories prepared, of materials supplied, and of the plant and site installations of the undertaking.

Statements shall also be drawn up of emoluments still owed by the contractor to workers employed on the building site, and of sums owed by the contractor to the administration.

- (b) The administration shall have the option of acquiring, wholly or in part:

- provisional items of work which have been approved by the administration,
- materials specially constructed in connection with the execution of work under the contract and which cannot be re-used.

- (c) The purchase price of the provisional items of work and materials referred to above shall be equal to the unpaid portion of the expenditure incurred by the successful tenderer, such expenditure being limited, where necessary, to that corresponding to the normal execution of the contract.

- (d) The administration shall purchase at market prices the materials and items supplied or ordered on conditions that it considers appropriate.

3. In the event of the cancellation of a supplies contract, the contract shall be closed solely on the basis of supplies delivered and accepted.

4. However, the administration may, without waiting for the definitive settlement, and if it is so requested, pay the successful tenderer up to 80% of the credit balance shown by the provisional settlement. Likewise, if the provisional settlement shows a credit balance in favour of the administration, the latter may require the successful tenderer to return 80% of the amount of such balance.

CHAPTER II

CLAUSES RELATING SPECIFICALLY TO WORKS CONTRACTS

Section I

PRELIMINARY PROVISIONS

Article 97

In overall price contracts, the successful tenderer shall be considered to have prepared the sum contained in his tender according to his own operations, calculations and estimates.

After the final date fixed for filing tenders he shall no longer be allowed to enter any claim concerning possible errors or omissions in the itemised estimate furnished by the administration.

Details included in this document by the administration are given solely for purposes of information and may be invoked, if necessary, only to make good any inadequacy in the specific clauses and conditions and in the approved plans.

In the event of a discrepancy between the details of the plans and the specific clauses and conditions or the itemised estimate, the plans shall be deemed to be authentic.

Should the plans contain discrepancies, the successful tenderer may claim to have provided for the hypothesis which is most advantageous to him, unless the itemised estimate gives more precise details on this matter.

Article 98

1. The successful tenderer shall be deemed to have prepared his tender on the basis of the data, in particular hydrological, climatic and physical data, provided by the administration in the invitation to tender. However, as a result of his own investigations and the on-the-spot visits organised by the administration in cases where the importance of the work so justifies, he shall be considered to have ascertained, as far as is possible, before filing his tender, the characteristics of the location, the nature of the work, the quantities to be produced, the amount of the materials to be provided, the ways and means of access to the building sites, the necessary equipment, and, in a general manner, to have obtained all information concerning risks, hazards and circumstances likely to influence his tender.

2. Even if they are not the subject of an item on the itemised estimate, all works, measures and expenses relating to execution of the contract shall be the responsibility of the successful tenderer, in particular the perfect state of preservation, removal and possible replacement of the cables, conduits and installations specified by the administration in the contract plans and documents.

Where the presence of cables, conduits and installations has not been specified in the contract plans and documents but is revealed by benchmarks and references, the successful tenderer shall be bound by a general duty of care and similar obligations regarding preservation, removal and replacement. In this case, the administration shall indemnify him for expenditure relating to such work, to the extent to which this is necessary for the execution of the contract.

However, the obligation concerning the removal and replacement of cables, conduits and installations and the expenditure resulting therefrom shall not be the responsibility of the successful tenderer if the administration decides to accept these itself. The same shall

apply where this obligation and the expenditure resulting therefrom devolve upon another specialist administration or on an agent.

Section II

EXECUTION OF CONTRACT

Damage caused by the successful tenderer to cables, conduits and installations which have not been notified, cannot be marked, and of which he could not reasonably have been aware, must be regarded as being the result of a circumstance provided for in Article 90 (2).

3. The successful tenderer shall carry out, at his expense, any work whatsoever which, by their nature, are dependent upon or bound up with those defined in the approved plans and which are described, in addition, by the requirements of the specific clauses and conditions and the itemised estimate.

Since the successful tenderer is deemed to have determined his prices on the basis of his own calculations, operations, and estimates, he must carry out, free of charge, any work which is the subject of any item whatsoever, for which he neither indicates a unit price nor a firm sum.

Address for service of the successful tenderer and representation

Article 99

The successful tenderer shall give an address for service close to the works and shall notify the administration of that address. Should he fail to fulfil this obligation within a period of two months of notification of award of the contract, all notifications concerning the contract shall be valid where these are made to the address designated for this purpose in the specific clauses and conditions.

After final acceptance of the works, the successful tenderer shall be relieved of this obligation. Should he fail to give notice of his new address to the administration, notifications concerning the contract, made to the address given in the specific clauses and conditions, shall be valid.

The successful tenderer shall himself carry out and supervise the works or he shall appoint a representative for this purpose; in any case, he shall be responsible for carrying out the works satisfactorily.

The representative shall automatically be deemed to have his address at the address for service given by the successful tenderer.

The administration shall be entitled, at any time, to call for replacement of the representative.

Checking of materials and supplies

Article 100

1. Identification

The specific clauses and conditions may require all articles and supplies, where possible, to bear the successful tenderer's mark on a specified place.

2. Provision and acceptance of materials and supplies

The successful tenderer shall be required to take the necessary steps to ensure that the plant, materials and supplies are conveyed to the site in good time and that the administration has the necessary time at its disposal to proceed to the formalities of accepting the materials and supplies irrespective of the state of the means of communication and the mode of transport used. Since the successful tenderer is deemed to have fully appreciated the difficulties which he might encounter in this respect, he shall not be permitted to put forward grounds for delay in taking these steps, without prejudice to the provisions of Article 90.

The materials and supplies may not be used unless they have first been accepted by the official responsible for directing execution of the contract or his representative.

3. Tests

The tests required for technical verification of materials and supplies are laid down in the specific clauses and conditions. These shall specify whether these tests shall take place:

- (a) on the work site or at the place of delivery,
- (b) at the manufacturer's factories,
- (c) in the administration's laboratories,
- (d) in laboratories approved by the administration.

In the case of verification on site or at the place of delivery as provided for under (a), the successful tenderer shall place at the disposal of the administration, at his own expense, the workmen, and the tools and articles normally used on sites, as needed for the verification and acceptance of the materials.

In the case of verification at the factory as provided for under (b), the test samples or parts to be tested, ready for testing, shall be made available to the representative of the administration within

five calendar days of being marked. The tests shall be carried out in the presence of this representative; the successful tenderer shall bear the costs of preparing parts, test samples, and the costs of the tests themselves.

In the case of verification in the laboratories as provided for under (c) and (d), immediately after the parts to be tested or the substances to be used in preparing the test samples have been selected and marked by the representative of the administration, they shall be sent by the successful tenderer, free of charge, to the laboratory responsible for the tests, under the supervision of the representative of the administration.

The administration 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 were to be carried out by the successful tenderer in the manufacturer's factories. The residue of test samples, broken parts and surplus samples shall remain the property of the administration. The successful tenderer may be present when the tests are carried out in one of the administration's laboratories or in a laboratory approved by the administration.

In any case, 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 or certain quantities of materials, these must be replaced by the successful tenderer, at his expense.

The extent to which the tests may involve such destruction shall be indicated in the specific clauses and conditions.

#### 4. Test period

The period which extends from the date of dispatch to the date of arrival in the establishment responsible for testing shall not be included in the period laid down in the specific clauses and conditions for notifying the successful tenderer of the decision of approval or rejection.

#### 5. 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 successful tenderer's factory; the successful tenderer shall place the weighing instruments at the disposal of the administration, free of charge, in accordance with Article 61.

The same shall apply in the case of duly verified measuring equipment and test machinery required for the test provided for in the successful tenderer's factories and on site.

#### 6. Check tests

In the event of an objection by one or other party to the result 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 administration.

If the objection concerns an element which is incapable of perfect evaluation, each of the parties shall be entitled to request an expert appraisal. The expert shall be selected by common consent. The expert appraisal shall be held at a place nominated by the expert and approved by the administration.

The report drawn up by the laboratory or by the expert shall be submitted to the administration, which shall communicate it, without delay, to the successful tenderer, by registered mail. The results of the check test or the expert appraisal shall be conclusive.

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

#### 7. Period for check tests

Under pain of preclusion, the successful tenderer shall address the request for a check test or an expert appraisal to the administration by registered letter not later than the fifteenth calendar day following the day on which the decision of rejection is notified.

The provision contained in paragraph 4 shall apply to the period for notifying the decision of acceptance or rejection resulting from the check test or the expert appraisal.

#### 8. Extension of the period of execution

An extension of the period of execution may be granted to the successful tenderer where the check test or the expert appraisal is in his favour.

#### 9. Materials and supplies which have been accepted

Materials and supplies which have been accepted and which are on site may not be removed without the authorisation of the administration.

#### 10. 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.

Materials and supplies which have been rejected shall be removed by the successful tenderer from the sites, if

the administration so requires, within a period which it shall specify, failing which the administration shall effect their removal ex officio, at the expense and risk of the successful tenderer.

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

#### General measures

#### Article 102

#### Special situations

#### Article 101

##### 1. Suspension of works for climatic reasons

The administration may suspend execution of the works for a certain period, where it considers that they cannot be carried out without difficulty by reason of climatic conditions or the results thereof.

During the periods of suspension, the successful tenderer shall take, at his expense, all protective measures to safeguard works and materials.

The periods of suspension may in no case run consecutive to the periods of postponement provided for in Article 93.

##### 2. Discoveries while work is in progress

The administration reserves the right of ownership of materials found during the excavation and demolition work carried out on land belonging to it, subject to compensating the successful tenderer for any special efforts in this behalf.

Discoveries of any interest whatsoever made in these excavations or in this demolition work shall be brought immediately to the attention of the administration.

Objets d'art, antiques, natural history, numismatic, or other objects which are of scientific interest, and also rare objects or objects made of precious materials found in these excavations or in this demolition work shall be the property of the administration and shall be held at the disposal of the official responsible for directing execution of the contract or his representative.

In the event of dispute, the administration shall have sole authority to decide as to the characteristics set out in the second and third paragraphs.

##### 3. Overlapping contracts

Where other contracts must be carried out simultaneously on the same site or in the same building, the successful tenderer

shall comply with orders given to him by the official responsible for directing the execution of the contract, so as to enable the contracts to be carried out.

1. The successful tenderer shall comply with national rules, especially those governing building, highways, hygiene, and the protection of work.

The successful tenderer shall have the right to forbid any person not involved in the execution of the contract to have access to the site, with the exception, however, of persons authorised by the administration in accordance with Article 57.

He shall ensure that sites are policed as long as work is in progress, and shall be responsible for taking the necessary steps, both in the interests of his servants, agents of the administration, and third parties, to prevent any loss or accident which may result from carrying out the works. In particular, he shall see to it that the works and installations of his undertaking cause neither difficulties nor obstacles to traffic on roads, railways, waterways, aerodromes etc., other than those permitted by the specific clauses and conditions.

Any work which the administration indicates to the successful tenderer, or which appears of itself as being capable of causing damage or disturbance to a public utility service shall be the subject of a notice issued by the successful tenderer and lodged with the operating body, at least ten calendar days prior to the commencement of the works.

This obligation shall be laid upon the successful tenderer without prejudice to the application of the national rules governing telecommunications.

Where, in the course of carrying out the works, the successful tenderer encounters benchmarks indicating the course of underground conduits, he shall be required to keep such benchmarks in position or to replace them should execution of the works have necessitated their temporary removal.

2. The successful tenderer shall take all essential steps, at his responsibility, and at his expense, to ensure that existing structures and installations are protected, preserved and maintained; he shall also take all the precautions required by building practice and by the special circumstances to safeguard neighbouring properties and to avoid causing any disturbance therein.

Outline of works

Article 103

Before starting to carry out the works the successful tenderer shall produce an outline of the work and shall set up an adequate number of benchmarks to which the relative height of the various parts of the work must be exactly related. He shall have pegs, stakes, profile battens, etc., positioned wherever the administration shall judge it necessary.

When these operations are completed he shall inform the administration thereof in writing. The latter shall verify them without delay and, where necessary, shall rectify them in the presence of the successful tenderer or his representative.

The successful tenderer shall see to it that pegs, stakes, profile battens etc. remain in the position and at the height thus fixed; he shall be responsible, in any event, for the consequences which could result from their being moved or disturbed.

The successful tenderer shall place the pegs, lines, boards, stakes, set-squares, profile battens, water and spirit levels, levelling rods, chains, etc., at the disposal of the administration, on each occasion that it needs them, together with all the articles necessary to the operations which have to be carried out so that it may be ascertained that the works are being carried out in accordance with the approved plans and the conditions of the contract.

The administration may select from among the successful tenderer's staff, and with the latter's consent, the workmen most capable of assisting him in the operations in question. The successful tenderer shall bear the cost of the wages of these workmen.

Occupation of land or premises

Article 104

1. Use of land belonging to the administration

Apart from the actual building land, the successful tenderer shall himself procure the land he considers necessary for carrying out the works. If the administration proposes to provide him with such land, wholly or in part, this shall be stipulated in the specific clauses and conditions or in the contract plans.

The successful tenderer may not make use of land procured for him by the administration, without authorisation in writing.

2. Use of premises belonging to the administration

If premises are placed at his disposal for any use whatsoever, the successful tenderer shall be required to keep them

in a good state of preservation while he is in occupation and to restore them to their original state, on completion of the contract, if called upon to do so.

No payment may be claimed for improvements resulting from installation work carried out by the successful tenderer of his own accord, if the administration decides to retain them.

Materials obtained from demolition

Article 105

Where the contract includes demolition work, materials and articles obtained therefrom shall be the property of the successful tenderer subject to the provisions of Article 101 (2).

Should the specific clauses and conditions depart from this rule and reserve to the administration the right of ownership of materials or all or part of the articles obtained from the demolition work, the successful tenderer shall take all the necessary precautions to ensure that these are preserved. He shall be answerable for any destruction of or damage to such materials caused by him or his servants.

Irrespective of the intended use to which the administration intends to put the materials or articles, in respect of which it reserves the right of ownership, all costs incurred in storing them at the place indicated by the official responsible for directing the contract shall be borne by the successful tenderer for any carriage not exceeding 100 metres.

Where the specific clauses and conditions do not otherwise provide, the successful tenderer shall progressively remove rubble and other demolition materials, rubbish and debris in accordance with the instructions of the administration.

Provisional works and soil studies

Article 106

1. Provisional works

The successful tenderer shall carry out at his expense all the provisional works to enable the construction work to be carried out.

He shall submit the plans for such provisional works, such as coffer-dams, scaffolding, trusses, shuttering etc., which he intends to use, to the administration. He shall take account of any observations made to him, while assuming sole responsibility for these plans.

## 2. Soil studies

In accordance with the terms set out in the specific clauses and conditions, the successful tenderer shall hold at the disposal of the administration the personnel and equipment necessary for carrying out any soil survey which the administration shall judge necessary. He shall be compensated for the cost of the manpower and equipment used in this work.

### Staff of the undertaking

#### Article 107

The agents and workmen employed by the successful tenderer must be sufficient in number, and must each possess the necessary qualifications in his own field to ensure steady progress and satisfactory execution of the works. The successful tenderer shall immediately replace all persons indicated by the administration as capable of jeopardising satisfactory execution of the works.

The general bases of remuneration and the general working conditions as laid down in national provisions shall apply to personnel on the site of the undertaking.

In the event of delay being duly ascertained in the payment of wages and salaries and the allowances and contributions laid down in national provisions, the administration may, after giving notice to the successful tenderer, pay arrears of wages and salaries, allowances and contributions, ex officio, out of amounts due to the successful tenderer or, failing this, by making a deduction from the deposit, or obtaining a contribution from the joint guarantor.

Record of work - Daily statements of materials used and work done

#### Article 108

1. A record of work shall be kept on each building site by the representative of the administration who shall enter in it, in particular, the following information:

- (a) An indication of the atmospheric conditions, interruptions of work owing to inclement weather, hours of work, number and type of workmen employed on the site, materials supplied, equipment in use, equipment not in use, tents carried out in situ, samples dispatched, unforeseen circumstances, etc., as well as orders given to the successful tenderer which are purely occasional and of little importance;
- (b) Detailed daily statements of all the quantitative and qualitative elements of the work done and the supplies

effected, capable of inspection on the site and relevant in calculating the payments to be made to the successful tenderer.

The successful tenderer shall ensure that daily statements are drawn up, in good time and in accordance with the provisions of the specific clauses and conditions, in respect of work, services and supplies which could not be traced or verified subsequently; failing this, he must accept the decisions of the administration unless he provides evidence to the contrary, at his own expense.

These daily statements shall form an integral part of the record of work but they may, where appropriate, be recorded in separate documents.

2. Entries made in the record of work, as work progresses, shall be signed by the representative of the administration and countersigned by the successful tenderer or his representative.

The successful tenderer shall communicate his views to the administration by registered letter within fifteen calendar days of the date on which the entry of the statements objected to are recorded.

Should he fail to countersign or to submit his views within the period allowed, the successful tenderer shall be deemed to agree with the notes shown in the record.

The successful tenderer may examine the record of work at any time and may, without removing the document, make or receive a copy of entries which he considers necessary for his own information.

3. At the request of the representative of the administration, the successful tenderer shall provide him with the information needed to keep the record of work in good order.

## Insurance

#### Article 109

Within fifteen days following notification of the award of the contract, the successful tenderer shall take out insurance, to take effect from the actual commencement of the work, covering his liability with regard to accidents at work and civil liability in the event of accidents caused to third parties as a result of the works; he shall be obliged to furnish proof of regular payment of premiums each time he is required to do so.

Unforeseen work and modifications to the contract

#### Article 110

Where the administration, without changing the subject matter of the contract, considers it necessary to carry out

unforeseen work or to effect changes in the work to be done, the successful tenderer shall comply with the service orders he receives in this respect.

The price of such work shall be determined in accordance with Article 83.

Increase in the volume of work

Article 111

In the event of an increase in the volume of work required by the administration, the successful tenderer may not object if such increase, calculated on the basis of the original prices, does not exceed one fifth of the amount originally provided for in the contract unless the specific clauses and conditions otherwise provide. In that case, the successful tenderer may apply for an extension of the contractual period of execution, giving reasons for the duration of the period he requires.

Where the increase, calculated in the same manner, exceeds one fifth, the successful tenderer may, when the final detailed statement is drawn up, request compensation for any loss incurred by him as a result of the modifications to the original project. He shall also be entitled to an extension of the contractual period of execution.

Where this increase, calculated in the same way, exceeds one third, the successful tenderer shall be entitled to refuse to carry out any work over and above one third. In this case he shall inform the administration of his decision by registered letter within a period of two months of the service order stipulating that increase.

Reduction in the volume of work

Article 112

In the event of a reduction in the volume of work required by the administration, the successful tenderer may not object if such reduction, calculated on the basis of the original prices, does not exceed one fifth of the amount originally provided for in the contract unless the specific clauses and conditions otherwise provide.

Where the reduction, calculated in the same manner, exceeds one fifth, the successful tenderer may, when the final detailed statement is drawn up, request compensation for any loss incurred by him as a result of the modifications to the original project.

Where this reduction, calculated in the same manner, exceeds one third, the successful tenderer shall, within a period of two months of the service order stipulating such reduction, request compensation for the loss incurred by him as a result of the modifications to the original project. Where, within two months following the lodging of the request for compensation, no agreement can be reached with the administration as to the amount of the compensation, the successful tenderer shall be entitled to cancel the contract and to receive compensation for any loss caused by such cancellation.

Change in the quantities of the various items in the itemised estimate

Article 113

1. Without prejudice to the application of Articles 111 and 112, where the contract contains an itemised estimate showing, for each item, the quantities of the various works and the respective price for each of these items, and where the alterations required by the administration modify the quantities of certain of these works in such a way that the quantity shown for any item differs by more or less than one fifth, the successful tenderer may, when the final detailed statement is drawn up, request compensation for any loss incurred by him as a result of the modifications to the original project, in this respect.

2. Where the price list shows items with prices as token entries for which no quantity is indicated in the itemised estimate, the provision contained in paragraph 1 may not be invoked by the successful tenderer.

Article 114

1. Without prejudice to the application of Articles 111, 112 and 113, where, independently of any modification made by the administration to the contract, any volume of work actually carried out, which is covered by an item in the itemised estimate and which is provided with a separate unit price, exceeds four times the estimated volume or is less than one half of such volume, the administration or the successful tenderer may request revision of this price and/or the original time limits.

This revision shall be subject to it being shown that the estimated quantities have been modified in such a way that the price and/or the time limits no longer correspond with the new situation thus created.



In cases where the administration and the successful tenderer are unable to agree on the fixing of the new unit price, the administration shall determine this ex officio, without prejudice to any rights of the successful tenderer.

2. The provisions of paragraph 1 may also be invoked where, in the case of a particular item in the itemised estimate, the variation in the quantity of work carried out by comparison with the estimated quantity entails an upward or downward variation in excess of 20% of the volume calculated on the basis of the original prices.

#### Use of works by the administration

##### Article 115

Immediately after provisional acceptance, the administration may make use of all the works completed by the successful tenderer.

However, if the specific clauses and conditions so allow, the administration may make use of the various structures forming part of the contract as and when they are completed, on condition that an inventory is drawn up as appropriate.

The taking over of the work by the administration shall not count as provisional acceptance.

Once the administration has taken possession of a structure or a part thereof, the successful tenderer shall no longer be required to make good damage resulting from use.

#### Acceptance

##### Article 116

###### 1. Verification and testing

The works shall not be accepted until the prescribed verifications and tests have been carried out at the expense of the successful tenderer.

###### 2. Rejection of works

Works which do not satisfy the clauses and conditions of the contract or which are not carried out in accordance with the rules of the trade shall be demolished and rebuilt by the successful tenderer; otherwise this shall be done, at his expense, by order of the administration, ex officio, in one or other of the ways indicated in Article 121.

The administration may also require the demolition and reconstruction by the successful tenderer, under the same conditions as those laid down in the

preceding paragraph, of structures in which materials have been used which have not been accepted, or of those carried out in a period of suspension, as laid down in Article 101 (1).

###### 3. Provisional acceptance

The successful tenderer must advise the administration of completion of the works, by registered letter.

Within thirty calendar days of the date of receipt of the communication from the successful tenderer, or within a longer period if so provided in the specific clauses and conditions, the administration shall draw up for the successful tenderer a statement of provisional acceptance of the works or of rejection, and shall forward a copy thereof to the successful tenderer.

If this time limit is exceeded, and the delay is not attributable to the successful tenderer, the administration shall become liable to pay him compensation equal to 0.5% per week of delay on the amounts, payment of which is dependent upon provisional acceptance, up to a limit of 5% of the total of such sums.

However, the payment of this compensation shall be subject to submission by the successful tenderer of a request in writing within thirty calendar days from the date of provisional acceptance.

Works which are held subject to provisional acceptance shall, unless proof to the contrary is furnished, be deemed to have been so accepted on the completion date indicated by the successful tenderer in his registered letter.

###### 4. Final acceptance

Upon expiry of the guarantee period, the administration shall draw up, as soon as possible, and within a maximum of thirty days, a statement indicating its final acceptance of the works or its refusal to accept them and shall forward a copy to the successful tenderer.

In the case of a statement of rejection of the works, it shall be incumbent upon the successful tenderer to immediately give notice to the administration, by registered letter, that all the works of the undertaking are ready for final acceptance, and acceptance of the works shall take place within twenty calendar days from receipt of the registered letter.

###### 5. Clauses applicable in respect of both provisional and final acceptance

Verification of works with a view to provisional or final acceptance shall take place in the presence of the successful tenderer. The absence of the letter shall not be a bar to acceptance on condition that he has been summoned in due form by registered letter posted at least twenty calendar days prior to the date of acceptance.

Should one or several of the exceptional circumstances referred to in Article 90 make it impossible to ascertain the state of the works during the period of twenty days fixed for provisional or final acceptance, a statement certifying such impossibility shall be drawn up after summoning the successful tenderer. The statement of acceptance or rejection shall be drawn up within twenty calendar days from the date on which such impossibility ceases to exist.

The successful tenderer shall not be permitted to invoke these circumstances in order to avoid the obligation of presenting the works in a state suitable for acceptance.

The works shall not be regarded as completed until the successful tenderer has had removed any goods in storage, litter or change in the condition of the premises, resulting solely from the requirements for performing his contract.

### Section III

#### PULFILMENT OF THE CONTRACT

##### Responsibility of the successful tenderer

###### Article 117

Without prejudice to the guarantee obligation laid down in Article 92, the successful tenderer shall no longer be responsible, after provisional acceptance, for risks which may affect the works which are the subject of the contract and which result from causes not attributable to him.

However, the successful tenderer shall be responsible, as from the date of provisional acceptance, for the soundness of the structures, in accordance with the provisions of the national law.

##### Fraud and faulty workmanship

###### Article 118

If fraud or faulty workmanship is suspected, the successful tenderer may be required, either while work is in progress or after final acceptance, to demolish the works carried out and to rebuild them. The costs of such demolition and reconstruction shall be borne by the successful tenderer or the administration, according to whether the suspicion is confirmed or not.

##### Non-performance of contract by successful tenderer

###### Article 119

Non-performance of the contract by the successful tenderer occurs:

1. where the work is not carried out in accordance with the provisions of the contract;
2. where the work is not completed within the contractual period of execution, or where, at any time, it is not proceeded with, in any respect whatsoever, so as to be capable of being entirely completed within this period;
3. where the successful tenderer departs from written instructions given by the administration.

Non-performance of contract by the successful tenderer attributable to him

###### Article 120

Non-performance of the contract shall be established by means of an entry in the record of work.

This entry shall constitute formal notice to put an end to the failure to perform the contract.

Within fifteen days of the date of entry in the record of work, the successful tenderer shall be obliged to submit the grounds of his defence to the administration by registered letter. Silence on his part after this period shall be regarded as acknowledgement of the facts established.

The administration shall give a ruling on the defence submitted by the successful tenderer, without delay, and shall inform him of its decision by registered letter.

##### Sanctions for non-performance of contract attributable to successful tenderer

###### Article 121

If no ground for non-performance of the contract is accepted or furnished within the period laid down in Article 120, the successful tenderer shall be subject to one or more of the measures defined and governed by the following paragraphs:

1. Penalties
  - (a) Special penalties for specific failures in performing the contract;
  - (b) Penalty per calendar day for any form of non-performance of the contract which must be terminated immediately.

This penalty shall be applied as from the date on which non-performance of the contract has been established by an entry in the record of work in accordance with Article 120, up to and including the date on which such non-performance has been ended by the successful tenderer or by the administration;

(c) Penalties for delay where non-performance results from non-completion of the contract within the contractual time limits. Notwithstanding Article 120, these penalties shall be due without formal notice;

(d) General penalty for any form of non-performance of the contract other than those laid down under (a), (b) and (c).

The amount of and the detailed procedures relating to these penalties shall be stipulated in the specific clauses and conditions.

## 2. Ex officio measures

A decision of the administration relating to the application of ex officio measures shall be notified to the successful tenderer by registered letter.

These measures shall be as follows:

- (a) execution of all or part of the works under the supervision of the administration;
- (b) conclusion of a contract with a third party, to the account of the successful tenderer, after prior cancellation of the original contract.

In applying one or other of these measures, the administration shall make any necessary arrangements to ensure the protection or satisfactory execution of the works.

After the successful tenderer has been summoned by registered letter, the works shall be checked, an inventory of plant and materials shall be drawn up, and a statement of the wages and salaries due and the amounts owed by the successful tenderer to the administration shall be made out.

In the event of supervision by the administration, and while that procedure applies, the successful tenderer shall be authorised to observe the operations without, however, being able to interfere with the execution of instructions given by the administration. Supervision by the administration may be terminated if he furnishes proof of the necessary means to resume the work and to bring it to a satisfactory conclusion.

Additional expenses resulting from supervision by the administration or from the new contract shall be borne by the successful tenderer.

If supervision by the administration or the new contract results in a reduction in the expenses, the successful tenderer may not claim any part of the profit thus derived, which shall be the property of the administration;

- (c) cancellation of all or part of the contract, decided against the successful tenderer;
- (d) temporary or permanent exclusion from the award of contracts.

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

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

- (a) a single failure to perform the contract may only give rise to the application of a single penalty;
- (b) supervision by the administration may be combined with penalties for delay and with exclusion;
- (c) a contract to the account of the successful tenderer may be combined with exclusion;
- (d) cancellation decided against the successful tenderer may be combined with exclusion and penalties for delay relating to the period prior to the date of cancellation;
- (e) exclusion may be combined with any measures by the administration.

## Collection of penalties

### Article 122

Collection of penalties and collection of amounts relating to damages, disturbances or expenses resulting from the application of the measures provided for in subparagraph 2 of Article 121 shall be effected by deduction from the sums due to the successful tenderer out of the deposits, or by contribution of the joint guarantor.

## CHAPTER III

### CLAUSES RELATING SPECIALLY TO SUPPLIES CONTRACTS

#### Section 1

### PRELIMINARY PROVISIONS

Elements included in the prices of all supplies contracts

#### Article 123

1. Subject to any special conditions for which provision may be made in the specific clauses and conditions, the successful tenderer shall be deemed to have included in his prices all costs charged on supplies, in particular:

- (a) The costs of transport and insurance;
- (b) The costs of packing, transhipment, unloading, transit, unpacking and making available at the place of delivery.

The packing materials shall be the property of the administration in the absence of indications to the contrary in the specific clauses and conditions;

- (c) The cost of documents relating to the supplies where such documents are required by the administration.
2. The successful tenderer shall be responsible for the assembly of the supplies and for putting them into working order where the specific clauses and conditions so provide.

Verification by successful tenderer of technical documents made available to him

#### Article 124

The successful tenderer shall be obliged to verify the technical documents submitted to him by the administration and to give notice, without delay, of errors, omissions or contradictions which these documents may contain, and which are evident to a specialist. Adjustments to prices and time limits which may result therefrom shall be negotiated in accordance with Article 128.

Address for service of the successful tenderer and representation

#### Article 125

The administration shall send all notifications relating to the contract to the address for service given by the successful tenderer for this purpose in his tender.

Where the person concerned has changed this address without advising the administration thereof, all notifications relating to the contract shall be validly made to the address designated for this purpose in the specific clauses and conditions.

Furthermore, the specific clauses and conditions may provide that the successful tenderer shall be required to give an address for service within a specific period, or to establish a representative in a place designated for this purpose.

Where the successful tenderer does not fulfil this obligation within the time limit laid down, all notifications relating to the contract made to the address shown in the specific clauses and conditions shall be valid.

#### Overlapping contracts

#### Article 126

Where the successful tenderer is the holder of several contracts relating to like supplies, the deliveries which he makes shall be ascribed to one or other of the

contracts in the order in which delivery dates fall due.

Where the successful tenderer is the holder of a contract for several like lots but at different prices, the deliveries shall be paid for at the average price.

#### Section II

#### EXECUTION OF CONTRACTS

#### Identifications

#### Article 127

The specific clauses and conditions may require that the articles and supplies, where possible, shall bear the selected tenderer's mark on a specified place.

Technical modifications during execution of contract

#### Article 128

During execution of the contract, the administration may require the selected tenderer to carry out modifications of a technical nature to the extent that these are compatible with the technical capacity of his undertaking, or accept modifications proposed by him.

The selected tenderer must provide a detailed estimate, if so requested by the administration, within the time limit prescribed for this purpose, showing the increase or decrease in price, and the alterations to the period of execution for which provision is to be made.

Without prejudice to the provisions of Article 71, the administration shall notify its decision by service order, by registered mail.

#### Tests and check tests

#### Article 129

#### 1. Tests

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

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

In the case of verification at the factory as provided for under (a), the test samples or parts to be tested, ready for testing, shall be made available to the representative of the administration within five calendar days of being marked. The tests shall be carried out in the presence of this representative; the successful tenderer shall bear the costs 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 by the representative of the administration, they shall be sent by the successful tenderer, free of charge, to the laboratory responsible for the tests, under the supervision of the representative of the administration. The administration 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 must be carried out by the successful tenderer in the manufacturer's factories. The residue of test samples, broken parts and surplus samples shall remain the property of the administration. The successful tenderer may be present when the tests are carried out in one of the administration's laboratories or in a laboratory approved by the administration.

In any case, 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 successful tenderer, at his expense.

The extent to which the tests may involve such destruction shall be indicated in the specific clauses and conditions.

#### 2. Test period

The period which extends from the date of dispatch to the date of arrival in the establishment responsible for testing shall not be included in the period laid down in the specific clauses and conditions for notifying the successful tenderer 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 successful tenderer's factory; the successful tenderer shall place the weighing instruments at the disposal of the administration, free of charge, in accordance with Article 61.

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

#### 4. Check test

In the event of an objection by one or other party to the result 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 administration.

If the objection concerns an element which is incapable of perfect evaluation, each of the parties shall be entitled to request an expert appraisal. The expert shall be selected by common consent. The expert appraisal shall be held at a place nominated by the expert and approved by the administration.

The report drawn up by the laboratory or by the expert shall be submitted to the administration, which shall communicate it, without delay, to the successful tenderer, by registered mail.

The results of the check test or the expert appraisal shall be conclusive.

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

#### 5. Period for check tests

Under pain of preclusion, the successful tenderer shall address the request for a check test or an expert appraisal to the administration by registered letter not later than the fifteenth calendar day following the day on which the decision of rejection is notified.

The provision contained in paragraph 2 shall apply to the period for notifying the decision of acceptance or rejection resulting from the check test or the expert appraisal.

#### 6. Extension of the period of execution

An extension of the period of execution may be granted to the successful tenderer where the check test or the expert appraisal 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 supplier, nor may it modify their commercial value.

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

## Delivery

### Article 130

The supplies shall be delivered to the place, within the time limits and in accordance with the conditions stipulated in the contract.

Each delivery must be accompanied by a statement drawn up by the successful tenderer. This statement, the form of which may be prescribed by the administration, shall contain, in particular:

- the date of delivery,
- the reference of the contract,
- the identification of the successful tenderer,
- the identification 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 successful tenderer.

Where the supplies are delivered to an establishment of the administration, the latter shall bear the responsibility of depositary during the time which elapses between their being delivered for storage and acceptance.

## Section III

### FULFILMENT OF CONTRACTS

#### ACCEPTANCE

##### Verification operations

### Article 131

1. The supplies presented by the successful tenderer shall be subjected to qualitative and quantitative verifications intended to establish that they satisfy the contract specifications.
2. The specific articles and 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 administration for effecting the verifications and notifying its decision.
3. This period shall begin on the first

working day following the date of delivery on condition that the administration is in possession of the statement provided for in Article 130.

Unless the specific clauses and conditions provide otherwise, the length of this period shall be twenty days.

4. The authority responsible for verifications shall advise the successful tenderer, 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 absence of the successful tenderer or his representative shall not prevent the verifications being carried out.

Postponements, price reduction penalties, rejections

### Article 132

1. Where the authority responsible for the verifications considers that the supplies could be accepted if certain adjustments were carried out, it shall declare a postponement and shall invite the successful tenderer to present them again within a specific period after having carried out these adjustments. Where the contract does not specifically provide otherwise, the administration must be informed of the acceptance of the successful tenderer within a period of fifteen days of notification of the postponement decision.

In the event of refusal or silence on the part of the successful tenderer 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.

The work of adjusting postponed supplies may only be carried out inside the establishments of the administration with the special authorisation of the latter and at the successful tenderer's expense.

Except in special cases which shall be decided upon by the administration, no supply 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 seem to be usable in their existing state may be accepted subject to price reduction penalties 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 localised blemishes.

The administration shall inform the successful tenderer of the price reduction penalties which it proposes to apply.

The administration must be informed of any objection of the successful tenderer within fifteen days of notification of the proposed price reduction penalty. At the end of that period, the administration shall make a decision. If the successful tenderer does not accept this decision, the supply shall be rejected.

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

- where the supply is urgently required,
- where, because of their nature, supplies could not be stored separately in the administration'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 administration shall notify the successful tenderer of its intention to reject them.

The administration must be informed of any objection of the successful tenderer within fifteen days of notification of the proposed price reduction penalty. At the end of that period, the administration shall make a decision.

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

4. If postponement is granted in respect of the supplies, the whole of the period laid down for effecting the verifications shall be available to the administration, from the date on which the supplies are again presented by the successful tenderer. The same shall apply in the event of rejection, where the administration has authorised the successful tenderer to present new supplies.

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

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

Marking and removal of postponed or rejected supplies

#### Article 133

1. The specific clauses and conditions may stipulate that materials or articles which

have been postponed or finally rejected will be marked with a special sign by the administration and that, where appropriate, rejects will be denatured or destroyed.

2. The handling and transport costs which may result from the postponement or rejection of supplies shall be borne by the successful tenderer.

3. Should the verification operations have been carried out in the administration's warehouses, the decision to reject the supplies shall stipulate a time limit for their removal, if the specific clauses and conditions have not already done so.

4. On expiry of that time limit, the administration is relieved of its responsibility as depositary, and may:

- either send back the supplies in question, ex officio, at the expense and risk of the successful tenderer, 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 successful tenderer unless they should serve to pay off debts which he may be found liable to pay to the administration under the contract.

#### Acceptance

#### Article 134

1. At the end of the verifications, where the supplies satisfy the contract specifications, or on the date of the decision to apply a price reduction penalty, where they are accepted solely on that condition, the administration shall draw up a statement of acceptance by which transfer of ownership is effected and shall forward a copy thereof to the successful tenderer.

2. Where the specific clauses and conditions of the contract 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 administration shall draw up a final statement of acceptance and shall forward a copy thereof to the successful tenderer. The final acceptance may be implicit 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 90 make it impossible to carry out the verifications laid down in paragraph 1, a statement shall be drawn up establishing such impossibility, after summoning the successful tenderer or his representative. The statement of acceptance or rejection shall be drawn up once this impossibility ceases.

Non-performance of contract by  
successful tenderer

Article 135

Non-performance of the contract by the  
successful tenderer occurs:

1. where the supplies are not carried out in accordance with the provisions of the contract;
2. where the supplies are not delivered within the contractual period of execution, or where, at any time, they are not proceeded with, in any respect whatsoever, so as to be capable of being entirely completed within this period;
3. where the successful tenderer departs from written instructions given by the administration.

Sanctions for non-performance of  
contract attributable to  
successful tenderer

Article 136

1. Penalties for delay

The successful tenderer shall without formal notice, be liable for penalties for late deliveries solely by the fact of the expiry of the period of execution.

The amount of and the detailed procedures relating to these penalties shall be stipulated in the specific clauses and conditions.

2. Ex officio measures

Where the administration decides to apply to the successful tenderer one or more of the ex officio measures listed below, 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 successful tenderer may present any objections, by registered letter, within fifteen days from the date of receipt of the formal notice. Upon expiry of a period of twenty five days from receipt of such formal notice, the administration shall inform the successful tenderer of its decision by registered letter.

The ex officio measures shall be as follows:

- (a) cancellation of all or part of the contract, decided against the successful tenderer;
- (b) execution of the supplies outstanding under supervision by the administration up to the quantities not delivered, or solely a part thereof;

- (c) conclusion of a contract with a third party, to the account of the successful tenderer, for all or part of the supplies still to be delivered, after prior cancellation of the original contract.

The successful tenderer may no longer take part in the execution of that part of the contract covered by the ex officio measure, once this has been notified.

If it is not possible for the administration to obtain raw materials or articles which correspond exactly with those delivered and laid down in the specific clauses and conditions, under conditions which are appropriate to its needs, it may substitute equivalent materials or articles.

Additional expenses resulting from supervision by the administration or from the new contract shall be borne by the successful tenderer;

- (d) temporary or permanent exclusion from contract.

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

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

- (a) supervision by the administration may be combined with penalties for delay and with exclusion;
- (b) a contract to the account of the successful tenderer may be combined with exclusion;
- (c) cancellation decided against the successful tenderer may be combined with exclusion and penalties for delay relating to the period prior to the date of cancellation;
- (d) exclusion may be combined with any other sanctions.

Collection of penalties

Article 137

Collection of penalties and collection of amounts relating to damages, disbursements or expenses resulting from the application of the measures provided for in subparagraph 2 of Article 136 shall be effected by deduction from the sums due to the successful tenderer out of the deposit, or by contribution of the joint guarantor.



Declaration relating to Article 5 of the general clauses and conditions of public works and supplies contracts financed by the European Development Fund

"The word "may" used in paragraphs 3 and 4 of Article 5 means that the provisions of these two paragraphs will only apply to the European Development Fund referred to in Article 8 of the Convention of Association between the European Economic Community and the African and Malagasy States associated with that Community, signed on 29 July 1969."

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RULES OF PROCEDURE  
OF THE EEC-AAMS CUSTOMS CO-OPERATION COMMITTEE (1)

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Article 1

The Customs Co-operation Committee shall be convened by its Chairman on the proposal of the Association Committee or at the request of either the Community or the Associated African and Malagasy States.

Article 2

1. The Chairman shall draw up the agenda for each meeting. The agenda shall include all matters of which discussion has been requested in writing.
2. The provisional agenda shall be communicated to the Chairman of the Association Committee and to the members of the Customs Co-operation Committee at least 21 days before the date of the meeting.
3. The agenda shall be adopted by the Customs Co-operation Committee at the beginning of each meeting.

(1) Adopted by the Association Committee at its 33rd meeting, on 22 October 1971.

Article 3

The agenda and working documents shall be drawn up in the Dutch, French, German and Italian languages.

Article 4

Summary minutes shall be drawn up for each meeting. A copy of the minutes shall be communicated to the Chairman of the Association Committee and to the members of the Customs Co-operation Committee.

Article 5

All communications concerning the Customs Co-operation Committee shall be addressed to the Chairman of the Committee, care of the Secretariat of the Committee.

All communications to the members of the Committee shall be addressed, in respect of the Community, to the Permanent Delegations of the Member States and to the Commission, and in respect of the Associated States, to their Representatives to the Community.

At the request of a Member State or an Associated State, a copy shall be sent directly to the customs experts designated for the purpose by such State.

Article 6

The Secretariat of the Customs Co-operation Committee shall be provided in accordance with the conditions laid down in Article 17 of the Rules of Procedure of the Association Council.

Article 7

The work of the Committee shall remain confidential.

The Committee shall report regularly on all its work to the Association Committee.

Done at Brussels, on 22 October 1971

The Chairman of the Association Committee

A. SISSOKO





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