



AID 012590/01/5

SPECIAL CONDITIONS

1. Contents

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

Article 2 Language of the contract

2.1 The language used shall be English.

Article 4 Communications

4.1 All communications should be addressed to:

Chiara Spicciarelli - ECOS Project coordinator

Centro per un Appropriato Sviluppo Tecnologico
Seahorse Raod (next to Lees)

PoBox 561

80108 Kilifi

Email: kilifi@cast-ong.org

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ECOS AID 012590/01/5

Article 6 Subcontracting

Subcontracting is not allowed under this Framework Contract.

Article 7 Supply of documents

Not Applicable.

Article 8 Assistance with local regulations

Not Applicable.

Article 9 General obligations

Not Applicable.

Article 10 Origin

10.1 All goods purchased can originate in any country.

Article 11 Performance guarantee

11.1 No performance guarantee is required.

Article 12 Liabilities and insurance

12.1(a) By way of derogation from Article 12.1(a), paragraph 2, of the general conditions, compensation for damage to the supplies resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to not less than the value of the goods supplies.

12.2(a) The contractor shall ensure that itself, its personnel, its subcontractors and any person for which the contractor is answerable, are adequately insured with insurance companies legally recognized in the Republic of Kenya.

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

- **DDP - Delivered Duty Paid:** Incoterm which imposes on the seller maximum obligations vis-à-vis transportation and loss risks and damage associated with the goods:
*'the seller delivers the goods when the goods are placed at the disposal of the buyer, cleared for import on the arriving means of transport ready for unloading at the named place of destination. The seller bears all the costs and risks involved in bringing the goods to the place of destination and has an obligation to clear the goods not only for export but also for import, to pay any duty for both export and import and to carry out all customs formalities.'*¹
The transfer of risks and costs occurs at the place of unloading of the goods at the agreed place of destination.
- **DAP - Delivered At Place:** Incoterm whereby the buyer bears all risks and costs of import clearance:
*'the seller delivers when the goods are placed at the disposal of the buyer on the arriving means of transport ready for unloading at the named place of destination. The seller bears all risks involved in bringing the goods to the named place'*², including customs clearance for export, but not for import at the port or at the border of the agreed place of destination.

Article 13 Programme of implementation of tasks

13.2 Not Applicable.

Article 14 Contractor's drawings

¹ See <http://www.iccwbo.org/incoterms/>

² Idem.

14.1 Not Applicable.

Article 15 Sufficiency of tender prices

15.1 No additional provisions regarding Article 15 of the general conditions are required.

Article 16 Tax and customs arrangements

16.1 The terms and conditions for delivery shall be defined on a needs-based request and the Incoterm applicable shall be DDP¹ when not otherwise specified by the Contracting Authority.

The applicable tax and customs arrangements are the following:

Tax, custom and any obligation stated by the Republic of Kenya laws and regulations.

Article 17 Patents and licences

17.1 Not Applicable.

Article 18 Commencement order

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

Article 19 Period of implementation of the tasks

19.1 This Framework contract will be valid for 29 months, with possibility of extension up to 48 months from the day which the last of the two parties signs the contract. The Contracting Authority will be issuing Order Forms upon requests for quotations based on the project needs.

Article 24 Quality of supplies

24.2 Not Applicable.

Article 25 Inspection and testing

25.2 Not Applicable.

Article 26 General principles for payments

26.1 Payments shall be made in Kenyan Shillings [KES]. Payments at 100% shall be made upon submission of invoices to the contracting authority by the supplier. The invoices shall be against deliveries as per order forms(s) issued.

Pre-financing is not applicable to this Framework contract.

¹ DDP (Delivered Duty Paid) or DAP (Delivered At Place) - Incoterms 2020 International Chamber of Commerce - <http://www.iccwbo.org/incoterms/>

Payments shall be authorised and made by ECOS Project Coordinator or expressly authorised staff through bank transfer.

In order to obtain payment, the Contractor must entitle the payment requests in the name of CAST – Centro per un Appropriato Sviluppo Tecnologico.

In addition to the Publication Reference, it is mandatory to include in any invoice/ payment request the following writing:

“ECOS AID 012590/01/5”

26.3 The final payment to the contractor of the amounts due shall be made within 90 days following provisional acceptance of the goods, after receipt by the contracting authority of an admissible invoice.

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

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

26.9 Under this Framework Contract prices indicated in the financial offer shall be fixed and not subject to revision for implementation during the first 12 months of the duration of the contract.

From the beginning of the 13th month of this framework contract period, prices indicated by the contractor in the financial offer, 80% of each price may be revised upwards or downwards of maximum 20% each year, where such revision is requested by one of the contracting parties in written form no later than three (3) months of the anniversary of the date in which was signed.

The contracting authority shall purchase on the basis of the prices in force on the date on which the Order Forms are submitted. Such prices shall not be subject to revision.

Article 28 Delayed payments

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

Article 29 Delivery

29.3 The packaging shall become the property of the recipient subject to environmental considerations.

29.5/6/7 Delivery needs to be accompanied by usual documents and manuals foreseen by the manufacturing firms (if applicable).

Every document accompanying the deliveries must contain, in addition to the Publication Reference CAST/KLF/ECOS-01102024, the following writing: **“ECOS AID 012590/01/5”**

Article 31 Provisional acceptance

The certificate of provisional acceptance must be issued using the template in Annex C11.

Article 32 Warranty obligations

- 32.7 The warranty must remain valid for one (1) year after provisional acceptance.

Article 33 After-sales service

- 33.1 Not applicable.

Article 40 Settlement of disputes

- 40.4 Any disputes arising out of or relating to this contract which cannot be settled otherwise shall be referred for arbitration to in accordance with the rules of arbitration of Nairobi Centre for International Arbitration.

Article 44 Data protection

- 44.1 Processing of personal data related to the implementation of the contract by the contracting authority takes place in accordance with the national legislation of the state of the contracting authority and with the provisions of the respective financing agreement.
- 44.2 To the extent that the contract covers an action financed by the Italian Agency for Development Cooperation (AICS), the Contracting Authority may share communications related to the implementation of the contract, with AICS. These exchanges shall be made to the contracting authority, solely for the purpose of allowing the latter to exercise its rights and obligations under the applicable legislative framework and under the financing agreement with the contracting authority. The exchanges may involve transfers of personal data (such as names, contact details, signatures and CVs) of natural persons involved in the implementation of the contract (such as contractors, personnel, experts, trainees, subcontractors, insurers, guarantors, auditors and legal counsel). In cases where the contractor is processing personal data in the context of the implementation of the contract, he/she shall accordingly inform the data subjects of the possible transmission of their data to AICS. When personal data is transmitted to the Commission, the latter processes them in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC¹ and as detailed in the specific privacy statement published at ePRAG.

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