

Istanbul Metropolitan Municipality-Dept. of Transportation



Conditions of Contract General Conditions

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1. Parties of the contract

- 1.1. "Owner" means the person(s) named as Owner in the Contract Agreement and the legal successors in title to this person(s); the Owner will give to the Contractor access and possession of parts or the whole site, within the time stated in Particular Conditions or, if not stated, at the Commencement Date; this right might be not exclusive. If the Owner fails to comply with the terms of access and possession, any delay or cost will be notified from the Contractor in order to be entitled of extension of time and an extra payment to be added to the contract price; after this notification, the Owner has to evaluate those matters and determine a reimbursement; however, if Owners failure was due to a Contractor's mistake, no extra time or extra money will be approved and added to the contractual terms. Owner has to assist the Contractor for Country's Law relevant to the Contract but not available, and for any permits or license related with any production process.
- 1.2. "Contractor" means the person(s) named as Owner in the Contract Agreement and the legal successors in title to this person(s); Contractor will design, execute and complete the works, and remedy any defect, in accordance with the contract, as to delivery works that are fitted for the purposes stated in the contract, including any work necessary for safe and proper operation; Contractor, notifying details of operations to the Owner, might use every method to deliver a structure that fit the purpose of the contract, being responsible for adequacy, stability and safety of all site operations.
- 1.3. "Subcontractor" means any entity or the legal successor appointed as a subcontractor for a part of the Works; Contractor cannot sub-contract the whole project, and will always be responsible for any act of any Subcontractor, as if he did the very same act; Contractor must notify to the Owner at last 28 days before the appointment of a Subcontractor, with relevant experience in the field, the commencement of Subcontractor's work and of his activity of Site. Contractor might receive instruction from the Owner in order to hire a suggested Subcontractor, but, the Contractor has any obligations, so if he raises reasonable objection by notice to the Owner as soon as practicable, with supporting particulars, he can cover the function or appoint another Subcontractor, under the known procedure.
- 1.4. "DAB" means the Dispute Adjudication Board, that is one person or three persons appointed in the Contract. Parties will jointly appoint a DAB, which will be in charge for a dispute that did not have a consensual final decision, by the date 28 days after a Party gives notice to the other Party of its intention to refer a dispute to a DAB; it will be constituted by one qualified person, or three, called the members, if parties do not agree on just one; in the last scenario, each Party will nominate one member for the approval of the other Party, and then consult those members and agreed upon the third member, who will be appointed as chairman of the DAB. Terms of remuneration will be discussed and mutually approved by Parties, that will both pay half of this remuneration; furthermore they can replace one of the members, if so agreed, at any time, but they do not have power to terminate any of the member by a unilateral decision; DAB will expire when it has given its decision about the dispute. If : Parties fail to agree upon one sole member, the nomination of the first two members is reciprocally not approved, appoint of the third member (who would act as a chairman) does not end in agreement, Parties fail to appoint a replacement person within 42 days, then the entity named in the Particular Conditions will appoint this member; the appointment from this entity will be final and conclusive. Parties might refer the dispute in writing to the DAB for its decision, with a copy to the other Party, and they have to make available to the DAB all information and access to the Site as the DAB may require for the purposes of making a decision on such dispute; within 84 days after the chairman received the notification of such a dispute, DAB will communicate its decision, but if Parties did not pay in full DAB invoices for that dispute, the decision will not be communicated. If and when communicated, the decision will be binding for both Parties and be effective as soon as

possible; if both Parties are not satisfied with the decision taken, they have to reciprocally notify their dissatisfaction within 28 days; if they did not respect this timeframe, DAB's decision will become effective and binding for both. If a decision about a dispute does not become effective and binding for those issues, then it will be settled by an international arbitration, in the language chosen in the contract, under the Rules of Arbitration of the International Chamber of Commerce; arbitrator(s) will have full power to check and revise any documents produced from Parties or DAB. Arbitration can take place before or after the end of the works, and neither Party will be limited in the execution of their activities until the DAB's decision; obligations of the Parties and the DAB do not have to be altered by reason of any arbitration during the execution of the Works. If the DAB's decision has become final and binding and one Party fails to comply with instructions given, the other Party can refer the failure to the International Arbitrator; if a dispute arises regarding the execution of the works and there is no DAB in place or its appointment is expired, then the dispute might be referred directly to the International Arbitrator.

2. Representatives of the parties.

- 2.1. Contractor might appoint the Contractor's Representative, giving him full power to cover any position, after the submission and approval of the Owner; revocation will work as the delegation, so that Contractor will remove it just after Owner's approval; Contractor's Representative might delegate powers to competent persons, appointing or revoking this party always after Owner's approval; any Representative will speak in the language chosen.
- 2.2. Owner is entitled to appoint an Owner's Representative that will act on his behalf, under Contract limitations; he must notify to the Contractor any relevant information, such as name, address, duties and authority; Owner's Representative will have full authority, unless and until notified the Contractor otherwise; in case of replacement, the Contractor will have 14 days to update relevant information. Owner or his Representative might delegate and revoke duties and authority to any assistants for any kind of position; they have to be qualified persons able to communicate in the language chosen; revoke has effect from the moment in which Contractor receives the notification. All delegated persons are authorized to issue instructions (that must be notified in writing and specify every part of the contract it is related with) to the Contractor just for the purpose(s) they have been appointed, and all their related actions have the same effect of an Owner's act; the Contractor has still the right to have clarification about any instruction received from a delegated person from the Owner, who has to confirm, vary or call off the instruction. In such an occasion, Parties have to reach an agreement of the questioned matter or, if an agreement is not achieved, Owner has to make a fair determination in accordance with the Contract, notifying the decision to the Contractor with any relevant particulars; if Contractor is still not satisfied regarding the arrangement chosen, then it is required a decision of the Dispute Adjudication Board (DAB).

3. Object of the contract

- 3.1. The object of the Contract is the installation of a Swing Bridge, by Owner from Contractor. For those purposes,
- 3.2. Contractor shall perform the necessary Works for the installation of the Swing Bridge in accordance with the Contract Specifications until Acceptance has been achieved,
- 3.3. Owner shall perform any such obligation as set forth in the Agreement, and
- 3.4. Owner shall purchase the Swing Bridge, upon Acceptance.
- 3.5. The Contract Specifications are described in the Owner's Tender and in any other document accepted as part of the Agreement by the parties. The Contract Specifications are part of the Agreement.

4. Duties, Right and Standard of the Contract.

- 4.1. The Owner, his Representative or any assistant appointed under the instructions stated in the contract, might give instruction to the Contractor in order to execute the works; all the instructions have to be written, pointing out any Sub-clause or part of the contract related to; if any of them constitute a variation, it must comply with Variations and Adjustments clause.
- 4.2. Contractor will allow Owner, his personnel, any other contractor or any public authority, opportunities to execute any works or checks not included or stated in the contract: this will constitute an issue to be regulated under Variations and Adjustments clause, and will be analyzed for a Cost evaluation purposes, if it was not a foreseeable issue by the date for submission of the Tender; Contractor might have to offer services for these operations, as well as equipment, and will be responsible for the coordination of any activity on Site with other Contractors.
- 4.3. Contractor must execute works respecting original data, schemes, drawings, rectifying any previous level as soon as practicable and notifying it to the Owner; works have to be carried out under safety and environment regulations, avoiding any unnecessary obstruction, providing fencing, lighting, guarding and surveillance of the Works until Owner's Taking Over.
- 4.4. Quality has to be proved in a systematic way and has to demonstrate compliance with requirements in the contract; details of each procedure have to be submitted to Owner before each stage of design and execution respectively; Owner might audit any aspect of this system; Any document of a technical nature issued from Contractor has to demonstrate prior Owner's approval.
- 4.5. Contractor must receive any necessary information which may influence or affect works, because, by signing the Contract, he accepts total responsibility for having foreseen all difficulties and costs for a successful execution of all the Works, and any unforeseen difficulties of costs will not be taken into account in order to adjust the Contract Price.
- 4.6. Contractor will bear all expenses and charges for special or temporary rights-of-way, including those related with Site access, as well as for any additional structure outside the Site which he require for the execution of the Works; he will not interfere unnecessarily or improperly with public areas or areas under possession of the Owner or of others, paying for any of those unnecessary interferences.
- 4.7. Access routes have to be retained enough suitable for the Contractor, who have to prevent any damage to all access routes to the Site from its own traffic and personnel; maintain them in a proper condition with necessary sign or directions: obtain any permission required by authorities; be responsible for any claims which may arise from their use.
- 4.8. Contractor will notify not less than 21 days the delivery to the Site of any plant or major item; be responsible for the whole process of delivery (packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works); be the sole responsible for any damages, losses and expenses resulting from any transportation activities.
- 4.9. Equipment will be under Contractor's responsibility, and it has to be exclusively intended for the execution of the Works; Owner's equipment who is operated or controlled by Contractor will be under his responsibility, and its use will be paid to the Owner.
- 4.10. Contractor will adopt any reasonable steps to protect the environment on and off the Site, avoiding as much as possible any damage and nuisance to people and property due

pollution, noise and other results of his operations; values prescribed by Owner's requirements or Law will not be exceeded.

- 4.11. Contractor will autonomously be responsible for its needs of power, water and any other services required, except that supply of electricity, water, gas and other services, if already available on the Site; details and prices are given in the Owner's Requirements, but Contractor has to be responsible for any apparatus necessary for the use and measurement of those services; the overall amount will be determined and paid to the Owner.
- 4.12. Owner might supply, with any fees, Free-Issue Material, if it is stated in Owner's requirements, providing, at his risk and cost, these materials, in a specific place and time; then Contractor, after a visual inspection, will notify any shortage or defect, who will be rectified by Owner; after material is approved, Contractor will become responsible, and care, custody and control will not affect Owner's liability.
- 4.13. Contractor must prepare monthly progress reports and submit them to the Owner in six copies, covering period up to the end of the first calendar month following the Commencement Date; they will be then submitted monthly, until the completion of works as per the Taking-Over Certificate, each within 7 days after the last day of the period to which it relates. They will include descriptions of progress, including each stage of design, Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection, testing, commissioning and trial operation; photographs showing progress on the Site; details of the manufacturer (name, location, percentage progress, actual or expected dates of inspections, test and shipment); comparisons of actual and planned progress, with any events which might affect completion's conditions as agreed in the contract, forecasting them.
- 4.14. Contractor will be responsible for keeping unauthorized persons off the Site, authorizing just Contractor's Personnel and Owner's Personnel, or any other personnel notified to the Contractor, by (or on behalf of) the Owner.
- 4.15. Contractor will confine his operations to the Site, requesting authorization to Owner for any additional areas; Contractor will keep free all roads, ramps and access during works, clearing or removing any rubbish or Temporary works not longer required; after the Taking-Over Certificate, Contractor will clear surplus of materials, rubbish or Temporary works, leaving the Site in a clean and safe condition, retaining at most goods required to fulfill obligations during the Defects Notification Period.
- 4.16. Owner will be responsible for any fossils, articles of value or antiquity found on Site, but Contractor has to take reasonable precautions in order to avoid any damages or removal or any item with geological or archeological interest; in the case of discovery of those items, Contractor will promptly give notification to the Owner, who will deal with the issue; any delay due to those discoveries will give the Contractor the right to issue a claim for extension of time and payment of any cost incurred, that will be added to the Contract Price; as per Contract, Owner will proceed with Determinations in order to agree or determine if those variations have to be recognized.

5. Design Requirements.

- 5.1. Contractor, prior to the Base Date, has to analyze all the data made available by the Owner, including design criteria and calculations, and making further inspections: after this analysis he will be the sole responsible for the Design of the works and has to respect every requirement of the contract; Owner is responsible just for the correctness of specific elements among all the Owner's Requirements, such as portions, data and information which are stated in the Contract as being immutable or the responsibility of the Owner;

definition of the purpose of the project; criteria for and performance of the completed Works; portions, data and information which cannot be verified by the Contractor; for any other issues he will not be responsible for any error or inaccuracy.

- 5.2. Contractor has to provide all the technical documents specified in the Owner's Requirements, in order to satisfy all regulatory approvals, and as well as for As-Built Documents and Operation and Maintenance Manuals, including any manual for personnel; Owner will review all the documents within the review period (that generally is less than 21 days from the day in which Owner receives them together with the Contractor's notice), notifying any failure with instructions to Contractor, so that the last one can review, modify and re-submit them, at Contractor's cost; works will not commence prior to the approval of Owner or of the expiry date, and have to comply with all those documents and any related Law in the Country; all the documentation has to be written in the communication's language.
- 5.3. Design and related documents, as well as for the execution of works, have to comply with Country's technical standards and any other standards specified in the Owner's Requirements, applicable to the Works; all those specifications will prevail when works or any section will be subject to Owner's Taking Over clause; any variation in the law must be communicated to Owner , and then proceed with prescriptions in Variations and Adjustments clause.
- 5.4. Contractor will train Owner's Personnel for operation and maintenance of the Works, and, if the training has to be done before taking-over, works will not be considered completed for the purposes of Taking Over of the Works and Sections, until training has being completed.
- 5.5. Contractor will prepare and keep up-to-date a set of "as-built" records of the whole execution of the works, showing locations, sizes and details of the work as executed; records must be kept on Site, sending two copies to Owner prior the Tests on Completion; furthermore, Contractor will provide as-built drawings and submit them to Owner for review, waiting commencement of works until Owner approval or expiry date; works will not be considered completed for the purposes of Taking Over of the Works and Sections, until Owner receives those documents.
- 5.6. Contractor will supply the Owner, prior the Test on Completion beginning, with provisional operation and maintenance manuals to operate, maintain, dismantle, reassemble, adjust and repair the Plant; works will not be considered completed for the purposes of Taking Over of the Works and Sections, until Owner receives those manuals.
- 5.7. Any errors, omissions or other defects in the Contractor's Documents will be corrected by Contractor at his costs.

6. Change orders.

- 6.1. Variations might be requested from the Contractor before issuing the Taking-Over Certificate for the Works, and they have to take place and bind the Contractor, unless Contractor cannot obtain any soon the materials required for the Variations, they will affect safety or suitability of the Works; the Owner, after the reception any of those notices, will cancel, confirm or vary the instruction.
- 6.2. Contractor might submit a written proposal to the Owner, whenever he feels it is opportune, in order to: accelerate completion; reduce the cost to the Owner of executing, maintaining or operating the Works; improve the efficiency or value to the Owner of the completed Works; otherwise be of benefit to the Owner; proposal will be prepared at Contractor's cost.

- 6.3. If the Owner requests a proposal before instructing a Variation, the Contractor will answer in writing as soon as practicable, giving reasons why he can comply or not with the request, such as: description of the proposed design and its related schedule of execution; modifications, if any, to the original Time for Completion; modifications, if any, to the Contract Price; those procedures must not affect Contractor's schedule of works; Owner will respond with approval, disapproval or comments as soon as possible, and each instruction to execute a Variation will be notified to the Contractor, who will acknowledge receipt, with related Costs' recording requirements; after the approval of a Variation, the Owner will agree or determine adjustments to the Contract Price, including reasonable profit, and the Schedule of Payments.
- 6.4. In the case of a Contract price payable in more than one currency, it has to be specified the amount payable in each of the applicable currencies, providing references to the actual or expected currency proportions of the Cost of the varied Work.
- 6.5. Owner might instruct the use of a Provisional Sum, that will adjust the Contract Price; they will be used in case of works that have to be executed under Variation Procedure, or for plants, materials or other services that have to be purchased by the Contractor; the adjustment of Contract Price will be made taking into account the actual amounts paid (or due to be paid) by the Contractor and sum for overhead charges and profit (applying, if any, the related percentage); Contractor is required to produce quotations, receipts and accounts for such a change.
- 6.6. If any Variation has a minor relevance, compared with the overall project, Owner might proceed with execution on a daywork basis, affecting the overall schedule in proper way; Contractor must submit quotations before ordering materials, and then submit receipts and invoices when applying for payment; furthermore, he must submit daily statements to Owner for each day spent on daywork execution, including names, occupations and time of Contractor's Personnel, identification, type and time of Contractor's Equipment and Temporary Works, and types of plant and materials used; a duplicate copy must be ready, so that Owner will, if he agrees with the contents, sign it and send it back.
- 6.7. Contract price must be adjusted in the case of any costs resulting from a change in the Laws of the Country, or in the judicial or official governmental interpretation of such Laws, made after the Base Date, which affect the Contractor in the performance of obligations under the Contract; any delay or additional costs might be the reason for extension of time and/or payment of any cost, which will be added to the Contract Price; as usual, the Owner have to agree or determine these matters.
- 6.8. Any adjustments of Contract Price, due to increases or falls in the cost of labour, goods or other inputs to the work, will be evaluated in accordance with rules in the Particular Conditions.

7. Commencement, Suspension and Termination of the work.

- 7.1. Contractor has to commence design and execution phases as soon as practicable after the Commencement Date, complying with the schedule submitted and approved by Owner; Commencement Date has to be within 42 **calendar** days after the Contract Agreement comes into full force, and it has to be communicated at least with 7 days of notice from Owner to Contractor.
- 7.2. Contractor will complete all the works and sections (if any), within the Time for Completion, including the achievement of the Tests on Completion, under the Taking Over of the Works and Sections clause.

- 7.3. Contractor will submit a schedule of works within 36 days after the Commencement Date, updating it whenever there are inconsistencies with actual progress or contractual obligations; the schedule has to show the chronological order of works, the periods of review, the sequence and timing of inspections as per contract, reports with the most relevant steps and forecast of number of each class of Contractor's personnel and equipment; Contractor will proceed with this plan, unless the Owner ask for any revision within 21 days after the reception of the program; Owner's personnel has to rely on this schedule when planning its own activities; Contractor has to notify any likely to happen future events which might affect the duration of works, and Owner might ask the submission of a revised program for approval.
- 7.4. Contractor might ask for extensions of Time for Completion in the case of a Variation agreed and evaluated as per contract, or in case of any delay of which he is not responsible, so if it is the case of Force Majeure, Owner's responsibility or any other contractor on Site, Authorities intervention, or disruption not reasonably foreseeable by the date for submission of the Tender. If Contractor retains to be entitled of any extension of Time for Completion, he has to give notice to the Owner, who will review and determine the total extension of time.
- 7.5. If actual progresses are behind schedule, so that Time for Completion will fall behind the current estimation, Contractor might be asked to submit a revised program with updated methods of execution, needed to respect the agreed Time for Completion. This revised methodology will be adopted, even if this might cause an increase of working hours and personnel on Site that will bring additional risks and costs for the Contractor only. If Contractor does not execute the works within Time for Completion, Owner will ask for Delay Damages, as per Particular Conditions.
- 7.6. Owner might ask to Contractor to suspend any works at any time: in such a case Contractor has to suspend works, protecting any part of the works that might be subject to deterioration, loss or damage; if the cause of the delay is not attributable to Contractor, the last one might ask for an extension of Time for Completion and payment of any such Cost, which will be added to the Contract Price.
- 7.7. If suspension has continued for more than 84 days, Contractor might ask permission to restart to work: if permission is given, even without Contractor's request or before 84 days, Parties will jointly examine the works and Materials affected by the suspension, making good any deterioration, adding the eventual cost to Contract Price; if the Owner not give permission within 28 days, he might apply Termination by Contractor clause, because he considers the suspension as an omission who affected the whole of the Works.
- 7.8. Contractor might suspend the works giving at least 21 days of notice, if the Owner fails to comply with Owner's Financial Arrangements or Timing of Payments clauses, and the suspension might be protracted until Contractor receives reasonable evidence or payment; if evidence of payments is notified to Contractor before a notice of termination, Contractor must resume normal operations as soon as reasonable, bearing the right to claim for an extension of the Time for Completion and a payment of any cost plus reasonable profit, which will be added to the Contract Price; Owner will then proceed as per Determination clause.
- 7.9. Contractor will be entitled to terminate the Contract, giving 14 days of notice to Owner, if evidence of payment, due to an Owner's failure, is not notified within 42 days, or if the Owner does not performs his Contract's obligations; furthermore, if a prolonged suspension affected the whole of the works or if the Owner becomes bankrupt or insolvent, the

Contractor might notify the immediate termination of the Contract; if Contractor terminate the Contract for any of those reasons, he will still have any other rights stated in the Contract.

- 7.10. After a notice of termination, Contractor will immediately: cease all works, except for those related to protection of life, property, or safety of the works; transmit all the documentation for which has received payment; remove all materials, goods or equipment from Site, except for those necessary for safety requirements.
- 7.11. The notice of termination will force the Owner to immediately: pay to the Contractor a fair amount for the works executed; pay to the Contractor a fair amount for any loss or damage due to this termination.
- 7.12. Owner might notice to Contractor any failure or defects in the work executed, in order to remedy in a specified time frame; Owner is entitled to terminate the Contract if the Contractor: leaves Site or shows any clear intention to do not respect contractual obligations; fails to respect clause of Commencement, Delays and Suspension; subcontracts the whole of the works; becomes bankrupt, insolvent, goes into liquidation or if take place any other events with similar consequences; gives or offer to anyone any bribe, gift or other thing of value as reward for something related to the Contract; Owner, with 14 days' notice, might terminate the Contract and expel Contractor from the Site; furthermore, the last two cases will give Owner the right to execute Immediate termination. After termination, Contractor will leave the Site, delivering any goods, material, design or documents made for Contract's purposes, that might be use for the remaining works by any other Party; Contractor's Equipment will be delivered at or near the Site, but, if Contractor has any overdue payment, Owner might decide to sell all Contractor's Equipment.
- 7.13. After the termination procedures take place, Owner will proceed with Determinations, in order to agree or revise the amount requested from Contractor; those payments might be withheld until any weakness of Contractor's works is evaluated and balanced.
- 7.14. Termination by Owner might take place anytime after 28 days after the later of the date in which: is received notification to the Contractor. This procedure is not valid if it is executed by Owner in order to appoint another Contractor or execute the works by himself.

8. Payment scheme.

- 8.1. Payment for works will be made on the basis of a lump sum Contract Price, subject to eventual adjustment; contractor will pay taxes, duties and fees as per Law of the country, without any adjustment to Contract Price.
- 8.2. Owner will make an Advance Payment, as to let Contractor to carry out the financing part of and design, so that the amount of the advance payment will be deducted from Contract Price. Particular Conditions might state the conditions for the Advance Payment: number and timing of instalments and applicable currencies and proportions.
- 8.3. Contractor will adopt a guarantee valid and enforceable until the complete repayment of the advance Payment, reducing this amount of the proportional deductions in interim payments, eventually extending the guarantee's duration if the advance payment has not been repaid by the date 28 days after its expiry date; if the advance payment has not been repaid before the issue of the Taking-Over Certificate, it will immediately become due and payable by the Contractor to the Owner.
- 8.4. Interim Payments will be attached and invoiced with Progress Reports monthly, with details of amounts, that the Contractor considers to be entitled, referred to: estimated contract

value of the works executed **on Owner's site**, variations included; amounts related to changes in legislation, retention, advance payments, claims, disputes, retention.

- 8.5. Contract Price might be paid in several instalments, associated with actual work progresses **on Owner's site** and specified in the Schedule of Payments, that will be equivalent to Contract Price and determined each time from Owner upon actual progresses achieved; Contractor will submit at least a non-binding estimate of expected payments each ~~quarterly~~ **monthly** period, with the first one notified before 42 days after the Commencement Date.
- 8.6. Owner will pay: the instalment of the advance payment within 42 days after the Contract came into full force; the amount as per each Statement within 56 days after receiving the relative documentation; the Final Payment within 42 days after receiving the final Statement and written discharge; all Payments will be done in the bank account specified by Contractor, in the agreed currency.
- 8.7. If any payment is not done within agreed terms, Contractor will receive a monthly compounded financing charges, calculated at the annual rate of three percentage points above the discount rate of the central bank in the country of the currency of payment, without any requirement of formal notice.
- 8.8. Owner might ask for clarifications that have to be provided in order to reach an agreement with eventual modifications of the draft, so that the Contractor will prepare and submit the Final Statement; any disagreement will be discussed in any of the contractual procedures, but the agreed part of the draft has to be liquidated in the contractual Timing of Payments; when disputes are settled, Contractor will proceed with preparation and submission of Final Statement; the submission of the Final Statement represents confirmation from Contractor of full and final settlement of all moneys due to the Contractor under or in connection with the Contract.
- 8.9. Owner will not be liable to the Contractor for any matter thing under or in connection with the Contract or execution of the Works, if Contractor does not eventually specifies it in the Final Statement or in issues due to Statement at completion; however, Owner will be liable in any case of fraud, deliberate default or reckless misconduct.
- 8.10. Contract Price will be paid in the currency currencies named in the Contract Agreement; in the case of currencies, foreign currencies will be paid under fixed rates of exchange, and any portion of the Contract Price that is due in a foreign currency must be specified in Particular Conditions, specifying exchange rates, or those will be those prevailing on the Base Date and determined by the central bank of the Country.

9. Test on Completion.

- 9.1. Contractor will provide anything necessary to carry out the required tests efficiently (materials, equipment, personnel), agreeing with the Owner's proposal about time and place for each of them; Contractor will provide As-Built Documents and Operation and Maintenance Manuals; Owner might vary or add any kind of tests, giving the Contractor not less than 24 hours' notice for his intention to attend the tests; Owner's absence will give the chance to Contractor to carry on as notified, as if the Owner were there; for any delay or additional costs due to Owners' behavior, Contractor might ask for extension of time and payment of any cost plus reasonable profit, which will be added to the Contract Price, with a following procedure of Determinations, that will give Owner the right to agree or determine these matters.

- 9.2. After tests have been executed, Contractor will communicate as soon as practicable certified reports; when a test has been passed, Owner will confirm and certificate such an event.
- 9.3. If a test is not passed, Owner will require to the Contractor to make good the defect and ensure that the rejected item complies with the Contract, in order to redo the test and obtain a positive result of achievement; any additional costs due to Rejection will be paid by the Contractor.
- 9.4. Contractor must notify Test on Completion date at least 21 days in advance to the Owner, and this test will take place within 14 days after this date, if not otherwise agreed; it has to follow a procedure of : pre-commissioning tests (basically functional tests); commissioning tests (operational tests); trial operation tests (as to verify compliance with Contract's requirements); any product produced during tests will be Owner's property; when tests' requirements are achieved, Contractor will submit a certified report of the results to the Owner.
- 9.5. If Tests on Completion is repeatedly failed, Owner has the right to: order further repetitions; reject the works or section; issue a Taking-Over Certificate. In the last scenario, the Contractor will keep comply with obligations of the Contract, and the Contract Price will be reduced of a proportionate amount for such a failure, determining an agreed reduction between Parties, or upon Owner's determination.
- 9.6. If Contractor is not put in the conditions to perform Tests on Completion for more than 14 days because of Owner's behavior, tests will be carried out as soon as practicable; however, Contractor will be entitled to an extension of time and a payment for any costs plus reasonable profit which will be added to the Contract Price; Owner will then proceed to agree or determine such request.

10. Owner's taking over.

- 10.1. Works or sections will be taken over by Owner if they comply with Contract's requirements and Taking-Over Certificate for the Works has been issued; apply for Taking-Over Certificate from Contractor might be applied not before than 14 days of the estimated date in which they are ready for taking over; Owner, within 28 days, will: issue the Taking-Over Certificate, certifying that works has been executed as per Contract' specifications and they are ready to operate, or reject the request, justifying this decision, with details of works that have to be done before the Contractor will issue again the certificate.
- 10.2. If Taking-Over Certificate is not issued or rejected within 28 days after the application for the certificate, and works or sections are substantially adequate respect to Contract's requirements, the Taking-Over Certificate will be deemed to have been issued on the last of the 28 days; taking over is not applicable for parts of works or sections, in not specifically stated in the Contract.

11. Defects' liability.

- 11.1. Contractor will remedy for any outstanding work or remedying defects by the expiry date of Defects Notification Period, completing works required to in the Taking-Over Certificate or remedy any damages upon Owner's notice; all corrections will be executed at Contractor's risk and cost if: they are attributable to design of works; they are due to plant, materials or labour force that do not comply with Contract's prescriptions; operation and maintenance were done improperly by Contractor; they are due to any other Contractor's obligation.
- 11.2. Owner might extend Defects Notification Period for works or a section until 2 years' time.

- 11.3. If Contractor fails to remedy any damage or defect within a reasonable time, Owner might fix a deadline, and Contractor will pay any cost related; if this deadline is not respected, Owner might: execute the work by himself at Contractor's cost, but being the sole responsible; agree or determine a fair reduction in Contract Price; terminate the Contract, if those damages do not let operations required to be achieved by Contract, retained himself to be entitled to be paid for works or unusable parts, plus financing and dismantling costs, forcing clearing of the Site of Contractor.
- 11.4. Contractor might execute corrections of defects or damages, after Owner's approval, out of Site.
- 11.5. Corrections might affect performance of works or sections, so that any of the already executed tests have to be done again within 28 days after the correction is executed; the cost of those tests will be suffered by the liable Party.
- 11.6. Contractor will have free access to any part of works or sections until the Performance Certificate has been issued, except for any case or Owner' security restrictions.
- 11.7. Contractor might be instructed and guided to search for the cause of any defect; the cost for this operation plus reasonable profit will be agreed or determined by Owner and added to the Contract Price.
- 11.8. Performance Certificate will set free Contractor from any obligations of his performance from the specific date stated in the certificate; this certificate will be issued from Owner within 28 days after the latest of the expiry dates of the Defects Notification Periods; if Owner fails to issue the Performance Certificate, it will be retain to have been issued on the date 28 days after the date on which it should have been issued; Performance Certificate is the only certificate that certifies acceptance of the works.
- 11.9. Each obligation not performed before the Performance Certificate will constitute a liability for any of the Party, as if the Contract is still in force.
- 11.10. Contractor will remove any Equipment, material, rubbish or temporary works from Site after the notification of the Performance Certificate; any item not removed within 28 days might be sold from Owner or used otherwise; any balance from their sale will be paid to Contractor or Owner, depending on who is on credit.

12. Test after Completion.

- 12.1. For the execution of Tests after Completion, Owner will provide electricity, fuel, materials and his personnel; Contractor will be responsible for everything else required, because he will carry on the test; this test has to take place as soon as possible after Owner's take over, and Owner has to give to the Contractor at least 21 days notice of the date before test takes place, and this event has to happen within 14 days after this date; Contractor will prepare a detailed report of test's results.
- 12.2. Any unreasonable delay due to Owner's behavior will give to the Contractor the right of payment for any additional cost plus reasonable profit, which will be added to the Contract Price; Owner will then proceed to agree or determine such request; if, in any case, Test after Completion of works or sections cannot take place before the end of Defects Notification Period, then related works or section will be deemed to have passed this test; any retest of works or sections will be paid by Contractor to Owner.
- 12.3. If any test of works or sections is not passed: the Contractor might pay, during Defects Notification Period, the relevant sum, stated in the Contract, payable as non-performance

damages for this failure, and then the works or section will be deemed to have passed those tests; the Contractor might propose to fix any failure, but, if Owner does not notify Contractor to fix those failures during the Defects Notification Period, Contractor will be deemed of any liability and works or section will be deemed to have passed those tests; furthermore, if the Contractor incurs in any additional cost due to unreasonable delay by the Owner about the permission of remedy or investigate for any test's failure, Contractor will be entitled to be paid for any costs plus reasonable profit which will be added to the Contract Price; Owner will then proceed to agree or determine such request.