

## GENERAL CONDITIONS OF CONTRACT

### 1. GENERAL PROVISIONS

#### 1.1 Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- (a) “Acceptance” means the Client’s written certification that the goods have been tested and verified as complete and in accordance with the Contract Specifications.
- (b) “Applicable Law” means the laws and any other instruments having the force of law in Jamaica, as they may be issued and in force from time to time;
- (c) “Contract” means the Contract signed by the Parties, to which these General Conditions of Contract (GC) are attached, together with all the documents listed in Clause 1 of such signed Contract;
- (d) “Contract Price” means the price to be paid for the goods, in accordance with tender documents, including any technical specifications;
- (e) “Defects Liability Period” means a period of time, as stated in the SC, during which any defects in material or workmanship shall be made good at the expense of the Contractor;
- (f) “Effective Date” means the date on which this Contract comes into force and effect pursuant to GC 2.1;
- (g) “Foreign currency” means any currency other than local currency;
- (h) “GC” means these General Conditions of Contract;
- (i) “Government” means the Government of Jamaica;
- (j) “Local currency” means Jamaican currency;
- (k) “Party” means the Client or the Contractor, as the case maybe, and “Parties” means both of them;
- (l) “Personnel” means persons hired by the Contractor as employees and assigned to the performance of the contract or any part thereof;
- (m) “Project Site” means the site for delivery of the goods and any incidental services;
- (n) “SC” means the Special Conditions of Contract by which the GC may be amended or supplemented;
- (o) “Services” means any incidental services (including transportation, installation, after-sales service, etc.) to be performed pursuant to this Contract, as shown in the SC;
- (p) “Third Party” means any person or entity other than the Government, the Client, or the Contractor.

#### 1.2 Law Governing the Contract

This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.

#### 1.3 Language

This Contract has been executed in the English language as specified in the SC, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

- 1.4 **Headings** The headings shall not limit, alter or affect the meaning of this Contract.
- 1.5 **Notices**
- 1.5.1 Any notice, request, or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, telex, telegram, or facsimile to such Party at the address specified in the SC.
- 1.5.2 Notice will be deemed to be effective as specified in the SC.
- 1.5.3 A party may change its address for notice hereunder by giving the other party notice of such change.
- 1.6 **Authorized Representatives** Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Client or the Contractor may be taken or executed by the officials specified in the SC.
- 1.7 **Taxes and Duties** Unless otherwise specified in the SC, the Contractor shall pay such taxes, duties, fees, and other impositions as may be levied under the Applicable Law.

## **2. COMMENCEMENT, COMPLETION, MODIFICATION, AND TERMINATION OF CONTRACT**

- 2.1 **Contract Effectiveness** This Contract shall come into force and effect on the date (the “Effective Date”) of the Parties signing the Contract.
- 2.2 **Commencement** The Contractor shall begin carrying out the provisions of Contract as specified in the SC.
- 2.3 **Expiration of Contract** Unless terminated earlier pursuant to Clause GC 2.8 hereof, this Contract shall terminate at the end of project duration, pursuant to the SC, or such other period as the parties may agree in writing.
- 2.4 **Entire Agreement** This Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.
- 2.5 **Modification** The Client may at any time, by a written Order given to the Contractor make changes within the general scope of the Contract for the goods to be supplied. Such changes shall not cause an increase or decrease in the Contract price.
- 2.6 **Force Majeure**
- For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party, and which makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.
- Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party’s agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both (A) take into account at the time of the conclusion of this Contract and (B) avoid or overcome in the carrying out of its obligations hereunder.
- Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

- 2.6.1 **No Breach of Contract** The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.
- 2.6.2 **Measures to be reasonable Taken obligations**
- (a) A Party affected by an event of Force Majeure shall take all measures to remove such Party's inability to fulfill its obligations hereunder with a minimum of delay.
  - (b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
  - (c) The Parties shall take all reasonable measures to minimize the consequences of any event of Force Majeure.
- 2.6.3 **Extension of Time** Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.
- 2.6.4 **Consultation** Not later than fourteen (14) days after the Contractor, as the result of an event of Force Majeure, has become unable to perform a material portion of the contract, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.
- 2.7 **Suspension** The Client may, by written notice of suspension to the Contractor, suspend all payments to the Contractor hereunder if the Contractor fails to perform any of their obligations under this Contract, including the carrying out of the incidental services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Contractor to remedy such failure within a period not exceeding fourteen (14) days after receipt by the Contractor of such notice of suspension.
- 2.8 **Termination** The Client may, by not less than ten (10) days' written notice of termination to the Contractor (except in the event listed in paragraph (f) below, for which there shall be a written notice of twenty (20) days), such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause GC 2.8, terminate this Contract:
- (a) if the Contractor fails to remedy a failure in the performance of their obligations hereunder, within ten (10) days of receipt of such notice or within such further period as the Client may have subsequently approved in writing;
  - (b) if the Contractor becomes insolvent or bankrupt or enters into any agreements with their creditors for relief of debt or takes advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;
  - (c) if the Contractor fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GC 7 hereof;
  - (d) if the Contractor submits to the Client a statement which has a material effect on the rights, obligations or interests of the Client and which the Contractor knows to be false;
  - (e) if, as the result of Force Majeure, the Contractors are unable to

perform a material portion of the contract for a period of not less than sixty (60) days; or

- (f) if the Client, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

### **3. OBLIGATIONS OF THE CONTRACTOR**

- 3.1. Standards** The goods and services supplied under this Contract shall conform to the standards detailed in the Contract Specifications. The Contractor shall carry out their obligations hereunder with all due diligence, efficiency, and economy, in accordance with the contract documents, and shall observe sound environmental practices, and employ appropriate advanced technology and safe and effective equipment, machinery, materials and methods, as necessary. The Contractor shall always act, in respect of any matter relating to this Contract, safeguard the Client's legitimate interests, pursuant to this Contract.
- 3.2 Diligence and Due Care** Contractor is responsible for, and obligated to conduct all contracted activities with due care and diligence, in accordance with the Contract and using state-of-the-art methods and exercising all reasonable means to achieve the performance specified in the Contract.
- The Contractor is responsible for managing the activities of its personnel and will hold itself responsible for any misdemeanors.
- The Contractor shall appoint an experienced Representative to manage its performance of the Contract throughout execution. The Representative shall be authorized to accept orders and notices on behalf of the Contractor, and to generate notices and commit the Contractor to specific courses of action within the scope of the Contract.
- The Contractor shall complete delivery, repairs and/or replacements in accordance with Contract requirements.
- 3.3 Contractor and Affiliates not to be Otherwise Interested in Project** The Contractor agrees that, during the term of this Contract and after its termination the Contractor and any entity affiliated with the Contractor, as well as any Subcontractor and any entity affiliated with such Subcontractor, shall be disqualified from providing advice on or otherwise contribute to the development of the Contract Specifications of the goods to be procured under this contract.
- 3.4 Prohibition of Conflicting Activities** The Contractor shall not engage, and shall cause their Personnel not to engage, either directly or indirectly, in any of the following activities:
- (a) during the term of this Contract, any business or professional activities which would conflict with the activities assigned to them under this Contract; and
  - (b) after the termination of this Contract, such other activities as may be specified in the SC.
- 3.5 Confidentiality and Property Rights** The Contractor shall not, without the Client's prior written consent, disclose the Contract, or any provision thereof, or any specification or information furnished by or on behalf of the Client in connection therewith, to any person other than a person employed by the Contractor in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only as far as necessary for purposes of such performance.
- 3.6 Liability** The Contractor's liability shall be as set forth in the SC.
- 3.7 Insurance** The Contractor shall indemnify the Client against all actions, suits, claims, demands, costs, charges and expenses arising in connection therewith on account of any injury, loss or damage resulting from negligence of the Contractor.

Without prejudices to its liability to indemnify the Client under the GC, the Contractor shall effect insurances, pursuant to the SC and at the Client's request, shall provide evidence to the Client showing that such insurance has been taken out and maintained and that the current premiums therefor have been paid.

#### **4. CONTRACTOR PERFORMANCE**

- 4.1 Assignment perform** The Contractor shall not assign, in whole or in part, its obligations to under this Contract, except with the Client's prior written consent (such consent not to be unreasonably withheld).
- 4.2 Packing** The Contractor shall provide such packing of the goods as is required to prevent their damage or deterioration during shipment and/or other transport. The Contractor shall promptly repair or replace any goods that are damaged in transit due to inadequate packing or any other related causes.
- 4.3 Incidental Services** The Contractor is required to provide any or all of the incidental services stated in the SC, and shall include the cost(s) of such in its tender price.
- 4.4 Delivery**
- 4.4.1 The Contractor shall deliver the goods to the Client at the project site on or before the expiration of the project duration as stated in the SC.
  - 4.4.2 Time of delivery is the essence of this Contract.
  - 4.4.3 If the Contractor fails to deliver all of the goods in accordance with the Contract on the delivery date, then, without prejudice to the Client's rights for breach of Contract, the Client may terminate the Contract pursuant to the GC.
  - 4.4.4 Where delivery of a quantity of the goods under this Contract is less than the agreed quantity and the Client has not exercised its rights of termination under the GC, the Client may either accept these goods and recover for the Contractor's breach, or the Client may require the Contractor promptly to deliver sufficient goods to comply with the quantity required by the Contract. The Client may exercise these rights by written notice to the Contractor.
  - 4.4.5 The Contractor shall rectify any and all defects immediately upon notification of such defects by the Client or its representative pursuant to the GC.
- 4.5 Inspection and Acceptance** The Client, or its representative, shall have the right to inspect and/or test the goods and/or services performed to confirm their conformity to the Contract Specifications and shall notify the Contractor of the identity of any representative retained for these purposes.
- Should any inspected or tested goods and/or services fail to conform to the specifications, the Client may reject the goods and/or services and notify the Contractor of such rejection in writing. The Contractor shall forthwith either replace the rejected goods and/or services or make alterations necessary to meet specification requirements free of cost to the Client.
- At the Client's discretion, inspection for acceptance shall also be performed on the replaced and/or altered goods and/or incidental services.
- Nothing in this Clause shall in any way release the Contractor from any warranty or other obligations under this Contract.
- 4.6 Contractor Warranty** The Contractor warrants that the goods supplied under the Contract are new and unused. The Contractor further warrants that all goods supplied under this Contract shall have no defect arising from design, materials or workmanship or

from any act or omission of the Contractor.

The Client shall promptly notify the Contractor in writing of any claims arising under the Contractor's warranty. Upon receipt of such notice, the Contractor shall forthwith repair or replace the defective goods or parts thereof without cost to the Client.

If the Contractor, having been notified, fails to forthwith remedy the defect(s), the Client may proceed to take such remedial action as may be necessary, at the Contractor's risk and expense and without prejudice to any other rights that the Client may have against the Contractor under the Contract.

**4.7 Manufacturer's Warranty**

The Contractor shall ensure that the *Manufacturer's Warranty* on goods supplied under this Contract is available to the Client, if required by the SC and in accordance with the terms and conditions therein.

**5. PAYMENTS GUARANTEES AND LIABILITIES**

**5.1 Contract Price set**

The Contract Price is as stated in the SC, a breakdown of which is as forth in the Contractor's Tender.

**5.2 Currency of Payment**

The currency of payment shall be as specified in the SC.

**5.3 Performance Security**

If required by the SC, a Performance Security, in the amount and form as specified by the SC shall be furnished by the Contractor.

The proceeds of the performance security shall be payable to the Client as compensation for any loss resulting from the Contractor's failure to complete its obligations under the Contract.

The performance security shall be valid until discharged by the Client and returned to the Contractor not later than thirty (30) days after the completion date.

**5.4 Mode of Billing and Payment**

Billings and payments shall be made as follows:

- (a) If specified in the SC, the Client shall cause to be paid to the Contractor an advance payment as specified in the SC, and as otherwise set forth below. The advance payment will be due after provision by the Contractor to the Client of a bank guarantee by a bank acceptable to the Client in an amount (or amounts) and in a currency (or currencies) specified in the SC, such bank guarantee (i) to remain effective until the advance payment has been fully set off as provided in the SC, and (ii) to be in the form set forth in the Appendix hereto or in such other form as the Client shall have approved in writing.
- (b) Thereafter all other payments shall be tied to Contractor performance and in accordance with any performance-based progress payments as specified in the SC.
- (c) If required by the SC, a percentage of final payment shall be withheld, and become payable at the end of the defects liability period, as stated in the SC.

**5.5 Contractor Payment Requests**

With the exception of 5.4 (a), none of the above payments shall become due until the Client has received a request for payment from the Contractor. Requests shall be in writing and accompanied by an invoice describing the goods delivered and/or the services performed and upon fulfillment of any other obligations stipulated in the Contract.

**5.6 Interest**

Any outstanding payments due to the Contractor shall attract a rate of

interest as shown in the SC.

**5.7 Delays in Contractor Performance**

If at any time during performance of the Contract, the Contractor should encounter conditions impeding timely delivery of the goods and services, the Contractor shall promptly notify the Client in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable, after receipt of the Contractor's notice, the Client shall evaluate the situation and may, at its discretion, extend the Contractor's time for performance, with or without liquidated damages, in which case the extension shall be ratified by the parties by amendment of the Contract.

**5.8 Liquidated Damages**

Subject to Clause 5.7 of the GC, if the Contractor fails to deliver any or all of the goods within the period(s) specified in the Contract, the Client shall without prejudice to its other remedies under the Contract, deduct from monies due to the Contractor liquidated damages in the amount as specified in the SC for each day of delay.

**6. FAIRNESS AND GOOD FAITH**

**6.1 Good Faith**

The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

**6.2 Operation of the Contract for**

The Parties recognize that it is impractical in this Contract to provide every contingency which may arise during the life of the Contract, and the Parties hereby agree that it is their intention that this Contract shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Contract either Party believes that this Contract is operating unfairly, the Parties will use their best-efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but no failure to agree on any action pursuant to this Clause shall give rise to a dispute subject to arbitration in accordance with Clause GC 7 hereof.

**7. SETTLEMENT OF DISPUTES**

**7.1 Amicable Settlement**

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with the Contract or its interpretation.

**7.2 Dispute Settlement**

Any dispute between the Parties as to matters arising pursuant to this Contract which cannot be settled amicably within fifteen (15) days after receipt by one Party of the other Party's request for such amicable settlement may be submitted by either Party for settlement in accordance with the provisions specified in the SC.