Section XIV - Particular Conditions of Contract

part b - special provision

**Table of Contents**

[1. GENERAL PROVISIONS 4](#_Toc57107349)

[1.1. DEFINITIONS 4](#_Toc57107350)

[1.2. LAW AND LANGUAGE 4](#_Toc57107351)

[2. THE CONTRACTOR 5](#_Toc57107352)

[2.1. CONTRACTOR’S GENERAL OBLIGATIONS 5](#_Toc57107353)

[2.2. PERFORMANCE SECURITY 5](#_Toc57107354)

[2.3. SUFFICIENCY OF THE CONTRACT PRICE 8](#_Toc57107357)

[3. DESIGN 9](#_Toc57107358)

[3.1. SAMPLES 9](#_Toc57107359)

[3.2. PATENTS AND COPYRIGHT 9](#_Toc57107360)

[4. STAFF AND LABOUR 10](#_Toc57107361)

[4.1. HEALTH AND SAFETY OF PERSONNEL 10](#_Toc57107362)

[5. COMMENCEMENT, DELAYS AND SUSPENSION 11](#_Toc57107363)

[5.1. COMMENCEMENT OF WORK 11](#_Toc57107364)

[5.2. PROGRAMME 11](#_Toc57107365)

[5.3. DELAY DAMAGES 11](#_Toc57107366)

[6. DEFECTS AFTER TAKING OVER 12](#_Toc57107367)

[6.1. PERFORMANCE CERTIFICATE 12](#_Toc57107368)

[6.2. CLEARANCE OF SITE 12](#_Toc57107369)

[7. VARIATIONS AND ADJUSTMENTS 13](#_Toc57107370)

[7.1. RIGHT TO VARY 13](#_Toc57107371)

[7.2. VARIATION PROCEDURE 13](#_Toc57107372)

[7.3. ADJUSTMENTS FOR CHANGES IN LAWS 14](#_Toc57107373)

[8. CONTRACT PRICE AND PAYMENT 15](#_Toc57107374)

[8.1. THE CONTRACT PRICE 15](#_Toc57107375)

[8.2. ADVANCE PAYMENT 15](#_Toc57107376)

[8.3. SCHEDULE OF PAYMENTS 16](#_Toc57107377)

[8.4. PAYMENT 16](#_Toc57107378)

[8.5. DELAYED PAYMENT 17](#_Toc57107379)

[8.6. RELEASE OF RETENTION MONEY 17](#_Toc57107380)

[8.7. CURENCIES OF PAYMENT 17](#_Toc57107381)

[9. CARE OF THE WORKS AND INDEMNITIES 18](#_Toc57107382)

[9.1. EMPLOYER’S RISKS 18](#_Toc57107383)

[10. DISPUTES AND ARBITRATION 19](#_Toc57107384)

[10.1. ARBITRATION 19](#_Toc57107385)

**Part B - Special Provisions**

The following Particular Conditions shall supplement the General Conditions. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions.

# GENERAL PROVISIONS

This Contract is an EPC Contract and the Conditions of Contract for EPC/Turnkey Projects, Second Edition 2017 (Silver Book) apply, with the exception of the changes below.

# DEFINITIONS

Add the following to the end of Sub-Clause 1.1:

“Letter of Acceptance” means the letter of formal acceptance, signed by the Employer, including any annexed memoranda comprising agreements between and signed by both Parties.

# LAW AND LANGUAGE

Add the following to the end of Sub-Clause 1.4:

The Contract shall be governed by and constructed in accordance with the laws of the Republic of Maldives.

All letters and communication shall be made in English.

# THE CONTRACTOR

# CONTRACTOR’S GENERAL OBLIGATIONS

Delete Sub-Clause 4.1 and substitute with the following:

The Contractor shall design, execute and complete the Works in accordance with the Contract, and shall remedy any defects in the Works. When completed, the Works shall be fit for the purposes for which the Works are intended as defined in the Contract. The Contractor shall employ the key personnel named in the Contract Data. Such persons can be substituted only with written approval of the Engineer

The Contractor shall provide the Plant and Contractors Documents specified in the Contract, and all Contractor’s Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects.

The Works shall include any work which is necessary to satisfy the Employer’s Requirements, or is implied by the Contract, and all works which (although not mentioned in the Contract) are necessary for stability or for the completion, or safe and proper operation, of the Works.

The Contractor shall be responsible for the adequacy, stability and safety of all Site operations, of all methods of construction and of all the Works.

The Contractor shall, whenever required by the Engineer, submit details of the arrangements and methods, which the Contractor proposes to adopt for the execution of the Works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to the Engineer.

# PERFORMANCE SECURITY

Delete Sub-Clause 4.2 and substitute with the following:

The Contractor shall obtain (at the Contractor's cost) a Performance Security to secure the Contractor's proper performance of the Contract, in the amount and currencies stated in the Contract Data. If no amount is stated in the Contract Data, this Sub-Clause shall not apply.

* + 1. Contractor's obligations

The Contractor shall deliver the Performance Security to the Employer within fourteen (14) days after both Parties have signed the Contract Agreement. The Performance Security shall be issued by an entity and from within a country (or other jurisdiction) to which the Employer and ADFD gives his/her consent and shall be in the form annexed to the Particular Conditions, or in another form agreed by the Employer (but such consent and/or agreement shall not relieve the Contractor from any obligation under this Sub-Clause).

The Contractor shall ensure that the Performance Security remains valid and enforceable until the issue of the Performance Certificate; the Contractor has complied with Sub-Clause 11.11 (Clearance of Site) and until the end of the DLP.

If the terms of the Performance Security specify an expiry date, and the Contractor has not become entitled to receive the Performance Certificate by the date twenty-eight (28) days before the expiry date, the Contractor shall extend the validity of the Performance Security until the issue of the Performance Certificate and the Contractor has complied with Sub-Clause 11.11 (Clearance of Site).

Whenever Variations and/or adjustments under Clause 13 [Variations and Adjustments] result in an accumulative increase or decrease of the Contract Price by more than twenty percent (20%) of the Contract Price stated in the Contract Agreement:

# in the case of such an increase, at the Employer's request the Contractor shall promptly increase the amount of the Performance Security in that currency by a percentage equal to the accumulative increase. If the Contractor incurs Cost as a result of this Employer's request, Sub-Clause 13.3.1 (*Variation by Instruction*) shall apply as if the increase had been instructed by the Employer; or

# in the case of such a decrease, subject to the Employer's prior consent the Contractor may decrease the amount of the Performance Security in that currency by a percentage equal to the accumulative decrease.

* + 1. Claims under the Performance Security

The Employer shall not make a claim under the Performance Security, except for amounts to which the Employer is entitled under the Contract in the event of:

1. failure by the Contractor to extend the validity of the Performance Security, as described in this Sub-Clause, in which event the Employer may claim the full amount (or, in the case of previous reduction(s), the full remaining amount) of the Performance Security;
2. failure by the Contractor to pay the Employer an amount due, as agreed or determined under Sub-Clause 3.5 (*Agreement or Determination*) or agreed or decided under Clause 21 (*Disputes and Arbitration*), within forty-two (42) days after the date of the agreement or determination or decision or arbitral award (as the case may be);
3. failure by the Contractor to remedy a default stated in a Notice given under Sub-Clause 15.1 (Notice to Correct) within forty-two (42) days or other time (if any) stated in the Notice;
4. circumstances which entitle the Employer to terminate the Contract under Sub-Clause 15.2 (Termination for Contractor's Default), irrespective of whether a Notice of termination has been given; or
5. if under Sub-Clause 11.5 (Remedying of Defective Work off Site) the Contractor removes any defective or damaged Plant from the Site, failure by the Contractor to repair such Plant, return it to the Site, reinstall it and retest it by the date of expiry of the relevant duration stated in the Contractor's Notice (or other date agreed by the Employer).

The Employer shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security to the extent that the Employer was not entitled to make the claim.

Any amount which is received by the Employer under the Performance

Security shall be taken into account:

1. in the final payment to the Contractor under Sub-Clause 14.13 (*Final Payment*); or
2. if the Contract is terminated, in payment due to the Contractor under Sub-Clause 15.4 (*Payment after Termination for Contractor's Default*), Sub-Clause 15.7 (*Payment after Termination for Employer's Convenience*), Sub-Clause 16.4 (*Payment after Termination by Contractor*), Sub-Clause 18.5 (*Optional Termination*), or Sub-Clause18.6 (*Release from Performance under the Law*) (as the case may be).
   * 1. Return of the Performance Security

The Employer shall return the Performance Security to the Contractor:

1. within twenty-one (21) days after the issuance of the Performance Certificate and completion of the DLP; or
2. promptly after the date of termination if the Contract is terminated in accordance with Sub-Clause 15.5 (*Termination for Employer's Convenience*), Sub-Clause 16.2 (*Termination by Contractor*), Sub-Clause 18.5 (*Optional Termination*) or Sub-Clause 18.6 (*Release from Performance under the Law*).

# SUFFICIENCY OF THE CONTRACT PRICE

Delete Sub-Clause 4.11 and substitute with the following:

The Contractor shall be deemed to:

1. have satisfied himself as to the correctness and sufficiency of the Initial Contract Price; and
2. have based the Initial Contract Price on the data, interpretations, necessary information, inspections, examinations and satisfaction as to all relevant matters and any further data relevant to the Contractor’s design.

# DESIGN

# SAMPLES

Add Sub-Clause 5.9 and include the following:

The Contractor shall submit the following samples/relevant information to the Engineer for pre-construction review in accordance with the procedure for Contractor’s Documents described in Sub-Clause 5.2 (*Contractor’s Documents*) above:

1. manufacturer’s standard samples of Materials;
2. samples specified (if any) in the Employer’s Requirements; and
3. additional samples instructed by the Engineer.

Each sample shall be labelled as to origin and intended use in the Works.

# PATENTS AND COPYRIGHT

Add Sub-Clause 5.10 and include the following:

The Contractor shall save harmless and indemnify the Employer from and against all claims and proceedings for or on account of infringement of any copyrights in connection with drawings specifications and of any patent rights, design trademark, or name or other protected rights in respect of any Constructional Plant or Material used for or in connection with the Works or any of them and from and against all claims proceedings, damages, costs, charges and expenses whatsoever specified and the Contractor shall pay all tonnage and other royalties, rent and other payments or compensation connected with.

# STAFF AND LABOUR

# HEALTH AND SAFETY OF PERSONNEL

Add the following to the end of Sub-Clause 6.7 with the following:

Contractor shall ensure that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

# COMMENCEMENT, DELAYS AND SUSPENSION

# COMMENCEMENT OF WORK

Delete Sub-Clause 8.1 and substitute with the following:

Unless otherwise stated in the Contract Data, the Start Date shall be fourteen (14) days after the Letter of Acceptance.

The Contractor shall commence the design and execution of the Works as soon as is reasonably practicable after the Start Date, and shall then proceed with the Works with due expedition and without delay.

# PROGRAMME

Delete the 1st paragraph in Sub-Clause 8.3 and substitute with the following:

The Contractor shall submit an initial programme for the execution of the Works to the Employer within fourteen (14) days after receiving the Notice under Sub Clause 8.1 *(Commencement of Works).* This programme shall be prepared using programming software stated in the Employer's Requirements (if not stated, the programming software acceptable to the Employer).

# DELAY DAMAGES

Add the following to the end of Sub-Clause 8.8 with the following:

The rate per day for liquidated damages shall be calculated as follows:

The liquidated damages for the whole of the works are as: (CP \* 0.0025 \* LD), where, CP is Contract Price and LD is Late Duration (in calendar days).

The maximum amount of liquidated damages for the whole of the works is 15% (fifteen percent) of the final contract price.

# DEFECTS AFTER TAKING OVER

# PERFORMANCE CERTIFICATE

Delete Sub-Clause 11.9 and substitute with the following:

Performance of the Contractor’s obligations shall not be considered to have been completed until the Engineer has issued the Performance Certificate to the Contractor stating the date on which the Contractor completed his obligations under the Contract.

The Engineer shall issue the Performance Certificate within twenty-eight (28) days after the latest of either;

* 1. the expiry dates of the Defects Notification Periods, or
  2. as soon thereafter as the Contractor has supplied all the Contractor’s Documents and completed and tested all the Works, including remedying any defects.

A copy of the Performance Certificate shall be issued to the Employer.

Only the Performance Certificate shall be deemed to constitute acceptance of the Works.

# CLEARANCE OF SITE

Delete Sub-Clause 11.11 and substitute with the following:

Upon receiving the Performance Certificate, the Contractor shall remove any remaining Contractor’s Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site,

If all these items have not been removed within twenty-eight (28) days after the Employer receives a copy of the Performance Certificate, the Employer may dispose of any remaining items.

The Employer shall be entitled to be paid the costs incurred in connection with, or attributable to, such disposal and restoring the Site and the Contractor shall pay such costs to the Employer.

# VARIATIONS AND ADJUSTMENTS

# RIGHT TO VARY

Delete Sub-Clause 13.1 and substitute with the following:

The term ‘Variation’ means:

1. change in the Employer’s Requirements which necessitate any alteration or modification of the design, quality of the Works as described by or referred to in the Employer’s Requirements or in the Contractor’s Proposals, other than that reasonably necessary for the purposes of remedial works pursuant to Sub-Clause 7.5 (*Defects and Rejection*), including:
2. addition, omission or substitution of any work;
3. alteration of the kind or standard of any of the materials or goods to be used in the Works; and
4. removal from Site of any Work executed or Materials or Goods brought by the Contractor for the purpose of the Works.
5. the addition, alteration or omission of any obligations or restrictions imposed by the Employer in the Employer’s Requirements in regard to:
6. access to the Site or use of any specific parts of the Site;
7. the execution or completion of the Works in any specific order.

A variation may be initiated by the Engineer at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Contractor to submit a proposal. A variation shall not comprise the omission of any work which is to be carried out by others.

The Contractor shall execute and be bound by each Variation, unless the Contractor promptly gives notice to the Engineer stating (with supporting particulars) that

* 1. the Contractor cannot readily obtain the Goods required for the Variation,
  2. it will reduce the safety or suitability of the Works, or
  3. it will have an adverse impact on the achievement of the Schedule of Guarantees. Upon receiving this notice, the Engineer shall cancel, confirm or vary the instruction.

# VARIATION PROCEDURE

Add at the end of Sub-Clause 13.3 to include the following:

The government public finance regulation should be followed for variation approval; all variations are subject to acceptance from the Employer and ADFD. (i.e.: taking written approval from employer for all variation works).

# ADJUSTMENTS FOR CHANGES IN LAWS

Delete Sub-Clause 13.6

# CONTRACT PRICE AND PAYMENT

# THE CONTRACT PRICE

Delete Sub-Clause 14.1 and substitute with the following:

Unless otherwise stated in the Contract Data

1. the Contract Price shall be the lump sum as stated in the Letter of Acceptance. The Contract Price shall be exclusive of GST.
2. The Contractor shall pay all such indirect taxes and duties as levied under the Applicable Law.
3. Whenever the Contractor is required to pay taxes and duties under the laws of the Republic of Maldives and the applicable laws do not permit exemption of taxes, the Government of Maldives shall reimburse the Contractor for any such taxes, and duties paid by the Contractor under the Contract.
4. The Government of Maldives shall only reimburse the Contractor for taxes payable under the Contract as per the laws of the Republic of Maldives.
   1. The contractor shall pay the Maldivian Inland Revenue Authority for the GST.
   2. For the project GST, the contractor shall submit two (2) invoices.
      1. The first invoice shall be for the works performed, paid directly by ADFD.
      2. The second invoice shall be for the GST (converted to MVR).
         1. The second invoice will be reinbursed directly to the contractor by the MNDPI
5. Any quantities which may be set out in the tender are estimated quantities and are not to be taken as the actual and correct quantities of the Works which the Contractor is required to check and verify;
6. This is a lump-sum contract, the Contractor is responsible to inspect the site and verify the quantities before submitting their proposal as no additional payments will be entertained.

# ADVANCE PAYMENT

Delete Sub-Clause 14.2.2 and substitute with the following:

The Employer shall make an advance payment, as an interest-free loan for mobilization and design, when the Contractor submits the bank guarantee to the value of the advance payment in accordance with this Sub-Clause (this bank guarantee should be from a bank registered in the Maldives.

However, with pre-approval from the Employer and ADFD; a bank guarantee from an international bank may be accepted). The total advance payment shall not exceed 10% of Initial Contract Price.

1. The advance payment will be paid within forty-five (45) days after the original approved advance payment guarantee and performance guarantee has been submitted and received; and
2. The certified Contractor’s invoice has been received at the ADFD offices in Abu Dhabi.

# SCHEDULE OF PAYMENTS

Delete Sub-Clause 14.4 and substitute with the following:

The Employer shall pay to the Contractor:

1. the advance payment within forty-five (45) days after receiving the documents in accordance with Sub-Clause 4.2 (*Performance Security*) and Sub-Clause 14.2 (*Advance Payment*), whichever is later;
2. the amount certified in each Interim Payment Certificate within forth-five (45) Days after the Engineer approves the Interim Payment certificate and after receiving the Statement and supporting documents; and
3. the amount certified in the Final Payment Certificate within fifty-six (56) days after the Employer receives this Payment Certificate.
4. The days shown in Sub-Clauses 14.4 (a, b, c) refer to timings starting from when the original approved documents reach the ADFD office in Abu Dhabi.

# PAYMENT

Delete Sub-Clause 14.7 and substitute with the following:

The Employer shall pay to the Contractor:

1. the advance payment within forty-five (45) days after receiving the documents in accordance with Sub-Clause 4.2 (*Performance Security*) and Sub-Clause 14.2 (*Advance Payment*), whichever is later;
2. the amount certified in each Interim Payment Certificate within forty-five (45) Days after the Engineer approves the Interim Payment certificate and after receiving the Statement and supporting documents; and
3. the amount certified in the Final Payment Certificate within eighty-four (84) days after the Employer receives the Payment Certificate.
4. The days shown in Sub-clauses 14.7 (a, b, c) refer to timings starting from when the original approved documents reach the ADFD office in Abu Dhabi.

# DELAYED PAYMENT

Delete Sub-Clause 14.8

# RELEASE OF RETENTION MONEY

Delete Sub-Clause 14.9 and substitute with the following:

Retention will be deducted from the certified invoices until 10% of the contract value is reached.

The full retention amount will be held until the project is completed, handed over and accepted.

After acceptance and upon Completion of the whole of the Works, and

1. the Engineer has certified that all Defects notified by the Engineer to the Contractor have been completed, and
2. all items have been corrected, and
3. the project is accepted by the Employer, then
4. half of the retention will be repaid to the Contractor (5% of the contract value).

Upon Completion of the whole of the Works, and

1. after the DLP has passed, and
2. all items have been corrected regardless if the DLP has passed, then
3. the remaining retention will be repaid to the Contractor (5% of the contract value)

*Note: A Bank Guarantee or any similar type of security will not be accepted for release of the retention. The retention will be held until the end of the project and completion of the DLP, as explained above.*

# CURENCIES OF PAYMENT

Add the following to Sub-Clause 14.15.h to include:

GST component of each payment shall be paid in Maldivian Rufiyaa and to the local account given for the prevailing exchange rate at the date of bid submission.

Contract payments, excluding the GST amount, will be paid to Contractors bank account in United States Dollars (USD$).

# CARE OF THE WORKS AND INDEMNITIES

# EMPLOYER’S RISKS

Add Sub-Clause 17.7 and include the following:

The risks referred to in Sub-Clause 17.5 (*Indemnities by Employer*) below are:

1. war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
2. rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, within the Country;
3. riot, commotion or disorder within the Country by persons other than the Contractor’s Personnel and other employees of the Contractor and Subcontractors;
4. munitions of war, explosive materials, ionising radiation or contamination by radio-activity, within the Country, except as may be attributable to the Contractor’s use of such munitions. explosives, radiation or radio-activity;
5. pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds;
6. use or occupation by the Employer of any part of the Permanent Works, except as may be specified in the Contract;
7. design of any part of the Works by the Employer’s Personnel or by others for whom the Employer is responsible;, and
8. any operation of the forces of nature which is unforeseeable or against which an experienced contractor could not reasonably have been expected to have taken adequate preventative precautions.

# DISPUTES AND ARBITRATION

# ARBITRATION

Disputes shall be referred to arbitration in accordance with the Arbitration Act of the Republic of Maldives [10/2013].

The place of arbitration shall be: Republic of Maldives

In case, an Arbitration system is not yet established, Court of Law of Republic of Maldives shall prevail.