

Construction Contract on Measurement Basis

The

A2

**Deutsche Gesellschaft für
Internationale Zusammenarbeit
(GIZ) GmbH
Dag-Hammarskjöld-Weg 1 - 5
D-65760 Eschborn
Federal Republic of Germany**

- hereinafter referred to as the
- **"Employer"** -

and



- hereinafter referred to as the
- **"Contractor"** -

herewith enter into the following Contract

for the Project:

Country:

Deutsche Gesellschaft für
Internationale Zusammenarbeit (GIZ) GmbH

Registered offices
Bonn and Eschborn, Germany

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Registered at
Local court (Amtsgericht)
Bonn, Germany
Registration no. HRB 18384
Local court (Amtsgericht)
Frankfurt am Main, Germany
Registration no. HRB 12394
VAT no. DE 113891176
Tax no. 040 250 56973

Chairman of the Supervisory Board
Martin Jäger, State Secretary

Management Board
Tanja Gönner (Chair)
Ingrid-Gabriela Hoven
Thorsten Schäfer-Gümbel

Commerzbank AG Frankfurt am Main
BIC (SWIFT): COBADEFFXXX
IBAN: DE45 5004 0000 0588 9555 00

For correspondence (Please quote on all correspondence and invoices)

Contract No. (Cosoft No):

Project Processing No.:

Date:

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10/2020

1. PURPOSE OF THE CONTRACT - SCOPE OF WORKS

The Employer awards and the Contractor takes over the execution of the following construction works:

[REDACTED]

2. CONTRACT DOCUMENTS

The priority of documents forming the Contract shall be as follows:

- 2.1 This Construction Contract
- 2.2 The Specification of works / technical specifications
- 2.3 The Drawings enclosed to the Invitation to Tender for Contractors, i.e.

No. [REDACTED]	dated [REDACTED]	No. [REDACTED]	dated [REDACTED]
No. [REDACTED]	dated [REDACTED]	No. [REDACTED]	dated [REDACTED]

and such drawings and details as may be issued by the Employer or his Authorized Representative for the clarification of the Works during execution.

- 2.4 The priced Bill of Quantities (including Daywork Rates), dated [REDACTED]

3. TERMS OF EXECUTION - COMMENCEMENT OF WORKS

- 3.1 The Employer or his Authorized Representative shall give at least 7 working-days notice in writing, prior to the date of handing-over of the site. The Contractor shall commence the Works within 5 working-days of the date of the handing-over of site.
- 3.2 The Contractor agrees to execute and to complete the Works as described in the documents listed under Clause 2 with due care and diligence in accordance with generally accepted construction practices.
- 3.3 The Contractor shall be obliged to observe the Laws, Bye-Laws, Ordinances and Statutes and other legal provisions of the country in which the Works are executed, in particular labour laws, local standards, public rules and regulations.
- 3.4 The Contractor shall submit a work programme not later than [REDACTED] weeks after the signing of this Contract.
- 3.5 The Contractor shall supply all building materials, equipment, plant and tools necessary for the execution of the Works in due number and time.
- 3.6 The Contractor shall provide all qualified and experienced labour necessary in due number and time and shall supervise their activities with due care and diligence. The Employer shall be entitled to object to and require the Contractor to remove from the Works any person employed by the Contractor who, in the opinion of the Employer, is incompetent, negligent, or guilty of misconduct.

- 3.7 No work shall be covered up or otherwise put out of view without prior approval in writing by the Employer or his Authorized Representative.
- 3.8 The Employer shall be entitled to make any variation of the form, quantity or quality of the Works or any part thereof that may, in his opinion, be necessary or desirable (cf. Clause 4.2). No such variation shall be made without an order in writing by the Employer or his Authorized Representative.
- 3.9 Building materials and Works may be subject to tests at any time at the request of the Employer. These tests shall be carried out as directed by the Employer or his Authorized Representative at the place of manufacture or fabrication or on site or in a testing institute. The Contractor shall provide such assistance, materials, plant, instruments and labour as required for such test. The costs of carrying out such tests shall be borne by the Contractor.
- 3.10 The Contractor shall keep the site free from all unnecessary obstructions at all times and shall remove all materials and plant which are no longer required. Upon completion of the Works he shall leave the site clean and orderly to the satisfaction of the Employer or his Authorized Representative.
- 3.11 The Contractor shall treat the details of this Contract as well as any aspects of its implementation as private and confidential, save in so far as may be necessary for the purpose thereof, and shall not publish or disclose any such information to third parties without the prior consent in writing of the Employer. If any dispute arises as to the necessity of any publication or disclosure for the purpose of the Contract the same shall be referred to the decision of the Employer whose award shall be final.
- 3.12 The Employer has the right for on-the-spot-checks at the site that may be carried out on request by representatives of the financing or co-financing parties (e.g. EU)

4. REMUNERATION - ADDITIONAL WORKS

- 4.1 The Employer shall pay the Contractor a Contract Price of up to

(Currency)

(in words)

in accordance with the prices stated in the Bill of Quantities and the Works actually executed and measured. The Contract Price shall be subject to such additions and deductions as may be made under the provisions of this Contract.

- 4.2 The rates and prices of the Bill of Quantities shall cover all services and works of the Contractor described in the Specifications and the Drawings. Additional works shall be remunerated only if they were ordered in writing by the Employer or his Authorized Representative and shall be valued at the prices set out in the Bill of Quantities.
- 4.3 If the Contract does not contain any rates or prices applicable to the extra or additional work, then suitable rates or prices shall be agreed upon between the Employer and the Contractor in advance. In the event of disagreement, the Employer shall fix such rates or prices as shall, in his opinion, be reasonable and proper, taking into account all prevailing circumstances.

- 4.4 The Contractor shall invoice Value Added Tax (VAT) if and as prescribed by law; the Employer will refund the amount in addition to the remuneration.

Amount of VAT (*if applicable*):

5. TIME FOR COMPLETION - PENALTY FOR DELAY

- 5.1 The Contractor shall complete the Works as listed under Clause 1 and 2 within [REDACTED] working-days after the handing-over of site and shall request the issue of the Taking-Over Certificate at least 3 weeks prior to the date of completion.
- 5.2 If the Contractor should fail to achieve the completion of the Works within the period prescribed in Clause 5.1, the Contractor shall pay to the Employer a penalty of one per mille (1/1000) of the Contract Price stated under Clause 4.1 for every working-day of delay up to a limit of 5 % of the Contract Price.
- 5.3 The payment of such penalty shall not relieve the Contractor from his obligation to complete the Works or from any other obligation or liability under this Contract.

6. AUTHORIZED REPRESENTATIVE - SUPERVISION OF THE WORKS

The site supervision shall be carried out by an authorized firm or person assigned to act on behalf of the Employer and shall exercise the rights of the Employer under this Contract. The Employer herewith appoints as Authorized Representative for the execution of the Works:

[REDACTED]

7. PAYMENTS

- 7.1 All payments shall be made in [REDACTED] (*Currency*) to the following bank and account number of the Contractor:

[REDACTED]

- 7.2 The parties of this Contract agree to the following payment schedule:
- 7.2.1 Against presentation of a bank guarantee by a bank accepted by the Employer in compliance with the format for the Advance Payment Guarantee enclosed (see Annex A 6) the Contractor shall receive an advance payment of [REDACTED] % of the Contract Price = [REDACTED]

The advance payment shall be repaid by deduction of the corresponding percentage from each payment on account.

- 7.2.2 Payments on account shall be made in accordance with the progress of the Works measured on site each month, in keeping with the Bill of Quantities and after certification of each invoice by the Authorized Representative.
- 7.2.3 Each invoice shall be submitted in duplicate and bear the project and contract number indicated on the front page of this Contract.
- 7.2.4 An amount of 10 % of the total of each payment on account shall be withheld by the Employer as Retention Money.
- 7.2.5 After the issue of the Taking-Over Certificate in compliance with the format enclosed (Annex A 9) and presentation of the final bill the remuneration due shall be paid reduced by 5 % of the total Contract Price, which shall be released after the defects liability period has expired, provided the Works are free of defects. This amount may be released against the provision of a Defects Liability Guarantee by a bank accepted by the Employer in compliance with the format enclosed (see Annex A 7).

8. TAKING-OVER CERTIFICATE - DEFECTS LIABILITY PERIOD

- 8.1 The Employer or his Authorized Representative shall issue the Taking-Over Certificate in compliance with the format enclosed (see Annex A 9) within 3 weeks of the date of delivery of the Contractor's request for its issue, provided that the whole of the Works have been completed in accordance with the Contract and to the satisfaction of the Authorized Representative.

If the Works have been completed except for minor faults or missing items, the Employer or his Authorized Representative shall include a statement in the Taking-Over Certificate, listing all faults and defects, missing items or outstanding works to be completed, including the date when all rectification and finishing works shall be completed.

- 8.2 The Defects Liability Period shall be twelve (12) months, starting with the date of issue of the Taking-Over Certificate.
- 8.3 Defects, faults or shrinkage due to the use of materials or workmanship not in accordance with the Contract and which arise during the defects liability period shall be made good by the Contractor immediately after notification. For these rectifications a new defects liability period shall start on their day of completion.
- 8.4 If the Contractor should fail to comply with his obligations under this Contract, the Employer shall be entitled to either make a deduction, claim damages or, giving four (4) weeks notice to the Contractor, employ another contractor to execute the works required for rectification and to deduct all expenses arising thereon or incidental thereto from the moneys retained according to Clause 7.2.4 or 7.2.5, or to recover these from the Contractor.

9. LIABILITY - INSURANCE

- 9.1 The Contractor shall be liable for all damages caused by himself, his agents or persons employed or in any way engaged by him for the execution of the Works.

- 9.2 Subletting of the Works under this Contract or of any part thereof shall require the express written consent of the Employer. This approval may be revoked at any time in case serious complaints arise. The Contractor shall be liable for all services performed by his subcontractors in the same manner as for his own services.
- 9.3 Without limiting his obligations and responsibilities under this Contract, the Contractor shall insure himself at his own expense against his liability for any material or physical damage, loss or injury which may occur to any person or property arising out of or in consequence of the performance of this Contract.
- 9.4 The insurance sum shall be as customary in the country where the works are to be executed.

10. TERMINATION OF THE CONTRACT

- 10.1 The Employer may terminate this Contract at any time either wholly or in part for individual parts of the Works.
- 10.2 Should the Employer terminate the Contract for a reason for which the Contractor is answerable, the Employer shall be entitled to claim compensation for damages. In this case the Employer shall remunerate only the Works already completed, provided the Employer can use them. The Employer may offset the claim for damages against the remuneration. Any other legal rights of the Employer shall remain unaffected.
- 10.3 Should the Employer terminate the Contract for a reason for which the Contractor is not answerable, the Contractor shall be entitled to payment for work already completed and to reimbursement of unavoidable expenses incurred prior to the date of termination.

11. ARBITRATION

All disputes arising in connection with the present Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules.

12. ENVIRONMENTAL AND SOCIAL STANDARDS

The Contractor shall promote and respect human rights and shall respect applicable legislation including multilateral environmental agreements. The International Labour Standards of the ILO (International Labour Organisation) shall constitute an integral component of this Contract. The contractor is obliged to obey these standards and hereby declares that he is familiar with them. (www.ilo.org for information)

- 13. The contract is drawn up in duplicate. The contractor shall receive one copy thereof

14. FINAL PROVISION

This Contract shall be modified or supplemented only by written agreement.

.....
(Place, Date)

.....
(Place, Date)

.....
The Employer
Deutsche Gesellschaft für
Internationale Zusammenarbeit
(GIZ) GmbH

.....
The Contractor
(*seal, if available*)

Annexes :

A 6 Advance Payment Guarantee
A 7 Defects Liability Guarantee
A 9 Taking-Over Certificate