

Annex 1

**UNITED NATIONS SPECIAL CONDITIONS FOR CONSTRUCTION WORKS**

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**ANNEX 1**  
**UNITED NATIONS SPECIAL CONDITIONS FOR CONSTRUCTION WORKS**

1. **DEFINITIONS**

(1) (intentionally omitted)

(2) "Condition of Default" means any failure of any kind whatsoever by a party to the Contract to perform its obligations or responsibilities under the Contract, whether or not such failure is of a material or substantial nature, except where such failure is caused by Force Majeure. If after receiving notice of a Condition of Default, the defaulting party fails to cure it within a reasonable time, a Condition of Default becomes an Event of Default.

(3) (intentionally omitted)

(4) "Drawings", and "Specification" mean the drawings, and specification referred to in the Proposal and any modification thereof or addition thereto as may from time to time be furnished or approved in writing by the Engineer.

(5) "Event of Default" means any material or substantial failure by a party to the Contract to perform its obligations or responsibilities under the Contract giving rise to the remedies provided in the Contract.

(6) As used in these Special Conditions, the term "Owner" means the United Nations.

(7) (intentionally omitted)

(8) "Site" means the ..... at the premises of the United Nations the address of which is First Ave., corner of 42nd Street, New York, NY 10017.

(9) (intentionally omitted)

(10) (intentionally omitted)

2. **SINGULAR AND PLURAL AND GENDER**

Words importing persons or parties shall include firms or companies and words importing the singular only shall also include the plural, and vice versa, where the context so requires. Use of pronouns or other words indicating the male gender shall also mean the female gender, and vice versa, where the context so requires.

3. **HEADINGS OR NOTES**

The headings or notes in the Contract Documents shall neither be deemed to be part thereof nor be taken into consideration in the interpretation or construction thereof.

4. **LEGAL RELATIONSHIPS**

The Contractor and the Engineer shall have the status of independent contractors vis-à-vis the Owner. The Contract Documents shall not be construed to create any contractual relationship of any kind between the Engineer and the Contractor. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner or the Engineer and any subcontractor or sub-subcontractor.

5. **DUTIES AND POWERS OF ENGINEER**

- (1) The Engineer shall provide advice to the United Nations in administering the Contract as hereinafter described. Exercise by the Engineer of the powers set forth herein, and those set forth in Articles 44, 45, 51 (2) and 52, is subject to prior consultation with, and approval of, the Owner.
- (2) The Engineer shall be the Owner's representative during construction and until final payment is due. The Engineer shall advise and consult with the Owner. Unless the Owner decides otherwise, the Owner's instructions to the Contractor shall be forwarded through the Engineer. The Engineer shall have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument.
- (3) The Engineer shall visit the Site at intervals appropriate to the stage of construction to familiarize himself generally with the progress and quality of the Services and to determine in general if the Services are proceeding in accordance with the Contract Documents. On the basis of his on-site observations as an Engineer, he shall keep the Owner informed of the progress of the Services, and shall endeavour to guard the Owner against defects and deficiencies in the work of the Contractor.
- (4) The Engineer shall not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programmes in connection with the Services, and he shall not be responsible for the Contractor's failure to carry out the Services in accordance with the Contract Documents. The Engineer shall not be responsible for or have control or charge over the acts or omissions of the Contractor, Sub-contractors or any of their agents or employees, or any other persons performing services for the Services.
- (5) (intentionally omitted)
- (6) Based on the Engineer's observations and an evaluation of the Contractor's invoices, the Engineer shall determine the amounts owing to the Contractor and shall certify Contractor's invoices for payment as appropriate.
- (7) The Engineer shall review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformity with the design concept of the Services and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- (8) The Engineer shall render interpretation of the Contract Documents necessary for the proper execution of the Services, with reasonable promptness and in accordance with any time limit agreed upon. All interpretations and orders of the Engineer shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. Either party may make written request to the Engineer for such interpretation.
- (9) Except as otherwise provided in the Contract Documents, the Engineer shall have no authority to relieve the Contractor of any of his obligations under the Contract nor to order any work involving delay in completion or any extra payment to the Contractor by the Owner.
- (10) Any claim or dispute arising from the interpretation of the Contract Documents or relating to the execution or progress of the Services shall be settled in accordance with the provisions of Article 16 of the United Nations General Conditions of Contract (Annex F to the RFP).
- (11) In case of the termination of the employment of the Engineer, the Owner shall appoint another suitable professional to perform the Engineer's duties.
- (12) As judge of the Contractor's performance thereunder, the Engineer shall have authority to reject work that does not conform to the Contract Documents. Whenever, in his opinion, he considers it necessary or advisable for the implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the work whether or not such work be then fabricated, installed or completed. However, neither the Engineer's authority to act nor any reasonable decision made by him in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Engineer to the Contractor, any subcontractor, any of their agents or employees, or any other person performing services hereunder.

(13) The Engineer shall have authority to order minor "no additional cost" changes (i.e., changes that do not increase the total fixed contract NTE Amount) in the Services.

(14) The Engineer shall conduct inspections to determine the dates of Substantial Completion and Completion, shall receive and forward to the Owner for the Owner's review written warranties and related documents required by the Contract and assembled by the Contractor, and shall issue a Certificate of Completion upon compliance with the requirements of Clause 44 hereof.

(15) (intentionally omitted)

(16) The duties, responsibilities and limitations of authority of the Engineer as the Owner's representative during construction as set forth in the Contract Documents shall not be modified or extended without the written consent of the Owner.

(17) (intentionally omitted)

## 6. **CUSTODY OF DRAWINGS**

(1) The original construction drawings shall remain in the sole custody of the Engineer but one transparency set shall be furnished to the Contractor by the Owner free of charge. The Contractor shall provide and make at his own expense any further copies required by him.

(2) One copy of the Drawings furnished to the Contractor shall be kept by the Contractor on the Site and the same shall at all reasonable times be available for inspection and use by the Engineer and by any other person authorized in writing by the Engineer.

(3) The Contractor shall submit in triplicate to the Engineer at the end of each month signed copies of explanatory Drawings or any other material showing the progress of the Services.

(4) The Contractor shall give written notice to the Engineer, with a copy to the Owner, whenever planning or progress of the Services is likely to be delayed or disrupted unless any further drawing or order, including a direction, instruction or approval, is issued by the Engineer within a reasonable time. The notice shall include details of drawing or order required and of why and by when it is required and of any delay or disruption likely to be suffered if it is late.

## 7. **FURTHER DRAWINGS AND INSTRUCTIONS**

The Engineer shall have full power and authority to supply to the Contractor from time to time during the progress of the Services such further drawings and instructions as shall be necessary for the purpose of the proper and adequate execution and maintenance of the Services. The Contractor shall carry out and be bound by the same. However, in the event the carrying out of the further drawings and instructions would increase the total NTE Amount, the Contractor shall notify the Owner and obtain the Owner's consent prior to any action being taken.

8. (intentionally omitted)

9. (intentionally omitted)

## 10. **INSPECTION OF SITE**

The Contractor shall be deemed to have inspected and examined the Site and its surroundings and to have satisfied himself before submitting his Proposal as to all matters relative to the nature of the work and materials necessary for the completion of the Services, the means of access to the Site, and in general to have himself obtained all necessary information as to risk contingencies and other circumstances which may influence or affect his performance of the Services, and no claims against the Owner or the Engineer will be entertained in this connection.

## 11. **SUFFICIENCY OF PROPOSAL**

The Contractor shall be deemed to have satisfied himself before tendering as to the correctness and sufficiency of his Proposal for the performance of the Services and of the rates and prices which rates and prices shall, except in so far as it is

otherwise provided in the Contract, cover all his obligations under the Contract and all matters and things necessary for the proper execution and maintenance of the Services.

12. **WORK TO THE SATISFACTION OF ENGINEER**

The Contractor shall execute complete and maintain the Services in strict accordance with the Contract and to the satisfaction of the Owner, and shall comply with and adhere strictly to the Engineer's instructions and directions on any matter, whether mentioned in the Contract or not, in connection with or concerning the Services.

13. (intentionally omitted)

14. **CONTRACTOR'S SUPERINTENDENCE**

The Contractor shall give or provide all necessary superintendence during the execution of the Services and as long thereafter as the Engineer may consider necessary for the proper fulfillment of the Contractor's obligations under the Contract.

The Contractor or a competent and authorized agent or representative approved in writing by the Engineer, which approval may at any time be withdrawn, shall be constantly on the Site and shall give his whole time to the superintendence of the Services. If approval of the Contractor's authorized agent or representative shall be withdrawn by the Engineer, the Contractor shall as soon as practicable after receiving notice of such withdrawal remove the agent or representative from the Site. The Contractor shall replace him by another agent or representative approved by the Engineer.

15 through 34 (intentionally omitted)

35. **ACCESS TO SITE**

The Owner and the Engineer and any persons authorized by either of them shall, at all times, have access to the Services and to the Site.

36. **EXAMINATION OF WORK BEFORE COVERING UP**

No work shall be covered up or put out of view without the approval of the Engineer and the Contractor shall afford full opportunity for the Engineer to examine and measure any work which is about to be covered up or put out of view and to examine foundations before permanent work is placed thereon. The Contractor shall give due notice to the Engineer whenever any such work or foundations is or are ready or about to be ready for examination and the Engineer shall without unreasonable delay unless he considers it unnecessary and advises the Contractor accordingly, attend for the purpose of examining and measuring such work or of examining such foundations.

37. **REMOVAL OF IMPROPER WORK AND MATERIALS**

(1) The Engineer shall during the progress of the Services have authority to order in writing from time to time, and the Contractor shall execute at his cost and expense, the following operations:

- (a) The removal from the Site within such time or times as may be specified in the order of any materials which in the opinion of the Engineer are not in accordance with the Contract;
- (b) The substitution of proper and suitable materials; and
- (c) The removal and proper re-execution (notwithstanding any previous test thereof or interim payment therefore) of any work which in respect of materials or workmanship is not in the opinion of the Engineer in accordance with the Contract.

(2) **Default of Contractor in carrying out Engineer's Instructions**

In case of an Event of Default on the part of the Contractor in carrying out an instruction of the Engineer, the Owner shall be entitled to employ and pay other persons to carry out the same and all expenses consequent thereon or incidental thereto shall be borne by the Contractor and shall be recoverable from him by the Owner and may be deducted by the Owner from any monies due or which may become due to the Contractor.

38 and 39 intentionally omitted.

40. **TIME FOR SUBSTANTIAL COMPLETION**

- (1) Subject to any requirement in the Contract as to Substantial Completion of any section of the Services before completion of the whole, the whole of the Services shall be completed by the Completion Date.
- (2) The Substantial Completion time includes weekly rest days, official holidays, and days of inclement weather.

41. **EXTENSION OF TIME FOR SUBSTANTIAL COMPLETION**

If the Owner or the Engineer orders alterations or additions in the Services in accordance with Clause 45 hereof, or if circumstances constituting Force Majeure have occurred, or in case of any occurrence of the events amounting to Special Risks, the Contractor shall be entitled to apply for an extension of the time for Substantial Completion of the Services. The Owner shall, upon application of the Contractor, determine the period of any such extension of time; provided that in the case of alterations or additions in the Services, the application for such an extension must be made before the alterations or additions in the Services are undertaken by the Contractor.

42. **RATE OF PROGRESS**

The whole of the materials, plant and labour to be provided by the Contractor under the Contract and the mode, manner and speed of execution and maintenance of the Services are to be of a kind and conducted in a manner to the satisfaction of the Owner. Should the rate of progress of the Services or any part hereof be, at any time, in the opinion of the Engineer, too slow to ensure the completion of the Services by the prescribed time or extended time for completion, a Condition of Default will have occurred, and the Engineer shall so notify the Contractor in writing and the Contractor shall thereupon take such steps as the Contractor may think necessary and the Engineer may approve to expedite progress so as to complete the Services by the prescribed time or extended time for completion. If the work is not being carried on by day and by night and the Contractor shall request permission to work by night as well as by day, then, if the Engineer shall grant such permission, the Contractor shall not be entitled to any additional payment. All work at night shall be carried out without unreasonable noise and disturbance. The Contractor shall indemnify the Owner from and against any claims or liability for damages on account of noise or other disturbance created while or in carrying out the Services and from and against all claims, demands, proceedings, costs, charges and expenses whatsoever in regard or in relation to such noise or other disturbance.

43. **CERTIFICATE OF SUBSTANTIAL COMPLETION**

When the whole of the Services have been Substantially Completed and have satisfactorily passed any final test that may be prescribed by the Contract, the Contractor may give a notice to that effect to the Engineer accompanied by an undertaking to finish any outstanding work during the Defects Liability Period (hereinafter defined). Such notice and undertaking shall be in writing and shall be deemed to be a request by the Contractor for the Engineer to issue a Certificate of Substantial Completion in respect of the Services. The Engineer shall, within twenty-one (21) days of the date of delivery of such notice either issue to the Contractor, with a copy to the Owner, a Certificate of Substantial Completion stating the date on which, in his opinion, the Services were substantially completed in accordance with the Contract or give instructions in writing to the Contractor specifying all the work which, in the Engineer's opinion, requires to be done by the Contractor before the issue of such Certificate. The Engineer shall also notify the Contractor, with a copy to the Owner, of any defects in the Services affecting Substantial Completion that may appear after such instructions and before completion of the work specified therein. The Contractor shall be entitled to receive such Certificate of Substantial Completion within twenty-one (21) days of completion, to the satisfaction of the Engineer, of the work so specified and making good any defects so notified. Upon issuance of the Certificate of Substantial Completion of the Services, the Contractor shall be deemed to have undertaken to complete with due diligence any outstanding work of the Services during the Defects Liability Period.

44. **DEFECTS LIABILITY**

(1) **Defects Liability Period**

In this Contract the expression "Defects Liability Period" shall mean the period of twelve (12) months, calculated from the date of the Certificate of Substantial Completion of the Services issued in accordance with Clause 43 hereof, during which time the Contractor must complete all outstanding work and remedy any defects in the Services.

(2) **Completion of Outstanding Work and Remedying Defects**

During the Defects Liability Period, the Contractor shall finish the work, if any, outstanding at the date of the Certificate of Substantial Completion, as certified under Clause 43 hereof, and shall execute all such work of repair,

amendment, reconstruction, rectification and making good defects, imperfections, shrinkages or other faults as may be required of the Contractor in writing by the Engineer during the Defects Liability Period or within fourteen (14) days after its expiration, as a result of an inspection made by or on behalf of the Engineer prior to expiration of the Defects Liability Period.

(3) Cost of Execution of Work of Repair, etc.

All such work outstanding on the Services shall be carried out by the Contractor at his own expense if the necessity thereof shall, in the opinion of the Engineer, be due to the use of material or workmanship not in accordance with the Contract, or to neglect or failure on the part of the Contractor to comply with any obligation expressed or implied, on the Contractor's part under the Contract.

(4) Remedy on Contractor's Failure to Carry Out Work Required

If the Contractor shall fail to do any such work outstanding on the Services, an Event of Default will have occurred, and the Owner shall be entitled to employ and pay other persons to carry out the same, and all expenses consequent thereon or incidental thereto shall be recoverable from the Contractor by the Owner, and may be deducted by the Owner from any monies due or which may become due to the Contractor.

(5) Certificate of Completion

Upon satisfactory completion of the work outstanding on the Services, the Engineer shall within thirty (30) days of the expiration of the Defects Liability Period, issue a Certificate of Completion to the Contractor. The Contract shall be deemed completed upon issuance of such Certificate, provided that the provisions of this Contract which remain unperformed, and in particular the Settlement of Disputes provision shall remain in force for as long as is necessary to dispose of any outstanding work or issues between the Parties.

45. **ALTERATIONS, ADDITIONS AND OMISSIONS**

(1) Variations

Subject to paragraph 2 of this Clause, the Engineer may within his powers introduce any variations which he considers necessary and for that purpose or if for any other reasons it shall, in his opinion be desirable, he shall have power to order the Contractor to do and the Contractor shall do any of the following:

- (a) increase or decrease the quantity of any work under the Contract;
- (b) change the character or quality or kind of any such work;
- (c) change the levels, lines, positions and dimensions or any part of the Services;
- (d) execute additional work of any kind necessary for the completion of the Services; and no such variation shall in any way vitiate or invalidate the Contract.

(2) Variations Increasing Cost of Contract

The Engineer shall, however, obtain the written approval of the Owner before making any variations which will result in an increase in the cost of the Contract. No increase in the cost of the Contract shall be valid or enforceable against Owner except as provided in a written amendment to the Contract signed by the Parties.

(3) Orders for Variations to be in Writing

No variations shall be made by the Contractor without an order in writing from the Engineer. Variations requiring the written approval of the Owner under paragraph (2) of this clause shall be made by the Contractor only upon written order from the Engineer accompanied by a copy of such approval. Provided that no order in writing shall be required for any

increase or decrease in the quantity of any work where such increase or decrease does not result in an increase to the total fixed contract NTE Amount.

46 through 49 (intentionally omitted).

50. **CESSATION OF OWNER'S LIABILITY**

(1) The Services shall not be considered as completed until a Certificate of Completion shall have been signed by the Engineer and delivered to the Owner stating that the Services have been completed and maintained to his satisfaction.

(2) The Owner shall not be liable to the Contractor for any matter or thing arising out of or in connection with the Contract or the execution of the Services unless the Contractor shall have made a claim in writing in respect thereof before the giving of the Certificate of Completion.

(3) **Unfulfilled Obligations**

Notwithstanding the issuance of the Certificate of Completion, the Contractor shall remain liable for the fulfillment of any obligation incurred under the provisions for the Contract prior to the issuance of such Certificate and which remains unperformed at the time such Certificate is issued. For the purpose of determining the nature and extent of any such obligation the Contract shall be deemed to remain in force between the parties hereto.

51. **AUTHORITIES**

(1) **Owner's Right of Re-Entry**

The Owner shall have the right to enter upon the Site and expel the Contractor therefrom without thereby voiding the Contract or releasing the Contractor from any of his obligations or liabilities under the Contract or affecting the rights and powers conferred on the Owner and the Engineer by the Contract, if any of the following Conditions or Events of default have occurred:

- (a) The Contractor is declared bankrupt or claims bankruptcy or if the Contractor is a company or member of a company which was dissolved by legal action;
- (b) The Contractor makes arrangements with his creditors or agrees to carry out the Contract under an inspection committee of his creditors;
- (c) The Contractor withdraws from the Services or assigns the Contract to others without the Owner's approval;
- (d) The Contractor fails to commence the Services or shows insufficient progress to the extent which in the opinion of the Owner or the Engineer will not enable him to meet the Substantial Completion date of the Services;
- (e) (intentionally omitted)
- (f) The Contractor fails to comply with any of the Contract Conditions or fails to fulfill his obligations and does not remedy the cause of his failure within fifteen (15) days after being notified in writing to do so;
- (g) The Contractor is not executing the Services in accordance with standards of workmanship specified in the Contract;
- (h) The Contractor gives or promises to give a present or loan or reward to any employee of the Owner or engages during the term of this Contract any employee or workman of the Owner who has any relation with the Contract;

Then the Owner may himself complete the Services or may employ any other contractor to complete the Services and the Owner or such other contractor may use for such completion so much of constructional plant and materials, which have been deemed to be reserved exclusively for the construction and completion of the Services under the provision of the Contract as he or they may think proper and the Owner may at any time sell any of the said constructional plant, and unused materials and apply the proceeds of sale in or towards the satisfaction of any sums due or which may become due to him from the Contractor under the Contract.

(2) Evaluation at Date of Re-Entry

The Engineer shall as soon as may be practicable after any such entry and expulsion of the Contractor by the Owner notify the Contractor to attend the necessary evaluation of the Services. In the event that for any reason the Contractor does not attend such evaluation the Engineer shall undertake the evaluation in the absence of the Contractor and shall issue a certificate stating the sum, if any, due to the Contractor for work done in accordance with the Contract up to the time of entry and expulsion by the Owner which has been reasonably accumulated to the Contractor in respect of the Services he has executed in such case in accordance with the Contract. The Engineer shall indicate the value of the said materials whether unused or partially used and the value of construction equipment.

(3) Payment After Re-Entry

If the Owner shall enter and expel the Contractor under this clause he shall not be liable to pay the Contractor any money on account of the Contract until the expiration of the Defects Liability Period, and thereafter until the costs of completion and maintenance, damages for delay in completion (if any), and all other expenses incurred by the Owner have been ascertained and their amount certified by the Engineer. The Contractor shall then be entitled to receive only such sum or sums (if any) as the Engineer may certify would have been due to him, upon due completion by him after deducting the said amount. If such amount shall exceed the sum which would have been payable to the Contractor on due completion by him then the Contractor shall upon demand pay to the Owner the amount of such excess. The Owner in such case may recover this amount from any money due to the Contractor from the Owner without the need to resort to the Settlement of Disputes provisions of the Contract.

52. URGENT REPAIRS

If by reason of any accident or failure or other event occurring to, in, or in connection with the Services or any part thereof either during the execution of the Services or during the Defects Liability Period any remedial or other work or repair shall in the opinion of the Engineer be urgently necessary for security and the Contractor is unable or unwilling at once to do such work or repair, an Event of Default will have occurred, and the Owner may by his own or other workmen do such work or repair as the Engineer may consider necessary. If the work or repair so done by the Owner is work which in the opinion of the Engineer the Contractor was liable to do at his own expense under the Contract, all costs and charges properly incurred by the Owner shall, on demand, be paid by the Contractor to the Owner or may be deducted by the Owner from any monies due or which may become due to the Contractor provided that the Engineer shall as soon after the occurrence of any such emergency as may be practicable notify the Contractor thereof in writing.

53 through 59 intentionally omitted.

60. DATE FALLING ON HOLIDAY

Where under the terms of the Contract any act is to be done or any period is to expire upon a certain day and that day or that period fall on a day of rest or recognized holiday, the Contract shall have effect as if the act were to be done or the period to expire upon the working day following such day.