

SPECIAL CONDITIONS

CONTENTS

These conditions amplify and supplement, if necessary, the General Conditions governing the contract. Unless the Special Conditions provide otherwise, those General Conditions remain fully applicable. The numbering of the Articles of the Special Conditions is not consecutive but follows the numbering of the Articles of the General Conditions. In exceptional cases, and with the authorisation of the competent Commission departments, other clauses may be introduced to cover specific situations.

Article 2 Law applicable

- 2.1 Kenyan law shall apply in all matters not covered by the provisions of the contract.
- 2.2 The language used shall be English.

Article 4 Communications

Any written communication relating to this Contract between the Contracting Authority on the one hand, and the Contractor on the other must state the Contract title and identification number, and must be sent by post, fax, e-mail or by hand to:

**The Programme Coordinator,
Community Development Trust Fund,
Josem Trust House, 3rd Floor, Bunyala/Masaba,
P.O Box 62199-00200 Nairobi**

Article 6 Sub-contracting

Sub-contracting is not allowed.

Article 7 Supply of documents

Technical brochures and other documents describing the supply to be provided.

Article 8 Assistance with local regulations

Not applicable.

Article 9 The Contractor's obligations

- 9.6 The Contractor shall take the necessary measures to ensure the visibility of the European Union financing or co-financing. These measures must comply with the rules in the Communication and Visibility Manual for EU External Actions published by the European Commission: http://ec.europa.eu/europeaid/work/visibility/index_en.htm.

The motor vehicles shall have clearly painted on the both front doors the following:

**COMMUNITY DEVELOPMENT TRUST FUND (CDTF)
Community Environment Facility
P.O.Box 62199 – 00200
NAIROBI
(EU AID TO KENYA)**

Also the EU Logo (downloadable from http://ec.europa.eu/europeaid/work/visibility/index_en.htm) with a size(19x15cm) and CDTF logo with size (20x15cm) in blue and yellow as per standard.

The flag has the following colours: Pantone Reflex Blue for the surface of the rectangle.
Pantone Process Yellow for the stars.

Article 10 Origin

- 10.1 All supplies and materials purchased must originate in a Member State of the European Union and/or the ACP States and/or in a country or territory authorised by the ACP-EC Partnership Agreement under which the contract is financed. In this context, the definition of the concept of "originating products" shall be assessed by reference to the relevant international agreements, especially Protocol 1 included in Annex V of the ACP-EU Partnership Agreement, and supplies originating in the EU shall include supplies originating in the Overseas Countries and Territories.

Article 11 Performance guarantee

The amount of the performance guarantee shall be 10% of the Contract Value and the part in respect of after sales service including any amounts stipulated in addenda to the contract. The format of the performance guarantee is given in Annex V.

Article 12 Insurance

Not applicable.

Article 13 Programme of implementation of the tasks (timetable)

Delivery to be made within 60 days from the date of signature of the contract.

Article 14 Contractor's drawings

Not applicable

Article 15 Tender prices

Tender sum will be fixed and must be expressed in Kenya Shillings. No price revision shall be accepted under this contract.

Article 16 Tax and customs arrangements

The provisions regarding tax and customs arrangements are laid down in Annex V of the contract.

The Contractor shall provide in good time all the necessary documents required for the Contracting Authority to apply for tax and duty exemptions from the relevant authorities.

Article 17 Patents and licences

Not applicable under this contract

Article 18 Commencement order

- 18.1 The contract shall enter into force on the date of its signature by the contractor. Performance of the contract shall immediately commence.

Article 19 Period of Implementation of the tasks

- 19.1 The supplies are to be delivered within a period of 60 days from the date of commencement.

Article 22 Variations

The Contracting Authority reserves the right, to vary the quantities specified for this supply contract at the time of contracting and during the validity of the contract within a range of +/- 100%. The total value of the supplies may not rise or fall as a result of the variation in the

quantities by more than 25% of the tender price. The unit prices used in the tender shall be applicable to the quantities procured under the variation.

Article 24 Quality of supplies

The supplies must be consistent with the technical specifications laid down in the tender dossier and as per contract. No deviation whatsoever shall be accepted.

Article 25 Inspection and testing

Certificate of inspection and testing to be availed at point of delivery.

Article 26 Methods of payment

26.1 Payments shall be made in Kenyan Shillings.

Payments shall be authorised and made by the Community Development Trust Fund (CDTF). The invoice should be sent to: Programme Co-ordinator, Community Development Trust Fund, Josem Trust House, 3rd Floor, Bunyala/Masaba, P.O Box 62199-00200 Nairobi.

In order to obtain payments, the Contractor must forward to the authority referred to in paragraph 26.1 above:

a) Option 1

For the 60% pre-financing, in addition to the payment request, the performance guarantee. If a pre-financing is requested and this payment exceeds the equivalent value of EUR 150.000, or if no proof documents have been provided for the selection criteria, the Contractor must provide a financial guarantee for the full amount of the pre-financing payment.]

b) For the 40% balance, the invoice(s) in triplicate following provisional acceptance of the supplies.

26.3 By derogation the sums due shall be paid within no more than 90 days.

26.4 By derogation the period shall be 90 days.

26.9 This contract does not include a price revision provision.

Article 28 Delayed payments

28.1 By derogation the sums due shall be paid within no more than 90 days.

Article 29 Delivery

29.1 The Contractor shall bear all risks relating to the goods until provisional acceptance at destination. The supplies shall be packaged so as to prevent their damage or deterioration in transit to their destination.

29.2 The packaging shall remain the property of the Contractor subject to respect for the environment.

29.3 The supplies must be accompanied by the relevant documents including manuals and brochures.

Article 31 Provisional acceptance

The Certificate of Provisional Acceptance must be issued using the template in Annex C11.

Article 32 Warranty

The Contractor shall warrant that the supplies are new, unused, of the most recent models and incorporate all recent improvements in design and materials. The Contractor shall further warrant that none of the supplies have any defect arising from design, materials or workmanship. This warranty shall remain valid for a period of one year after provisional acceptance.

Article 33 After-sales service

The contractor will ensure that services for maintenance and repairs of the provided vehicles is available, including but not limited to the availability of original spare parts, specified tool and trained technicians. A proposal for an after-sales service for at least 5 years is requested. (article 11 of the instructions to tenderers (ITT)).

Article 40 Settlement of disputes

40.1 Any dispute arising out of or relating to this contract which cannot be settled otherwise shall:

(a) in the case of a national contract, be settled in accordance with the national legislation of the state of the contracting authority; and

(b) in the case of a transnational contract, be settled either:

(i) if the parties to the contract so agree, in accordance with the national legislation of the beneficiary country or its established international practices; or

(ii) by arbitration in accordance with the Procedural rules on conciliation and arbitration of contracts financed by the European Development Fund, adopted by Decision 3/90 of the ACP-EEC Council of Ministers of 29 March 1990 (Official Journal No L 382, 31.12.1990)(see Annex a12 to the Practical Guide to contract procedures for EU external actions)]