

**GENERAL TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS
REGIONAL COOPERATION COUNCIL SECRETARIAT**

April 2009

The contract shall be governed by the following General Terms and Conditions for the Purchase of Goods, together with its incorporated attachments or annexes if any. Any departure from these General Terms and Conditions shall only be valid if mutually agreed between the Parties in writing.

1. DEFINITIONS

In these 'General Terms and Conditions for the Purchase of Goods' (hereinafter referred to as 'General Terms and Conditions'), the following definitions shall apply:

'**RCC Secretariat**' means the Regional Cooperation Council Secretariat represented by the authorised representative.

'**Contractor**' means the supplier of goods named in the contract represented by an official duly authorised to undertake contractual obligations on behalf of the supplier.

'**Contract**' means the contract relating to the purchase of goods between the RCC Secretariat and the Contractor and includes these General Terms and Conditions.

'**Goods**' means any goods provided, or to be provided, to the RCC Secretariat by the Contractor, or any of the Contractor's subcontractors, pursuant to or in connection with the Contract.

'**Host Country Agreement**' means the Agreement between the Council of Ministers of Bosnia and Herzegovina and the Governments of the Other SEECP Participating States, the United Nations Interim Administration Mission in Kosovo on Behalf of Kosovo in Accordance with the United Nations Security Council Resolution 1244 on the Host Country Arrangements for the Secretariat of the Regional Cooperation Council) signed in Povdiv, on 14 September 2007.

'**Parties**' means the Contractor and the RCC Secretariat, collectively, and 'Party' means either one of them;

2. ENTRY INTO FORCE OF CONTRACTS

The Contract shall enter into force on the day after both Parties have signed it. The Contract shall be drawn up in English as the only authentic language, each Party receiving one original.

3. DELIVERY

The Contractor shall deliver the Goods at the place of delivery specified in the Contract and within the delivery period stipulated in the Contract.

4. PAYMENT

Unless expressly stipulated otherwise in the contract, the RCC Secretariat shall make payment:

(a) Within 30 days of receiving the invoice and any other documents specified in the contract, or within 30 days of the date on which performance of the Contract is satisfactorily completed, whichever is later;

(b) The price of the Goods shall be as stated in the Contract and may not be increased, except by express written agreement of the RCC Secretariat. The RCC Secretariat shall not pay any charge for late payment unless this has been expressly agreed to in writing.

(c) Payment shall be made in BiH Convertible Marks (BAM) or Euros (EUR) unless otherwise stipulated in the contract.

(d) Advance payment shall only be authorised by the RCC Secretariat where normal commercial practice or the interests of the RCC Secretariat require so.

5. PRIVILEGES AND IMMUNITIES

Nothing contained in the Contract shall be deemed a waiver, express or implied, of any privilege or immunity that the RCC Secretariat may enjoy pursuant to: (i) "Host Country Agreement", or (ii) any other agreement to which the RCC Secretariat is party.

6. TAX EXEMPTION

(a) The RCC Secretariat is exempted from taxes and duties in accordance with the provisions of the 'Host Country Agreement' providing *inter alia* that the RCC Secretariat, its funds and other property shall be exempted from direct state and local duties and taxes, except charges for public utility goods, and from customs restrictions, duties, and charges of a similar nature in respect of articles imported or exported for its official use.

(b) In the event any governmental authority refuses to recognize the exemptions of the RCC Secretariat from such taxes, restrictions, duties, or charges, the Contractor shall immediately consult with the RCC Secretariat to determine a mutually acceptable procedure.

(c) The Contractor's price shall reflect any tax and duty exemption to which the RCC Secretariat is entitled by reason of the privileges that it enjoys. If it is subsequently determined that any taxes and duties from which the RCC Secretariat is exempted have been included in the price paid by the RCC Secretariat, the amount of such taxes and duties shall be refunded by the Contractor. Alternatively, the RCC Secretariat may deduct such amount from the contractor price and payment of such corrected amount shall constitute full payment by the RCC Secretariat.

(d) Notwithstanding the paragraph (c) of this Article in the event that Goods provided are subject to VAT, the Contractor's price shall include VAT, and the RCC Secretariat shall submit the invoice for refund in accordance with relevant legislation of Bosnia and Herzegovina.

7. LIABILITY OF THE CONTRACTING PARTIES

(a) The RCC Secretariat shall not under any circumstances or for any reason whatsoever be held liable for loss, damage or injury sustained by the Contractor or by any person acting on behalf of the Contractor during the performance of the contract. The RCC Secretariat shall not accept any claim for compensation or repairs in respect of any such damage. The Contractor shall insure against all risks or loss, damage or injury caused by the Contractor or by any person acting on behalf of the Contractor during the performance of the contract. The Contractor and any person acting on behalf of the Contractor shall during the performance of the Contract comply with these General Terms and Conditions particularly those relating to confidentiality.

(b) Except in the case of *force majeure*, the Contractor shall be required to indemnify the RCC Secretariat for any loss, damage or injury that it may sustain from any act performed by the Contractor.

(c) The term *force majeure*, as used here, shall include, unforeseen events not within the control of either party, such as laws or regulations, strikes, lock-outs or other industrial disturbances, acts of terrorism, wars, whether declared or not declared, blockades, embargoes, insurrections, riots, civil disturbances, explosions, epidemics, landslides, earthquakes, storms, lightning, floods and washouts. Any other event could be recognised as *force majeure* in dispute resolution proceedings instituted in relation to a dispute as mentioned in Article 27 of these General Terms and Conditions.

(d) If either Party considers that *force majeure* affecting the Performance of its obligations has occurred, it shall promptly notify the other Party, giving full particulars in writing, including its probable duration and its effect on the Party's ability to perform. However, once the condition of *force majeure* has been agreed by the Parties, the Parties shall be relieved of liability for non performance of their obligations until it ends.

(e) The Contractor shall not be entitled to payment if it is prevented by *force majeure* from performing the tasks assigned to it. Part performance of any task shall result in pro-rata payment.

8. TERMINATION OF THE CONTRACT

(a) If the Contractor ceases to practice his profession or carry out his business wholly or for a large part; does not comply with any provision of the Contract; applies for moratorium or applies to be declared insolvent; is granted a moratorium or declared insolvent; is declared bankrupt; offers a settlement in lieu of bankruptcy or if the property of the Contractor is attached; or if the Contractor is not a natural person and loses power of disposal over its capital or part of it or loses its status as a legal person, is wound up or in actual fact is liquidated, the RCC Secretariat has the right to give notice of termination of Contract immediately without notice of default.

(b) If any of the circumstances as mentioned in paragraph (a) of this Article should arise, the Contractor shall be in breach of this Contract as a consequence.

(c) The Contractor shall be bound to compensate the RCC Secretariat for all damage, costs and loss of interest as a result of a situation as mentioned in paragraph (a) of this Article as a result of premature termination of the contract, even in the event that a moratorium is granted or the Contractor is declared insolvent. This damage shall include in any case all amounts due until the original agreed date of termination of the contract, as well as all costs incurred by the RCC Secretariat in legal and non-legal proceedings, including those for legal assistance with regard to any circumstances as referred to in paragraph (a) of this Article.

(d) The conditions in paragraphs (a), (b), and (c) of this article do not exclude the right of the RCC Secretariat to exercise other legal rights, including its right to impose liquidated damages, demand payment or compensation for damages or for cancellation of the contract.

(e) The RCC Secretariat, at its own discretion, is legally and without intervention by the courts entitled to carry out itself, or to have carried out any contractual obligation for which the Contractor is in default, at the expense and risk of the Contractor.

(f) Each contracting Party may, of its own volition and without being required to pay compensation, terminate the Contract by serving formal notice one month in advance,

unless the Contract provides otherwise. Upon receipt of notice of termination by the RCC Secretariat, the Contractor shall take immediate steps to bring the work or service to a close in a prompt and orderly manner, the Contractor shall reduce expenses to a minimum and shall not undertake any further commitments under the Contract from the date of receipt of such a notice.

If the Contract is terminated by the RCC Secretariat, the Contractor shall be entitled to pro-rata payment for any tasks performed prior to such termination. Additional costs incurred by the RCC Secretariat, resulting either from termination by the Contractor or from Contractor's failure to complete satisfactory performance, may be withheld from any amount otherwise due to the Contractor from the RCC Secretariat under this or any other contract.

(g) In case of a breach of this Contract by the Contractor, included but not limited to failure or refusal to make deliveries within the time limit specified, the RCC Secretariat may procure the Goods from other sources and may hold the Contractor liable for any excess cost occasioned thereby. Furthermore, the RCC Secretariat may, by written notice, terminate the right of the Contractor to proceed with deliveries or such part or parts thereof as to which there has been a default.

9. LIQUIDATED DAMAGES

Without prejudice to the provisions on *force majeure* in these General Terms and Conditions, if the Contractor fails to provide any or all of the Goods within the time period specified in the Contract, the RCC Secretariat may, without prejudice to any other rights and remedies, deduct from the price stipulated in the Contract, as liquidated damages, a sum equivalent to 2% per week of the contractual price of the delayed Goods for each week of delay until actual delivery, up to a maximum 10% of the contractual price.

10. THIRD PARTIES

(a) The Contractor shall not, without prior and express written approval of the RCC Secretariat, assign in whole or in part the rights and obligations arising out of the Contract to third parties or subcontract any part of the work required under this Contract to third parties.

(b) In the event where the RCC Secretariat authorises the Contractor to sub-contract part or all of the obligations under the Contract to third parties, the Contractor shall nonetheless remain bound by its obligations to the RCC Secretariat under the Contract.

(c) Save where the RCC Secretariat expressly authorises an exception, the Contractor shall be required to include in any sub-contract provisions enabling the RCC Secretariat to enjoy the same rights and guarantees in relation to sub-contractors as it enjoys in relation to the Contractor.

11. NON-WAIVER OF RIGHTS

Failure of, or delay by the RCC Secretariat in the exercise of any rights or remedies provided by the Contract shall not be deemed a waiver of any rights of the RCC Secretariat, and shall not release the Contractor from fulfilling its obligations.

12. CONFIDENTIALITY

(a) The Contractor, or its employees, shall not use any information acquired or developed in the course of this Contract for any purpose not authorised in writing by the RCC Secretariat.

(b) The Contractor is required to exercise the utmost discretion during the performance of the contract.

The Contractor may not communicate to any other person, government or authority external to the RCC Secretariat any information known to it by reason of his contractual relationship with the RCC Secretariat which has not previously been made public, except with written authorisation of the RCC Secretariat. Nor shall the Contractor at any time use such information to private advantage.

(c) The obligations under this Article do not lapse upon cessation of this Contract.

(d) The Contractor shall be liable for any breach of confidentiality or any indirect disclosure which could vitiate the interests of the RCC Secretariat. The extent of any such liability shall be directly proportional to the extent of the damage caused.

13. WARRANTY

The Contractor must provide Goods that are:

(a) Of the quality, quantity and description required by the Contract;

(b) Free from any right or claim of a third party, including rights or claims based on copyright, patent or other industrial or intellectual property rights.

14. NON-EXEMPTION

Unless otherwise specified in the Contract, the RCC Secretariat shall have no obligation to purchase any minimum Goods from the Contractor, and the RCC Secretariat shall have no limitation on its right to obtain goods of the same kind, quality and quantity described in the Contract, from any other source at any time.

15. BANK GUARANTEE

If the RCC Secretariat so requests in the Contract, the Contractor shall guarantee the due fulfilment of its obligations under the Contract by providing an unconditional and irrevocable bank guarantee from an established bank of good standing for the amount determined in the Contract.

16. PACKING

The goods shall be packed and marked in a proper manner and in accordance with the instructions stipulated in the contract, any statutory requirements and any requirements of the transporters and manufacturers. A documentation containing, as a minimum, the description of the goods (including accessories and attached spare parts) and its main sub-element, the user manual, and the maintenance and repair manual, shall also be provided with the goods.

17. INDEMNITY

(a) The Contractor shall pay all damages and costs awarded against the RCC Secretariat flowing from any action or proceeding based upon a claim that the Goods or part thereof, constitute an infringement of any patent, registered design or copyright.

(b) In case there is found to be an infringement, the Contractor shall, at its own expense, either procure for the RCC Secretariat the right to continue using the Goods, or modify them so they become non-infringing, or, with the approval of the RCC Secretariat, remove said Goods and refund the order price, the transportation and the installation costs.

18. TITLE

The Contractor guarantees that the Goods provided by it are unencumbered by any third party's proprietary rights. Title to any Goods shall pass to the RCC Secretariat upon delivery.

19. INSPECTION

(a) The RCC Secretariat shall have the right, before payment, to examine the Goods ordered under this contract on the premises of the Contractor, in the places of shipment, during transport, or upon delivery, and the Contractor shall provide, when possible, all facilities for any such examination.

(b) Written notice of acceptance or rejection of the Goods shall be promptly transmitted to the Contractor. In the case of rejection, if the RCC Secretariat does not exercise its right to terminate the contract, the RCC Secretariat may postpone any payment due to the Contractor for such rejected goods until replacement by accepted Goods. Unless within a reasonable time of receipt of notice of rejection the Contractor collects the rejected Goods, the RCC Secretariat may dispose of them as the RCC Secretariat shall think fit (provided that if the RCC Secretariat sells such goods, the RCC Secretariat shall account to the Contractor for the net proceeds of such sale).

(c) The RCC Secretariat shall bear the expenses of such inspections as mentioned in paragraph (a) above.

(d) In case of rejection of the Goods, a new inspection may be carried out by representatives of both Parties if promptly requested by the Contractor, and before the RCC Secretariat exercises any legal remedies. The Contractor shall bear the expenses of such an inspection.

(e) The inspections shall be carried out in good faith.

20. TRANSPORT AND FREIGHT

Unless otherwise stipulated, transport arrangements shall be undertaken by the Contractor who shall be responsible for payment of freight and insurance costs of the Goods from the Contractor to the delivery address stipulated in the contract. Transport documents, including the packing list, shall be sent by the Contractor to the RCC Secretariat. In particular, the RCC Secretariat shall receive, prior to delivery, the documents that are needed for taking over the goods.

21. CUSTOMS DECLARATION

Where the Contractor is responsible for the customs clearance into Bosnia and Herzegovina and the Goods are subject to import duties, a customs declaration shall be provided to the Contractor by the RCC Secretariat, exempting the RCC Secretariat from these charges.

22. OBSERVANCE OF THE LAW

The Contractor shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the Contract.

23. ADVERTISING

Unless authorised in writing by the RCC Secretariat, the Contractor shall not advertise or otherwise make public the fact that it is supplying goods to the RCC Secretariat. The Contractor shall not use the name, emblem or official seal of the RCC Secretariat or any abbreviation of the names of the RCC Secretariat for advertising or for any other promotional purpose.

24. AMENDMENTS AND ADDITIONS TO THE CONTRACT

The provisions of this Contract and the annexes thereto may be amended or supplemented only by means of a supplementary written agreement signed by all of the parties or their authorised representatives.

25. OFFICIALS NOT TO BENEFIT

(a) The RCC Secretariat warrants that no official or employee of the Contractor has been or shall be admitted by it to any direct or indirect benefit arising from this Contract or the award thereof. Failure to comply with the foregoing provision shall constitute a material breach of this Contract.

(b) The Contractor warrants that no official or employee of the RCC Secretariat has been or shall be admitted by it to any direct or indirect benefit arising from this Contract or the award thereof. Failure to comply with the foregoing provision shall constitute a material breach of this Contract.

26. APPLICABLE LAW

The Contract shall be governed by the laws of Federation of Bosnia and Herzegovina.

27. SETTLEMENT OF DISPUTES

(a) Without prejudice to the privileges and immunities of the RCC Secretariat, any legal dispute relating to this Contract shall be settled amicably by negotiation.

(b) Any dispute which cannot be settled by negotiation shall, without prejudice to the relevant privileges and immunities of the RCC Secretariat, shall prior to any party initiating litigation at the Municipal Court in Sarajevo, be referred to mediation under the auspices of the Association of Mediators in Bosnia and Herzegovina. The parties will select a mediator from the list of mediators at the Association of Mediators in Bosnia and Herzegovina. At all times during the mediation process, including the selection of the mediator the parties will act in good faith and attempt to settle their dispute.