

Conditions of Contract for Plant and Design-Build

Particular Conditions Modifications to General Conditions

I. GENERAL CONDITIONS

- A.** The terms and conditions of the FIDIC Conditions of Contract for Plant and Design-Build for electrical and mechanical works and for building and engineering works designed by the Contractor, First Edition 1999 (hereinafter called "the General Conditions") apply to this Contract as amended by these Particular Conditions.
- B.** Any provisions of the General Conditions that are modified by these Particular Conditions are superseded to the extent of the modification only and the unmodified provisions of the General Conditions shall remain in effect.

II. MODIFICATIONS TO GENERAL CONDITIONS

II-1. CLAUSE: 1. General Provisions

Sub-Clause: 1.1.1 The Contract

- A.** Delete Sub-Clauses **1.1.1.4** and **1.1.1.9**, in their entirety and substitute the following:
 - 1.1.1.4. "Letter of Tender" means the document entitled letter of tender, which was completed by the Contractor
 - 1.1.1.9. "Appendix to Tender" means the part of the Contract referred to as Appendix to Tender.
- B.** Throughout the entire Part I - General Conditions, globally replace the word "six copies" with the words "two copies".

Sub-Clause: **1.1.6 Other Definitions**

C. Add Sub-Clause 1.1.6.10:

1.1.6.10 "Liquidated Damages" as referred to in Sub-Clause 8.7 means the fixed amount of damages which the Employer is entitled to recover from the Contractor for the Contractor's failure to comply with the Times for Completion of the Works, as specified in Appendix to Tender, unless the Contractor was hindered, delayed and/or the Works suspended or stopped by actions of any other third party such as but not limited to the local authorities, or by actions of contractors employed by the Employer directly or due to the fault of the Employer. Any other third party does not include the Contractor's Subcontractors or anyone who is employed by such subcontractor. Liquidated Damages shall apply after the Time for Completion has elapsed and shall amount to 0,05% of the Accepted Contract Amount for the Works for each day of delay but shall be limited to 50% of the Accepted Contract Amount. The Contractor's liability for delay shall be limited to such Liquidated Damages. The Contractor and the Employer warrant and represent that Liquidated Damages are not deemed to be inappropriate or inconsistent with business morals or common business practices.

II-2. CLAUSE: **3. The Engineer**

Sub-clause: **3.1 Engineer's Duties and Authority**

A. The following paragraphs are inserted behind the third paragraph of Sub-Clause 3.1:

The Engineer shall submit the Employer for his assessment any Variation or value engineering proposal (according to the Sub-Clause 13.2) whenever:

- a) the Variation or value engineering proposal increase the Contract Price,
- b) the Variation or value engineering proposal result in extension of the Time for Completion as of the Sub-Clause 8.4 (Extension of Time for Completion).

Thereafter, as soon as practicable and no longer than within 7 days after receiving the Variation or value engineering proposal as of the previous paragraph, the Employer shall respond by giving a written notice to the Engineer with his consent or objections to the proposal.

If the Employer does not respond within 7 days after the Variation or value engineering proposal is submitted, it shall be deemed that the Employer has given his consent to the Variation or value engineering proposal.

If the Employer does not consent to the Variation and the Contractor or Engineer assume that execution of Variation is necessary to complete the Works

according to the Contract, the Engineer shall proceed under Sub-Clause 3.5 to agree or determine within 7 days whether the Variation shall be executed. The Employer or Contractor may proceed under the Clause 20 (Claims, disputes and arbitration) if they do not agree with the determination of Engineer.

Sub-clause: **3.3 Instructions of the Engineer**

B. The last sentence of the first paragraph of Sub-Clause **3.3** is removed and the following text is inserted instead of it:

If an instruction states that it constitutes a Variation, the procedure under Sub-Clause 13.3 (Variation Procedure) shall apply. If not so stated, and the Contractor considers that the instruction:

- a) constitutes a Variation (or includes work that is a part of an existing Variation); or
- b) is inappropriate and impede the Contractor in the proper execution of the Works (as it reduces quality, safety of the Works or for other reasons)

he shall immediately, and before commencing any work related to the instruction, give a written notice to the Engineer with reasons. If the Engineer does not respond within 7 days after receiving this notice by giving a written notice confirming, reversing or varying the instruction, the Engineer shall be deemed to have revoked the instruction.

If the Engineer gives the notice confirming his instruction, the Contractor shall proceed in accordance with this notice. To the extent the Contractor explicitly advised the Engineer of the inadequacy of the instruction (b)), the Employer is not entitled to claim any defects of the Works due to the inadequacy of the instruction. If the Contractor considers that Engineer's instruction does not comply with the applicable Laws, he shall not proceed with any work related to the instruction and shall immediately give a written notice to the Engineer.

Sub-clause: **3.4 Replacement of the Engineer**

C. In Sub-Clause 3.4 replace the words "42 days" with the words "14 days".

II-3. CLAUSE: **8. Commencement, Delays and Suspension**

Sub-clause: **8.3 Programme**

A. In Sub-Clause 8.3 replace the words "28 days" with the words "21 days" and the words "21 days" with the words "14 days".

II-4. CLAUSE: 17. Risk and Responsibility

Sub-clause: 17.6 Limitation of Liability

A. Delete the second paragraph in Sub-Clause **17.6** and substitute with the following wording:

The total liability of the Contractor to the Employer under the Contract shall not exceed 50 % (fifty percent) of the Accepted Contract Amount.

II-5. CLAUSE: 20. Claims, disputes and arbitration

A. Rename title of Sub-Clause **20.2** as "**Arbitration**" and substitute it in its entirety with the following wording:

The Employer and the Contractor in good faith negotiations shall, amicably settle any dispute or claim arising out of or relating to this Contract or the breach, termination or invalidity hereof. If any dispute hereunder is not resolved amicably within 30 days from the date of the pertinent request by a party, it will be settled finally by the Arbitration Court attached to the Czech Chamber of Commerce and the Agricultural Chamber of the Czech Republic with its seat in Praha in accordance with its rules as in force at the time the pertinent statement of claim is submitted by either party.

B. Substitute Sub-Clauses 20.3 in its entirety with the following wording:

The arbitration shall be conducted in Praha. The Arbitration Court shall be composed of three arbitrators, one appointed by the claimant, one appointed by the defendant, and one appointed jointly by the arbitrators appointed by the claimant and the defendant. The third arbitrator shall chair the arbitration tribunal. If any of the parties to a dispute fails to appoint its arbitrator within the period specified by the arbitration rules, or the two arbitrators fail to appoint a third arbitrator, then the Chairman of the Arbitration Court shall act as an "appointing authority" within the meaning of the arbitration rules. The arbitration award shall be final and enforceable in any court of competent jurisdiction and the parties agree to comply with it voluntarily within 10 days from its receipt. The Employer and the Contractor shall ensure that arbitrators with a sufficient knowledge of English are appointed.

The language of the arbitration (including documentation) shall be English to the maximum extent permitted under Czech law.

C. Delete Sub-Clauses 20.4, 20.5, 20.6, 20.7 and 20.8 in their entirety.

(END of Particular Conditions)