



GENERAL TERMS AND CONDITIONS FOR GOODS

DEFINITIONS

“Contract” is used to include a purchase order, a contract, or any changes or amendments thereto, including all documents, exhibits, and attachments referenced therein, to which these General Terms and Conditions apply.

“Contractor” refers to the party with whom FAO is contracting to supply the goods and/or services and who shall have the sole and full responsibility for the performance of its obligations under this Contract.

“FAO” means the Food and Agriculture Organization of the United Nations.

“Goods” include equipment, spare parts, commodities, live plants or animals, seed, raw materials, components, intermediate products, or products, as specified in the Contract.

“Services” refers to the Contractor’s time, effort and/or expertise, as specified in the Contract.

1. LEGAL STATUS OF THE PARTIES: FAO and the Contractor shall also each be referred to as a “Party” hereunder, and:

1.1 Pursuant, *inter alia*, to the FAO Constitution and the Convention on the Privileges and Immunities of the Specialized Agencies, FAO has full juridical personality and enjoys such privileges and immunities as are necessary for the independent fulfillment of its purposes.

1.2 The Contractor shall have the legal status of an independent contractor *vis-à-vis* FAO, and it shall be fully responsible, in particular, for the acts or omissions of its personnel, agents, or other representatives. Nothing contained in or relating to the Contract shall be construed as establishing or creating between the Parties the relationship of employer and employee or of principal and agent. The officials, representatives, employees, or subcontractors of each of the Parties shall not be considered in any respect as being the employees or agents of the other Party.

2. ASSIGNMENT:

2.1 The Contractor may not assign, transfer, pledge or make any other disposition of the Contract, of any part of the Contract, or of any of the rights, claims or obligations under the Contract except as may be provided for in this Contract or with the prior written authorization of FAO. Any such unauthorized assignment, transfer, pledge or other disposition, or any attempt to do so, shall not be binding on FAO. Any assignment by the Contractor which is not authorized by FAO will be void and FAO reserves the right in such case, without prejudice to other rights or remedies, to terminate the Contract without liability effective upon the Contractor’s receipt of notification of termination. Except as permitted with respect to any approved subcontractors, the Contractor shall not delegate any of its obligations under this Contract, except with the prior written consent of FAO. Any such unauthorized delegation, or attempt to do so, shall not be binding on FAO.

2.2. The Contractor agrees that FAO may, at its discretion, assign, transfer, pledge, or make other disposition of this Contract or any part hereof, or any of FAO’s rights or obligations under this Contract upon written notification within a reasonable period of time either prior to or following such assignment, transfer, pledge or subcontracting arrangement.

3. SUBCONTRACTING: In the event that the Contractor requires the services of subcontractors to perform any obligations under the Contract, and except as may be provided for in this Contract, the Contractor shall obtain the prior written approval of FAO. FAO shall be entitled, in its sole discretion, to review the qualifications of any subcontractors and to reject any proposed subcontractor that FAO reasonably considers is not qualified to perform obligations under the Contract. The approval by FAO of a subcontractor shall not relieve the Contractor of any of its obligations under this Contract. FAO shall have the right to require any subcontractor’s removal from FAO premises without having to give any justification therefor. Any such rejection or request for removal shall not, in and of itself, entitle the Contractor to claim any delays in the performance, or to assert any excuses for the non-performance, of any of its obligations under the Contract, and the Contractor shall be solely responsible for all services and obligations performed by its subcontractors. The terms of any subcontract shall be subject to, and shall be construed in a manner that is fully in accordance with, all of the terms and conditions of the Contract. The essential terms set out in Article 22 shall be included in all subcontracting arrangements entered into under this Contract.

4. PURCHASE OF GOODS: To the extent that the Contract involves any purchase of goods, whether in whole or in part, and unless specifically stated otherwise in the Contract, the following conditions shall apply:

4.1 DELIVERY OF GOODS: The Contractor shall hand over or make available the goods, and FAO shall receive the goods, at the place for the delivery of the goods and within the time for delivery of the goods specified in the Contract. The Contractor shall provide to FAO such shipment documentation (including, without limitation, bills of lading, airway bills, and commercial invoices) as are specified in the Contract in the relevant Purchase Order or, otherwise, as are customarily utilized in the trade. All manuals, instructions, displays and any other information relevant to the goods shall be in the English language unless otherwise specified in the Contract. Unless otherwise stated in the Contract (including, but not limited to, in any “INCOTERM” or similar trade term), the entire risk of loss, damage to, or destruction of the goods shall be borne exclusively by the Contractor until physical delivery of the goods to FAO in accordance with the terms of the Contract. Delivery of the goods shall not be deemed in itself as constituting acceptance of the goods by FAO, which shall be further subject to Article 4.6 below.

4.2 INSPECTION OF THE GOODS: FAO reserves the right to inspect and test all goods ordered under this Contract at any time and place. The Contractor, without additional charge, shall provide all facilities for inspection and all necessary support including, but not limited to, access to drawings and production data, to ensure that inspections can be performed in such a manner as not to unduly delay delivery.

4.2.1 If the Contract provides that the goods may be inspected prior to delivery, the Contractor shall promptly notify FAO when the goods are ready for pre-delivery inspection. Such facilities and assistance shall be furnished to FAO or its designated inspection agents at no charge therefor. Neither an inspection carried out by representatives of FAO nor failure by FAO to inspect and accept or reject goods shall relieve the Contractor from responsibility for such goods that are not in accordance with the Contract requirements, including warranties, or impose liabilities on FAO therefor.

4.2.2 Notwithstanding the above, the Contractor shall provide and maintain an inspection, quality, and process control system acceptable to FAO covering the goods thereunder. Records of all inspection work by the Contractor shall be kept complete and available to FAO during the performance of this Contract and for twenty-four (24) months after completion, if not otherwise specified in this Contract. Copies of all material certifications and test results will be submitted to FAO upon request.

4.3 PACKAGING OF THE GOODS: The Contractor shall package the goods for delivery in accordance with the highest standards of export packaging for the type and quantities and modes of transport of the goods. The goods shall be packed and marked in a proper manner in accordance with the instructions stipulated in the Contract or, otherwise, as customarily done in the trade, and in accordance with any requirements imposed by applicable law or by the transporters and manufacturers of the goods. The packing, in particular, shall mark the Contract or Purchase Order number and any other identification information provided by FAO as well as such other information as is necessary for the correct handling and safe delivery of the goods. Unless otherwise specified in the Contract, the Contractor shall have no right to any return of the packing materials.

4.4 TRANSPORTATION & FREIGHT: Unless otherwise specified in the Contract (including, but not limited to, in any “INCOTERM” or similar trade term), the Contractor shall be solely liable for making all transport arrangements and for payment of freight and insurance costs for the shipment and delivery of the goods in accordance with the requirements of the Contract. The Contractor shall ensure that FAO receives all necessary transport documents in a timely manner so as to enable FAO to take delivery of the goods in accordance with the requirements of the Contract.

4.5 WARRANTIES AND AFTER SALES SERVICE: Unless otherwise specified in the Contract, in addition to and without limiting any other warranties, remedies or rights of FAO stated in or arising under the Contract, the Contractor warrants and represents that:

4.5.1 The goods, including all packaging and packing thereof, conform to the specifications of the Contract, including any applicable standards provided for in the Contract or, if no applicable standards are provided, the most recent authoritative standards issued by the relevant institution in the goods’ country of origin. The goods are securely contained, packaged and marked in accordance with normal commercial standards of export packing for goods of this type and in a manner so as to protect the goods while in storage or in transit to their ultimate destination. The Contractor further warrants that the goods are fit for the purposes for which such goods are ordinarily used and for purposes expressly made known to the Contractor by FAO, are of current manufacture and are of even quality and free from defects in design, workmanship, material and manufacture;

4.5.2 If the Contractor is not the original manufacturer of the goods, the Contractor shall provide FAO with the benefit of all manufacturers' warranties in addition to any other warranties required to be provided under the Contract;

4.5.3 The goods are of the quality, quantity and description required by the Contract, including when subjected to conditions prevailing in the place of final destination;

4.5.4 The goods are free from any right of claim by any third-party, including claims of infringement of any intellectual property rights, including, but not limited to, patents, copyright and trade secrets;

4.5.5 The goods are new and unused, unless procurement of used goods is approved in advance in writing by FAO;

4.5.6 All such warranties for the goods shall remain in effect for a period of one (1) year or for such other longer period that the Contractor normally provides for such goods or a longer period agreed upon in this Contract after the goods are placed in use (the "Warranty Period");

4.5.7 During any period in which the Contractor's warranties are effective, upon notice by FAO that the goods do not conform to the requirements of the Contract, the Contractor shall promptly and at its own expense correct such non-conformities or, in case of its inability to do so, replace the defective goods with goods of the same or better quality or, at its own cost, remove the defective goods and fully reimburse FAO for the purchase price paid for the defective goods. In the event the Contractor fails to repair or replace defective or non-conforming goods within a reasonable time, FAO may replace or repair the goods and charge or debit the Contractor for all costs connected therewith or, if such replacement or repair is not practicable, exercise its rights under Article 4.7 and/or Article 4.9 of this Contract; and,

4.5.8 The Contractor shall remain responsive to the needs of FAO for any services that may be required in connection with any of the Contractor's warranties under the Contract.

4.5.9 For goods ordered, the Contractor shall provide or maintain a service organization reasonably constituted to handle requests from FAO or its Members or other ultimate beneficiaries for technical assistance on maintenance, service repairs, and overhaul of the goods. If the presence of a local service agent has been requested by FAO and confirmed by the Contractor, its presence in the country becomes a condition of this Contract. The Contractor must inform FAO of any changes in its local service structure prior to delivery of the goods.

4.6 ACCEPTANCE OF GOODS: Under no circumstances shall FAO be required to accept any goods that do not conform to the specifications or requirements of the Contract. FAO may condition its acceptance of the goods upon the successful completion of acceptance tests as may be specified in the Contract or otherwise agreed in writing by the Parties. In no case shall FAO be obligated to accept any goods unless and until FAO has had a reasonable opportunity to inspect the goods following delivery and all required inspection reports satisfactory to FAO have been provided. If the Contract specifies that FAO shall provide a written acceptance of the goods, the goods shall not be deemed accepted unless and until FAO in fact provides such written acceptance. In no case shall payment by FAO in and of itself constitute acceptance of the goods.

4.7 REJECTION OF GOODS: In case of rejection by FAO of the goods provided, a new review may be carried out by the representatives of both FAO and the Contractor, if promptly requested by the Contractor and before FAO exercises any legal remedies. The Contractor shall bear the expenses of such review. Notwithstanding any other rights of, or remedies available to FAO under the Contract, including those available under Article 4.9, in case any of the goods are defective or otherwise do not conform to the specifications or other requirements of the Contract, FAO, at its sole option, may reject or refuse to accept the goods, and within thirty (30) days following receipt of notice from FAO of such rejection or refusal to accept the goods, the Contractor shall, at the sole option of FAO:

4.7.1 provide a full refund upon return of the goods, or a partial refund upon a return of a portion of the goods, by FAO;
or,

4.7.2 repair the goods in a manner that would enable the goods to conform to the specifications or other requirements of the Contract; *or,*

4.7.3 replace the goods with goods of equal or better quality; *and,*

4.7.4 pay all costs relating to the repair or return of the defective goods as well as the costs relating to the storage of any such defective goods and for the delivery of any replacement goods to FAO.

4.8 In the event that FAO elects to return any of the goods for the reasons specified in Article 4.7, above, FAO may procure the goods from another source. In addition to any other rights or remedies available to FAO under the Contract, including, but not limited to, the right to terminate the Contract, the Contractor shall be liable for any additional cost beyond the balance of the Contract price resulting from any such procurement, including, *inter alia*, the costs of engaging in such procurement, and FAO shall be entitled to compensation from the Contractor for any reasonable expenses incurred for preserving and storing the goods for the Contractor's account.

4.9 DAMAGES FOR DELAY, NONCONFORMING GOODS, SHORTFALLS: The Contractor recognizes that this Contract concerns delivery of goods where "time is of the essence" and that failure to deliver the goods by the scheduled date(s) or in accordance with the quantities and/or quality specified in this Contract may cause irreparable harm to FAO. Consequently, subject to Article 12, "Force Majeure", it is agreed that, at FAO's sole discretion, either actual damages or liquidated damages, when FAO determines that the calculation of actual excess costs or damages is not practicable, may be applied to reduce the consideration due under the Contract:

4.9.1 LIQUIDATED DAMAGES FOR LATE DELIVERY: If all or part of the goods or services are not delivered within the time period specified in the Contract, liquidated damages shall be equivalent to two point five percent (2.5%) of the total price of the Contract for each week of delay until actual delivery, up to a maximum deduction of ten percent (10%) of the total Contract price, as agreed liquidated damages, provided, however, that where delivery time was indicated in the tender documents as a criterion for award, agreed liquidated damages shall be equivalent to five percent (5%) of the total price of the Contract for each week of delay until actual delivery, up to a maximum deduction of twenty percent (20%) of the total Contract price. In all cases, if the delay is greater than five (5) weeks, FAO may unilaterally terminate this Contract without liability to FAO, in accordance with Article 13, "Termination"; and

4.9.2 LIQUIDATED DAMAGES FOR NON CONFORMING GOODS/SERVICES: In the event of delivery of non-conforming goods or services, liquidated damages shall be equivalent to ten percent (10%) of the total contracted price of the goods or services deemed non-conforming. Liquidated damages claimed by FAO will be deemed accepted by the Contractor if not contested in writing within thirty (30) days of receipt of payment from FAO. This remedy is without prejudice to any right or remedy that may be available to FAO, including termination, for the Contractor's non-performance or breach of any term or condition of the Contract.

4.10 TITLE: The Contractor warrants and represents that the goods delivered under the Contract are unencumbered by any third party's title or other property rights, including, but not limited to, any liens or security interests. Unless otherwise expressly provided in the Contract, title in and to the goods shall pass from the Contractor to FAO upon delivery of the goods and their acceptance by FAO in accordance with the requirements of the Contract.

4.11 EXPORT LICENSING: The Contractor shall be responsible for obtaining any export license required with respect to the goods, products, or technologies, including software, sold, delivered, licensed or otherwise provided to FAO under the Contract. The Contractor shall procure any such export license in an expeditious manner. Subject to and without any waiver of the privileges and immunities of FAO, FAO shall lend the Contractor all reasonable assistance required for obtaining any such export license. Should any governmental entity refuse, delay or hinder the Contractor's ability to obtain any such export license, the Contractor shall promptly consult with FAO to enable FAO to take appropriate measures to resolve the matter.

5. INDEMNIFICATION:

5.1 The Contractor shall indemnify, defend, and hold and save harmless, FAO, and its officials, agents and employees, and any of its member nations or member organizations ("Members") or other ultimate beneficiaries, from and against all suits, proceedings, claims, demands, losses and liability of any kind or nature brought by any third party against FAO, including, but not limited to, all litigation costs and expenses, attorney's fees, settlement payments and damages, based on, arising from, or relating to:

5.1.1 allegations or claims that the possession of or use by FAO of any patented device, any copyrighted material, or any other goods, property or services provided or licensed to FAO under the terms of the Contract, in whole or in part, separately or in a combination contemplated by the Contractor's published specifications therefor, or otherwise specifically approved by the Contractor, constitutes an infringement of any patent, copyright, trademark, or other intellectual property right of any third party; *or*,

5.1.2 any acts or omissions of the Contractor, or of any subcontractor or anyone directly or indirectly employed by them

in the performance of the Contract, which give rise to legal liability to anyone not a party to the Contract, including, without limitation, claims and liability in the nature of a claim for workers' compensation.

5.2 In addition to the indemnity obligations set forth in this Article 5, the Contractor shall be obligated, at its sole expense, to defend FAO and its officials, agents and employees, pursuant to this Article 5, regardless of whether the suits, proceedings, claims and demands in question actually give rise to or otherwise result in any loss or liability.

5.3 FAO shall advise the Contractor about any such suits, proceedings, claims, demands, losses or liability within a reasonable period of time after having received actual notice thereof. The Contractor shall have sole control of the defense of any such suit, proceeding, claim or demand and of all negotiations in connection with the settlement or compromise thereof, except with respect to the assertion or defense of the privileges and immunities of FAO or any matter relating thereto, for which only FAO itself is authorized to assert and maintain. FAO shall have the right, at its own expense, to be represented in any such suit, proceeding, claim or demand by independent counsel of its own choosing.

5.4 In the event the use by FAO of any goods, property or services provided or licensed to FAO by the Contractor, in whole or in part, in any suit or proceeding, is for any reason enjoined, temporarily or permanently, or is found to infringe any patent, copyright, trademark or other intellectual property right, or in the event of a settlement, is enjoined, limited or otherwise interfered with, then the Contractor, at its sole cost and expense, shall, promptly, either:

5.4.1 procure for FAO the unrestricted right to continue using such goods or services provided to FAO;

5.4.2 replace or modify the goods or services provided to FAO, or part thereof, with the equivalent or better goods or services, or part thereof, that is non-infringing; *or*,

5.4.3 refund to FAO the full price paid by FAO for the right to have or use such goods, property or services, or part thereof.

5.5 For the purposes of this Article, the term "third party" shall be deemed to include, *inter alia*, officials, employees and other representatives of the United Nations, FAO, and other Specialized Agencies participating in the implementation of this Contract as well as any person or entity employed by the Contractor or otherwise performing services for, or supplying goods to, the Contractor.

6. INSURANCE AND LIABILITY:

6.1 The Contractor shall pay FAO promptly for all loss, destruction, or damage to the property of FAO caused by the Contractor's personnel or by any of its subcontractors or anyone else directly or indirectly employed by the Contractor or any of its subcontractors in the performance of the Contract.

6.2 Unless otherwise provided in the Contract, prior to commencement of performance of any other obligations under the Contract, and subject to any limits set forth in the Contract, the Contractor shall take out and shall maintain for the entire term of the Contract, for any extension thereof, and for a period following any termination of the Contract reasonably adequate to deal with losses:

6.2.1 insurance against all risks in respect of its property and any equipment used for the performance of the Contract;

6.2.2 workers' compensation insurance, or its equivalent, or employer's liability insurance, or its equivalent, with respect to the Contractor's personnel sufficient to cover all claims for injury, death and disability, or any other benefits required to be paid by law, in connection with the performance of the Contract;

6.2.3 liability insurance in an adequate amount to cover all claims, including, but not limited to, claims for death and bodily injury, products and completed operations liability, loss of or damage to property, and personal and advertising injury, arising from or in connection with the Contractor's performance under the Contract, including, but not limited to, liability arising out of or in connection with the acts or omissions of the Contractor, its personnel, agents, or invitees, or the use, during the performance of the Contract, of any vehicles, boats, airplanes or other transportation vehicles and equipment, whether or not owned by the Contractor; *and*,

6.2.4 such other insurance as may be agreed upon in writing between FAO and the Contractor.

6.3 The Contractor's liability policies shall also cover subcontractors and all defense costs and shall contain a standard "cross liability" clause.

6.4 The Contractor acknowledges and agrees that FAO accepts no responsibility for providing life, health, accident, travel or any other insurance coverage which may be necessary or desirable in respect of any personnel performing services for the Contractor in connection with the Contract.

6.5 Except for the workers' compensation insurance or any self-insurance program maintained by the Contractor and approved by FAO, in its sole discretion, for purposes of fulfilling the Contractor's requirements for providing insurance under the Contract, the insurance policies required under the Contract shall:

6.5.1 name FAO as an additional insured under the liability policies, including, if required, as a separate endorsement under the policy;

6.5.2 include a waiver of subrogation of the Contractor's insurance carrier's rights against FAO;

6.5.3 provide that FAO shall receive written notice from the Contractor's insurance carrier not less than thirty (30) days prior to any cancellation or material change of coverage; *and*,

6.5.4 include a provision for response on a primary and non-contributing basis with respect to any other insurance that may be available to FAO.

6.6 The Contractor shall be responsible to fund all amounts within any policy deductible or retention.

6.7 Except for any self-insurance program maintained by the Contractor and approved by FAO for purposes of fulfilling the Contractor's requirements for maintaining insurance under the Contract, the Contractor shall maintain the insurance taken out under the Contract with reputable insurers that are in good financial standing and that are acceptable to FAO. Prior to the commencement of any obligations under the Contract, the Contractor shall provide FAO with evidence, in the form of certificate of insurance or such other form as FAO may reasonably require, that demonstrates that the Contractor has taken out insurance in accordance with the requirements of the Contract. FAO reserves the right, upon written notice to the Contractor, to obtain copies of any insurance policies or insurance program descriptions required to be maintained by the Contractor under the Contract. Notwithstanding the provisions of Article 6.5.3, above, the Contractor shall promptly notify FAO concerning any cancellation or material change of insurance coverage required under the Contract.

6.8 The Contractor acknowledges and agrees that neither the requirement for taking out and maintaining insurance as set forth in the Contract nor the amount of any such insurance, including, but not limited to, any deductible or retention relating thereto, shall in any way be construed as limiting the Contractor's liability arising under or relating to the Contract.

7. ENCUMBRANCES AND LIENS: The Contractor shall not cause or permit any lien, attachment or other encumbrance by any person to be placed on file or to remain on file in any public office or on file with FAO against any monies due to the Contractor or that may become due for any work done or against any goods supplied or materials furnished under the Contract, or by reason of any other claim or demand against the Contractor or FAO.

8. EQUIPMENT FURNISHED BY FAO TO THE CONTRACTOR: Title to any equipment and supplies that may be furnished by FAO to the Contractor for the performance of any obligations under the Contract shall rest with FAO, and any such equipment shall be returned to FAO at the conclusion of the Contract or when no longer needed by the Contractor. Such equipment, when returned to FAO, shall be in the same condition as when delivered to the Contractor, subject to normal wear and tear, and the Contractor shall be liable to compensate FAO for the actual costs of any loss of, damage to, or degradation of the equipment that is beyond normal wear and tear.

9. COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS:

9.1 Except as is otherwise expressly provided in writing in the Contract, FAO shall be entitled to all intellectual property and other proprietary rights including, but not limited to, patents, copyrights, and trademarks, with regard to products, processes, inventions, ideas, know-how, or documents and other materials which the Contractor has developed for FAO under the Contract and which bear a direct relation to or are produced or prepared or collected in consequence of, or during the course of, the performance of the Contract. The Contractor acknowledges and agrees that such products, documents and other materials constitute works made for hire for FAO.

9.2 To the extent that any such intellectual property or other proprietary rights consist of any intellectual property or other proprietary rights of the Contractor: (i) that pre-existed the performance by the Contractor of its obligations under the Contract, or (ii) that the Contractor may develop or acquire, or may have developed or acquired, independently of the performance of its obligations under the Contract, FAO does not and shall not claim any ownership interest thereto, and the Contractor grants to FAO a perpetual license to use such intellectual property or other proprietary right solely for the purposes of and in accordance with the requirements of the Contract.

9.3 At the request of FAO, the Contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring or licensing them to FAO in compliance with the requirements of the applicable law and of the Contract.

9.4 Subject to the foregoing provisions, all maps, drawings, photographs, mosaics, plans, reports, estimates, recommendations, documents, and all other data compiled by or received by the Contractor under the Contract shall be the property of FAO, shall be made available for use or inspection by FAO at reasonable times and in reasonable places, shall be treated as confidential, and shall be delivered only to FAO authorized officials on completion of work under the Contract.

10. PUBLICITY, AND USE OF THE NAME, EMBLEM OR OFFICIAL SEAL OF FAO: The Contractor shall not advertise or otherwise make public for purposes of commercial advantage or goodwill that it has a contractual relationship with FAO, nor shall the Contractor, in any manner whatsoever use the name, emblem or official seal of FAO, or any abbreviation of the name of FAO in connection with its business or otherwise without the written permission FAO.

11. CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION: All designs, drawings, specifications, reports, data, computer programs, and other technical or proprietary information compiled or developed by the Contractor or furnished or disclosed to the Contractor by FAO under this Contract ("Information") shall be the property of FAO and shall be treated as confidential and safeguarded by the Contractor, its employees, agents and representatives. Unless otherwise authorized in writing by FAO, the Contractor shall use such Information only in the performance of this Contract. Upon completion or termination of this Contract, the Contractor shall return such Information to FAO.

11.1 The Contractor may disclose Information to the extent required by law, *provided that*, subject to and without any waiver of the privileges and immunities of FAO, the Contractor will give FAO sufficient prior notice of a request for the disclosure of Information in order to allow FAO to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made.

11.2 FAO reserves the right to publish or otherwise make public the Contractor's name and address, any information regarding the Contract, including descriptions of the goods or services provided under the Contract, and the Contract value. FAO may also disclose Information to the extent as required pursuant to the FAO Constitution or consistent with or pursuant to resolutions or regulations of the Conference of FAO or rules promulgated thereunder.

11.3 A Party shall not be precluded from disclosing Information that is obtained by that Party from a third party without restriction, is disclosed by the other Party to a third party without any obligation of confidentiality, is previously known by the Party who has received the Information, or at any time is developed by the Party completely independently of any disclosures hereunder.

11.4 These obligations and restrictions of confidentiality shall be effective during the term of the Contract, including any extension thereof, and, unless otherwise provided in the Contract, shall remain effective following any termination of the Contract.

12. FORCE MAJEURE; OTHER CHANGES IN CONDITIONS:

12.1 In the event of and as soon as possible after the occurrence of any cause constituting *force majeure*, the affected Party shall give notice and full particulars in writing to the other Party, of such occurrence or cause if the affected Party is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under the Contract. The affected Party shall also notify the other Party of any other changes in condition or the occurrence of any event which interferes or threatens to interfere with its performance of the Contract. Not more than fifteen (15) days following the provision of such notice of *force majeure* or other changes in condition or occurrence, the affected Party shall also submit a statement to the other Party of estimated expenditures that will likely be incurred for the duration of the change in condition or the event of *force majeure*. On receipt of the notice or notices required hereunder, the Party not affected by the occurrence of a cause constituting *force majeure* shall take such action as it reasonably considers to be appropriate or necessary in the circumstances,

including the granting to the affected Party of a reasonable extension of time in which to perform any obligations under the Contract or termination under Article 13. The Contractor shall be liable for any damages resulting from lack of notice of the *force majeure* event.

12.2 If the Contractor is rendered unable, wholly or in part, by reason of *force majeure* to perform its obligations and meet its responsibilities under the Contract, FAO shall have the right to suspend or terminate the Contract on the same terms and conditions as are provided for in Article 13 “Termination,” except that the period of notice shall be seven (7) days instead of thirty (30) days. In any case, FAO shall be entitled to consider the Contractor permanently unable to perform its obligations under the Contract in case the Contractor is unable to perform its obligations, wholly or in part, by reason of *force majeure* for any period in excess of ninety (90) days.

12.3 *Force majeure* as used herein means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, terrorism, or any other acts of a similar nature or force, *provided that* such acts arise from causes beyond the control and without the fault or negligence of the Contractor (or on the part of its personnel, agents, other representatives, or authorized subcontractors), and proves insurmountable in spite of all due diligence. Defects in equipment, material or supplies, or delays in their availability (unless due to *force majeure*), labor disputes, strikes or financial difficulties shall not constitute an event of *force majeure*. Notwithstanding anything to the contrary herein in this Contract, the Contractor recognizes that the provision of goods and services may from time to time be performed under harsh or hostile conditions, including civil unrest. Consequently, delays or failure to perform caused by events arising out of, or in connection with, such difficult conditions shall not, in and of itself, constitute *force majeure* under this Contract. The Contractor therefore acknowledges and agrees that, with respect to any obligations under the Contract that the Contractor must perform in areas in which FAO is engaged in, preparing to engage in, or disengaging from any humanitarian or similar operations, any delays or failure to perform such obligations arising from or relating to harsh conditions within such areas, or to any incidents of civil unrest occurring in such areas, shall not, in and of itself, constitute *force majeure* under the Contract.

13. TERMINATION:

13.1 Either Party may terminate the Contract for cause, in whole or in part, upon thirty (30) days’ notice, in writing, to the other Party. The initiation of conciliation or arbitral proceedings in accordance with Article 16 “Settlement of Disputes, Conciliation and Arbitration”, shall not be deemed to be a “cause” for or otherwise to be in itself a termination of the Contract.

13.2 For the purposes of this Article, a “cause” include, without being limited to:

13.2.1 unforeseen causes beyond the control of FAO;

13.2.2 repeated and/or serious non compliance with laws and regulations related to social contribution, safety measures, pollution, prevention of injuries in the work place;

13.2.3 serious contractual breaches compromising the normal performance of the services under this Contract;

13.2.4 transfer to third parties, either directly or indirectly through an intermediary, of all or part of the rights and obligations pertaining to the services under this Contract, except for subcontracts duly authorized by FAO;

13.2.5 gross negligence;

13.2.6 unjustified delay in the execution of the services, so as to substantially prejudice the achievement of FAO’s objectives under this Contract;

13.2.7 default in the submission of the performance bond as required, if applicable.

13.3 FAO may terminate the Contract at any time by providing written notice to the Contractor in any case in which the mandate of FAO applicable to the performance of the Contract or the funding of FAO applicable to the Contract is curtailed or terminated, whether in whole or in part. In addition, unless otherwise provided by the Contract, upon sixty (60) days’ advance written notice to the Contractor, FAO may terminate the Contract without having to provide any justification therefor.

13.4 In the event of any termination of the Contract, upon receipt of notice of termination that has been issued by FAO, the Contractor shall, except as may be directed by FAO in the notice of termination or otherwise in writing:

13.4.1 take immediate steps to bring the performance of any obligations under the Contract to a close in a prompt and orderly manner, and in doing so, reduce expenses to a minimum;

13.4.2 refrain from undertaking any further or additional commitments under the Contract as of and following the date of receipt of such notice;

13.4.3 place no further subcontracts or orders for materials, services, or facilities, except as FAO and the Contractor agree in writing are necessary to complete any portion of the Contract that is not terminated;

13.4.4 terminate all subcontracts or orders to the extent they relate to the portion of the Contract terminated;

13.4.5 transfer title and deliver to FAO the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the portion of the Contract terminated;

13.4.6 deliver all completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to FAO thereunder;

13.4.7 complete performance of the work not terminated; *and*,

13.4.8 take any other action that may be necessary, or that FAO may direct in writing, for the minimization of losses and for the protection and preservation of any property, whether tangible or intangible, related to the Contract that is in the possession of the Contractor and in which FAO has or may be reasonably expected to acquire an interest.

13.5 In the event of any termination of the Contract, FAO shall be entitled to obtain reasonable written accountings from the Contractor concerning all obligations performed or pending in accordance with the Contract. In addition, FAO shall not be liable to pay the Contractor except for those goods delivered and services provided to FAO in accordance with the requirements of the Contract, but only if such goods or services were ordered, requested or otherwise provided prior to the Contractor's receipt of notice of termination from FAO or prior to the Contractor's tendering of notice of termination to FAO.

13.6 The Contractor shall immediately report any change in its legal status or control to FAO. FAO may, without prejudice to any other right or remedy available to it, terminate the Contract forthwith in the event that:

13.6.1 the Contractor is adjudged bankrupt, or is liquidated, or becomes insolvent, or applies for a moratorium or stay on any payment or repayment obligations, or applies to be declared insolvent;

13.6.2 the Contractor is granted a moratorium or a stay, or is declared insolvent;

13.6.3 the Contractor makes an assignment for the benefit of one or more of its creditors;

13.6.4 a Receiver is appointed on account of the insolvency of the Contractor;

13.6.5 the Contractor offers a settlement in lieu of bankruptcy or receivership; *or*,

13.6.6 FAO reasonably determines that the Contractor has become subject to a materially adverse change in its financial condition that threatens to substantially affect the ability of the Contractor to perform any of its obligations under the Contract.

13.7 Except as prohibited by law, the Contractor shall be bound to compensate FAO for all damages and costs, including, but not limited to, all costs incurred by FAO in any legal or non-legal proceedings, as a result of any of the events specified in Article 13.6, above, and resulting from or relating to a termination of the Contract, even if the Contractor is adjudged bankrupt, or is granted a moratorium or stay or is declared insolvent. The Contractor shall immediately inform FAO of the occurrence of any of the events specified in Article 13.6, above, and shall provide FAO with any information pertinent thereto.

13.8 The provisions of this Article 13 are without prejudice to any other rights or remedies of FAO under the Contract or otherwise.

14. NON-WAIVER OF RIGHTS: The failure by either Party to exercise any rights available to it, whether under the Contract or otherwise, shall not be deemed for any purposes to constitute a waiver by the other Party of any such right or any remedy associated therewith, and shall not relieve the Parties of any of their obligations under the Contract.

15. **NON-EXCLUSIVITY:** Unless otherwise specified in the Contract, FAO shall have no obligation to purchase any minimum quantities of goods or services from the Contractor, and FAO shall have no limitation on its right to obtain goods or services of the same kind, quality and quantity described in the Contract, from any other source at any time.

16. SETTLEMENT OF DISPUTES, CONCILIATION AND ARBITRATION:

16.1 Any dispute between the Parties concerning the interpretation and the execution of the Contract will be settled by negotiation or, if not settled by negotiation between the Parties or by another agreed mode of settlement shall, at the request of either Party, be submitted to one conciliator. Should the Parties fail to reach agreement on the name of a sole conciliator, each Party shall appoint one conciliator. The conciliation shall be carried out in accordance with the Conciliation Rules of the United Nations Commission on International Trade Law ("UNCITRAL"), as at present in force.

16.2 Any dispute between the Parties concerning the interpretation and the execution of the Contract that is unresolved after conciliation shall, at the request of either Party be settled by arbitration in accordance with the UNCITRAL Arbitration Rules, as at present in force. Arbitrations under this provision shall be administered by the International Bureau of the Permanent Court of Arbitration.

16.3 The conciliation or the arbitration proceedings shall be conducted in any of the six (6) official languages of FAO (Arabic, Chinese, English, French, Spanish and Russian) in which the Contract is drafted. In cases in which the language of the Contract is not an official language of FAO, the conciliation or the arbitration proceedings shall be conducted in English.

16.4 The Parties may request conciliation during the execution of the Contract or within a period not to exceed twelve (12) months after the expiry or the termination of the Contract, which shall in any case include any Warranty Period as defined in Article 4.5. The Parties may request arbitration not later than ninety (90) days after the termination of the conciliation proceedings.

16.5 Decisions of the arbitral tribunal shall be final and binding to the Parties. The arbitral tribunal shall have no authority to award punitive damages or, unless otherwise expressly provided in this Contract, to award interest in which case such interest shall not be in excess of the London Inter-Bank Offered Rate ("LIBOR") then prevailing, and any such interest shall be simple interest only.

17. PRIVILEGES AND IMMUNITIES AND APPLICABLE LAW:

17.1 Nothing contained in or relating to this Contract shall be deemed a waiver, express or implied, of the privileges and immunities of FAO, nor as conferring any privileges or immunities of FAO on the Contractor or its employees, nor as acceptance by FAO of the jurisdiction of the courts of any country over disputes arising out of this Contract.

17.2 Notwithstanding any specific provision herein, this Contract and any dispute arising therefrom shall be governed by general principles of law to the exclusion of any single national system of law. General principles of law shall be deemed to include the UNIDROIT Principles of International Commercial Contracts 2010.

18. TAX EXEMPTION:

18.1 Article III Section 9, of the Convention on the Privileges and Immunities of the Specialized Agencies provides, *inter alia*, that FAO is exempt from all direct taxes, including any value-added tax (VAT), except charges for public utility services, and is exempt from customs restrictions, duties and charges of a similar nature in respect of articles imported or exported for its official use. In the event any governmental authority refuses to recognize the exemptions of FAO from such taxes, restrictions, duties, or charges, the Contractor shall immediately consult with FAO to determine a mutually acceptable procedure.

18.2 The Contractor shall explicitly specify this tax exemption on any invoice. The Contractor authorizes FAO to deduct from the Contractor's invoices any amount representing such taxes, duties or charges, unless the Contractor has consulted with FAO before the payment thereof and FAO has, in each instance, specifically authorized the Contractor to pay such taxes, duties, or charges under written protest. In that event, the Contractor shall provide FAO with written evidence that payment of such taxes, duties or charges has been made and appropriately authorized, and FAO shall reimburse the Contractor for any such taxes, duties, or charges so authorized by FAO and paid by the Contractor under written protest.

19. MODIFICATIONS:

19.1 FAO may at any time by written instructions make changes within the general scope of this Contract and the Contractor shall be obliged to implement such changes in a timely manner. If any such change causes an increase or decrease in the quantities of goods and/or services or the time required for performance of this Contract, an equitable adjustment shall be made in the order price or delivery schedule, or both, and the Contract shall be amended, terminated or reissued accordingly.

19.2 Any claim by the Contractor for adjustment under this Article must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; provided, however, that FAO may, at its sole discretion, receive and act upon any such claim asserted at any time prior to final payment under this Contract. A dispute arising from failure to agree to any adjustments shall be subject to the provisions of Article 16, "Settlement of Disputes, Conciliation and Arbitration", of this Contract. However, nothing in this Article shall relieve the Contractor from its obligation to proceed with the performance of the Contract as changed.

19.3 No modification of or change in the terms of this Contract shall be valid or enforceable against FAO unless it is in writing and signed by a duly authorized officer.

19.4 Any modification of this Contract other than the changes provided for under paragraphs 19.1 to 19.3 above shall be effected by an amendment to this Contract to be mutually agreed between the Parties hereto.

20. AUDITS AND INVESTIGATIONS:

20.1 Each invoice paid by FAO shall be subject to a post-payment audit by auditors, whether internal or external, of FAO or by other authorized and qualified agents of FAO at any time during the term of the Contract and for a period of two (2) years following the expiration or prior termination of the Contract. FAO shall be entitled to a refund from the Contractor for any amounts shown by such audits to have been paid by FAO other than in accordance with the terms and conditions of the Contract.

20.2 The Contractor acknowledges and agrees that, from time to time, FAO may conduct investigations relating to any aspect of the Contract or the award thereof, the obligations performed under the Contract, and the operations of the Contractor generally relating to performance of the Contract. The right of FAO to conduct an investigation and the Contractor's obligation to comply with such an investigation shall not lapse upon expiration or prior termination of the Contract.

20.3 The Contractor shall provide its full and timely cooperation with any such inspections, post-payment audits or investigations. Such cooperation shall include, but shall not be limited to, the Contractor's obligation to make available its personnel and any relevant documentation for such purposes at reasonable times and on reasonable conditions and to grant to FAO access to the Contractor's premises at reasonable times and on reasonable conditions in connection with such access to the Contractor's personnel and relevant documentation. The Contractor shall require its agents, including, but not limited to, the Contractor's attorneys, accountants or other advisers, to reasonably cooperate with any inspections, post-payment audits or investigations carried out by FAO hereunder.

21. LIMITATION ON ACTIONS:

21.1 Except with respect to any indemnification obligations in Article 5, above, or as are otherwise set forth in the Contract, any conciliation proceedings in accordance with Article 16, above, arising out of the Contract must be commenced within twelve (12) months after the cause of action has accrued.

21.2 The Parties further acknowledge and agree that, for these purposes, a cause of action shall accrue when the breach actually occurs, or, in the case of latent defects, when the injured Party knew or should have known all of the essential elements of the cause of action, or in the case of a breach of warranty, when tender of delivery is made, except that, if a warranty extends to future performance of the goods or any process or system and the discovery of the breach consequently must await the time when such goods or other process or system is ready to perform in accordance with the requirements of the Contract, the cause of action accrues when such time of future performance actually begins.

22. ESSENTIAL TERMS: The Contractor acknowledges and agrees that each of the provisions in Articles 23 to 30 hereof constitutes an essential term of the Contract and that any breach of any of these provisions shall entitle FAO to terminate the Contract or any other contract with FAO immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind.

23. **SOURCE OF INSTRUCTIONS:** The Contractor shall neither seek nor accept instructions from any authority external to FAO in connection with the performance of its obligations under the Contract. Should any authority external to FAO seek to impose any instructions concerning or restrictions on the Contractor's performance under the Contract, the Contractor shall promptly notify FAO and provide all reasonable assistance required by FAO. The Contractor shall not take any action in respect of the performance of its obligations under the Contract that may adversely affect the interests of FAO, and the Contractor shall perform its obligations under the Contract with the fullest regard to the interests of the FAO.

24. **OFFICIALS NOT TO BENEFIT:** The Contractor warrants that it has not and shall not offer to any representative, official, employee, or other agent of FAO any direct or indirect benefit arising from or related to the performance of the Contract or of any other contract with FAO or the award thereof or for any other purpose intended to gain an advantage for the Contractor.

25. **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. The Contractor shall promptly correct any violations thereof and shall keep FAO informed of any conflict or problem arising in relation to national authorities. In addition, the Contractor shall maintain compliance with all obligations relating to its registration as a qualified vendor of goods or services to FAO, as such obligations are set forth in FAO vendor registration procedures.

26. **LABOR:**

26.1 The Contractor shall: i) respect the prohibition of forced or compulsory labour in all its forms; ii) respect the freely exercised right of workers, without distinction, to organize, to further and defend their interest as well as the protection of those workers who exercise their right to organize; iii) ensure equality of opportunity and treatment in respect of employment and occupation; and iv) ensure fair and reasonable conditions of safety, health and welfare.

26.2 The Contractor represents and warrants that neither it, its parent entities (if any), nor any of the Contractor's subsidiary or affiliated entities (if any) is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which *inter alia*, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

27. **MINES:** The Contractor represents and warrants that neither it, its parent entities (if any), nor any of the Contractor's subsidiaries or affiliated entities (if any) is engaged in the sale or manufacture of anti-personnel mines or components utilized in the manufacture of anti-personnel mines.

28. **SEXUAL EXPLOITATION:** The Contractor shall take all appropriate measures to prevent sexual exploitation or abuse of any direct beneficiary of the FAO projects or programmes receiving the goods or services provided under this Contract, or to any persons related to such beneficiaries, by its employees or any other persons engaged and controlled by the Contractor to perform any services under the Contract. For these purposes, sexual activity with any person less than eighteen years of age, regardless of any laws relating to consent, shall constitute the sexual exploitation and abuse of such person. In addition, the Contractor shall refrain from, and shall take all reasonable and appropriate measures to prohibit its employees or other persons engaged and controlled by it from exchanging any money, goods, services, or other things of value, for sexual favors or activities, or from engaging in any sexual activities that are exploitive or degrading to any direct beneficiary of the FAO projects or programmes receiving the goods or services provided under this contract, or to any persons related to such beneficiaries.

29. **TERRORISM:** The Contractor agrees to undertake all reasonable efforts to ensure that none of the funds received from FAO under this Contract are used to provide support to individuals or entities: (i) associated with terrorism, as included in the list maintained by the Security Council Committee established pursuant to Resolutions 1267 (1999) and 1989 (2011); or (ii) that are the subject of sanctions or other enforcement measures promulgated by the United Nations Security Council.

30. **SANCTIONABLE ACTIONS**

30.1 The Contractor shall observe the highest standard of ethics and will certify that it has not and will not engage in Sanctionable Actions during the selection process and throughout the negotiation and execution of this Contract. The Contractor expressly agrees to abide by the UN Supplier Code of Conduct.

30.2 FAO, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith if the Contractor, in the judgment of FAO, has engaged in Sanctionable Actions during the selection process or in negotiating or executing this Contract, and as appropriate, impose sanctions, as per the prevailing Sanctions Procedures (<http://www.fao.org/>)

[fileadmin/user_upload/procurement/docs/FAO_Vendors_Sanctions_Policy_-_Procedures.pdf](#)), and request full or partial restitution of sums previously paid by FAO under this Contract. FAO may also share information on the sanctioned Contractor with other Intergovernmental or UN Organizations.

30.3 For the purpose of this Article, Sanctionable Actions are defined as follows: “Corrupt practice” means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value whether tangible or intangible to improperly influence the actions of another party; “Fraudulent practice” means any act or omission, including misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial and/or other benefit and/or to avoid an obligation; “Collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party; “Coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party; “Unethical practice” is any act or omission contrary to the conflict of interest, gifts and hospitality or post-employment FAO policy (<http://www.fao.org/unfao/procurement/codeconduitethique/en/>), as well as any provisions or other published requirements of doing business with the Organization, including the UN Supplier Code of Conduct; and “Obstructive practice” is an act or omission by a Third Party that may prevent or hinder the work of Investigation Unit of the FAO Office of the Inspector General.

31. DISCLOSURE OF SANCTIONS OR TEMPORARY SUSPENSION: The Contractor should not be suspended, debarred, or otherwise identified as ineligible by any Intergovernmental or UN Organization, including any organization within the World Bank Group or any multi-lateral development bank, or by the institutions and bodies of economic integration organizations (e.g., the European Union). The Contractor is therefore required to disclose to FAO whether itself, or any of its affiliates or agents, is subject to any sanction or temporary suspension imposed by any such organization or National Authority at any time during the three years prior to this Contract and at any time throughout the execution of this Contract. The Contractor recognizes that a breach of this provision will entitle FAO to terminate its Contract with the Contractor, and that material misrepresentations on its status constitute a fraudulent practice.

32. COLLABORATION WITH CERTAIN COUNTRIES: FAO reserves the right to communicate in writing to the Contractor, countries from which no goods or services shall be purchased directly or indirectly for purposes of delivery, distribution, installation, or use under this Contract. These communications shall be deemed a condition of this Contract and be incorporated by the Contractor in any contracts with authorized subcontractors.

33. NOTICES AND COMMUNICATIONS: All notices and other binding communications shall be in English, or the language of the Contract, and shall be deemed to be validly given if sent by registered mail, by fax or by email with return receipt to the other Party at the address or numbers of either Party as indicated in the Contract.