



# **CONTRACT FOR THE SUPPLY OF SPECIFIED GOODS**

## **GENERAL CONTRACT CONDITIONS**



## Table of Contents

I.	GENERAL PROVISIONS .....	4
1.	Preliminary provisions .....	4
2.	Definitions .....	4
3.	Amendments and Severance .....	5
4.	Language.....	5
5.	Joint Venture, Consortium or Association .....	5
6.	Notice.....	5
7.	Governing legislation.....	5
8.	Country of origin.....	5
9.	Taxes and Duties.....	6
10.	IMPLEMENTATION OF THE CONTRACT .....	6
11.	Effectiveness of the Contract .....	6
12.	Standards.....	6
13.	Acceptance.....	6
14.	Delivery and delays.....	6
15.	Liquidated damages .....	7
16.	Expiration of the Contract.....	7
17.	Force majeure.....	7
18.	Suspension .....	7
19.	Termination by the Procuring Entity.....	8
20.	Termination by the Supplier .....	8
21.	OBLIGATIONS OF THE SUPPLIER.....	9
22.	General .....	9
23.	Law governing the Supply of Goods .....	9
24.	Conflict of interest or conflicting activities.....	9
25.	Confidentiality .....	9
26.	Patent rights .....	9
27.	Documents prepared by the Supplier to be the Property of the Procuring Entity .....	9
28.	Inspections and tests .....	10
29.	Packing.....	10
30.	Delivery and documents.....	10
31.	Incidental services.....	10
32.	Spare parts.....	10
33.	Guarantee .....	11
34.	Equipment and Materials furnished by the Procuring Entity .....	11
35.	OBLIGATIONS OF THE PROCURING ENTITY.....	11
36.	Assistance and exemptions .....	11
37.	Change in Applicable Laws .....	12
38.	Supply of Goods, Facilities and Property of the Procuring Entity .....	12
39.	Payments.....	12



40.	PAYMENTS TO THE SUPPLIER.....	12
41.	Currency of the Contract.....	12
42.	Prices.....	12
43.	Remuneration and reimbursable expenditures .....	12
44.	Written Order .....	12
45.	FAIRNESS AND GOOD FAITH.....	13
46.	Good Faith .....	13
47.	Operation of the Contract.....	13
48.	SETTLEMENT OF DISPUTES .....	13
49.	Amicable Settlement .....	13
50.	Dispute Settlement .....	13



## **I. GENERAL PROVISIONS**

### **1. Preliminary provisions**

- 1.1. The present General Contract Conditions (GCC) shall be considered as part of the Contract. Any interpretation of the GCC shall be made in line with the general meaning of the Specific Contract Conditions (SCC).
- 1.2. In case of inconsistency of any provision of the Contract, including its GCC and SCC, in terms of meaning of any trade term, rights and obligations of the Parties the meaning, rights and obligations as prescribed by the *Public Procurement Act 2019*, the *Public Procurement Regulations 2020*, and any other applicable laws of Kiribati shall prevail.
- 1.3. The Contract constitutes the entire agreement between the Procuring Entity and the Supplier and supersedes all communications, negotiations and agreements (whether written or oral) of the Parties with respect thereto made prior to the date of the Contract.
- 1.4. Any rights and obligations under this Contract shall not be transferred to any third Party, without the prior written approval of the other Party.

### **2. Definitions**

- 2.1. The terms provided in the GCC shall have the following meaning:
  - (a) “Amendment” means an agreed numbered change, in writing, of a Contract or its parts after the signature of both Parties.
  - (b) “Applicable Laws” means the laws of the Republic Kiribati.
  - (c) “Completion” means the delivery of the Goods by the Supplier in accordance with the terms and conditions set forth in the Contract.
  - (d) “Contract” means the agreement of economic interest concluded in writing between the Supplier and the Procuring Entity that has as its object the obligation to provide Supply of Goods.
  - (e) “Contract Documents” means the documents listed in the Contract, including the GCC, the SCC and its annexes and any amendments to the SCC as agreed upon between the Parties.
  - (f) “Contract Price” means the price payable to the Supplier as specified in the Contract, subject to additions and adjustments or deductions, as may be made pursuant to the Contract.
  - (g) “Day” means calendar day.
  - (h) "Force Majeure" means an event which is beyond the reasonable control of a Party, and which makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent). Force Majeure shall not include any event which is caused by the negligence or intentional action of a Party or such Party's Subcontractors or agents or employees, nor any event which a diligent Party could reasonably have been expected to both take into account at the time of the conclusion of the Contract and avoid or overcome in the carrying out of its obligations hereunder.
  - (i) “Goods” means tangible items, including assets and expendable items that are purchased, hired, leased or rented and related Supply of Goods, provided that the value of the Goods is higher than the value of the Service.
  - (j) “GCC” means the General Contract Conditions.
  - (k) “Party” means the Procuring Entity or the Supplier, as the case may be; and “Parties” means both of them.
  - (l) “Procuring Entity” means any governmental ministry, department, agency, organ or their unit, or any subdivision or multiplicity thereof, as designated by the Public Procurement Regulations, that engages in public procurement.
  - (m) “SCC” means the Specific Contract Conditions.



- (n) “Services” means those services ancillary to the supply of Goods, such as transportation and insurance, and any other incidental services, such as installation, commissioning, provision of technical assistance, training, and other such obligations of the Supplier covered under the Contract.
- (o) “Subcontractor” means a natural or legal person that is proposed by a Supplier to perform part of a Contract.
- (p) “Supplier” means any natural or legal person, which offers the provision of Supply of Goods.

### **3. Amendments and Severance**

- 3.1. No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of the Supplier and the Procuring Entity.
- 3.2. If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

### **4. Language**

- 4.1. The Contract as well as all correspondence and documents relating to the Contract exchanged by the Supplier and the Procuring Entity, shall be written in English. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in English.
- 4.2. The Supplier shall bear all possible costs of translation to the official Contract language and all risks of the accuracy of such translation.

### **5. Joint Venture, Consortium or Association**

- 5.1. If the Supplier is a joint venture, a consortium, or an association, all of the parties shall be jointly and severally liable to the Procuring Entity for the fulfilment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Procuring Entity.

### **6. Notice**

- 6.1. Any notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the SCC. The term “in writing” means any expression consisting of words and / or figures that can be read, reproduced and subsequently communicated. It may include information transmitted and stored by electronic means.
- 6.2. A notice shall be effective when delivered to the other party or on the notice’s effective date.

### **7. Governing legislation**

- 7.1. The Contract shall be governed by and interpreted in accordance with the laws of Kiribati, unless otherwise specified in the SCC.
- 7.2. Throughout the execution of the Contract, the Contractor shall comply with the import of goods and services prohibitions as established by the legislation of Kiribati when:
  - (a) as a matter of law, the legislation prohibits commercial relations with that country; or
  - (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the legislation of Kiribati prohibits any import of goods from that country or any payments to any country, person, or entity in that country.

### **8. Country of origin**

- 8.1. All Goods and Services supplied under the Contract shall have their origin in the countries and territories eligible under Kiribati legislation, as may be further elaborated in the SCC.
- 8.2. For purposes of this Clause, “origin” means the place where the Goods were mined, grown, or produced, or from which the Services are supplied. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially



recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.

8.3. The origin of Goods and Services is distinct from the nationality of the Supplier.

## **9. Taxes and Duties**

9.1. Unless otherwise specified in the SCC, the Supplier, including any Subcontractor and their personnel, shall pay such taxes, duties, fees and other impositions as may be levied under Applicable Laws.

## **10. IMPLEMENTATION OF THE CONTRACT**

### **11. Effectiveness of the Contract**

11.1. The Contract shall be considered valid and shall come into effect on the date the parties signed the Contract (the “Effective Date”).

### **12. Standards**

12.1. The Goods supplied under the Contract shall conform to the standards mentioned in the Specifications, and, when no applicable standard is mentioned, to the authoritative standards appropriate to the Goods’ country of origin and standards required under Kiribati legislation. Such standards shall be the latest issued by the concerned institution.

### **13. Acceptance**

13.1. The Procuring Entity may reject the Goods when they are evaluated to be inadequate or not conforming to the Specifications provided in Annex B. The Procuring Entity shall ask the Supplier to either rectify or modify/improve or replace the Goods, as necessary, and at no cost to the Procuring Entity, to meet the required Specifications.

13.2. If the inspection and/or testing carried out in line with Clause 28 of the GCC reveals that the Goods fully meet the Specifications, the Procuring Entity accepts the Goods by issuing a letter signed by the appropriate official certifying that the Goods were evaluated and found to be delivered according to the terms of the Contract. Such acceptance (“Final Acceptance”) shall not relieve the Supplier of the guarantee obligations as provided by Clause 33 of the GCC.

13.3. In case the Goods do not satisfy the Specifications in spite of the Supplier’s continual remedying, the Procuring Entity shall, after mutual discussion, be entitled to return the Goods to the Supplier. In this case, the Supplier shall refund the full amount prepaid for any rejected Goods and shall indemnify the Procuring Entity against all losses, damages and any additional expenses that the Procuring Entity incurred to repair or replace the defective Goods.

13.4. Unless otherwise agreed, the risk of loss and title to the Goods pass to the Procuring Entity upon the Final Acceptance.

### **14. Delivery and delays**

14.1. Unless otherwise provided in Annex B, all shipments of the Goods shall be shipped by the Supplier DDP – Delivery Duty Paid to the address advised by the Procuring Entity, in line with the INCOTERMS 2020 rules.

14.2. Without in any way limiting Clause 14.1 of the GCC, all transportation charges, import and export duties, insurance costs and any other costs and charges on the Goods delivered shall be borne by the Supplier.

14.3. The Goods shall be packed in standard packing conditions according to international commercial and industrial practice for international shipment. Without prejudice to foregoing, the Supplier shall apply proper anti-erosion and/or anti-rust compounds or coating, protective waterproof wrapping and/or packing, as the case may be.

14.4. Duplicate copies of the invoices and packing lists are to be packed with the Goods. Original documents and other documents as required by the Supplier are to be sent separately and as quickly as possible in order to reach the Procuring Entity before the shipment arrives at the destination.



- 14.5. The Supplier shall inform the Procuring Entity of shipping details, including bill of lading numbers, and number of packages, and its expected date of departure and arrival by email or facsimile within twenty-four (24) hours after the original shipping date.
- 14.6. Delivery of the Goods shall be made by the Supplier on the Delivery Date or Dates that the Procuring Entities has required in Annex A.
- 14.7. If the Supplier or its Subcontractor(s) encounters conditions impeding timely delivery of the Goods, the Supplier shall notify the Procuring Entities in writing and at the soonest opportunity of the fact of the delay, its likely duration and cause(s). The Procuring Entity shall evaluate the situation and advise the Supplier if the Delivery Date or Dates can be extended.
- 14.8. Delay may constitute default that may result in terminating the Contract, forfeiting the Supplier's Performance Security and/or awarding the Contract to another qualified Supplier.

### **15. Liquidated damages**

- 15.1. If the Supplier fails to deliver the Goods on the Delivery Date or Dates, the Procuring Entity may deduct from the Contract Amount, liquidated damages equivalent to 0,5% of the Contract Amount for every week of delay or part thereof until actual delivery or performance. The maximum allowable deduction for such liquidated damages shall be 10% of the Contract Amount.
- 15.2. Liquidated damages shall be imposed without prejudice to other remedies under the Contract and under applicable laws. Once the maximum allowable deduction for liquidated damages provided above is reached, the Procuring Entity may consider terminating the Contract based on the grounds provided in Clause 17 of the GCC.

### **16. Expiration of the Contract**

- 16.1. The Contract shall come to an end after such time period from the Effective Date as specified in the SCC.

### **17. Force majeure**

- 17.1. The failure of a Party to fulfil any of its obligations shall not be considered to be a breach of the Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of the Contract.
- 17.2. A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party's inability to fulfil its obligations with a minimum of delay. A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than ten (10) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible. The Parties shall take all reasonable measures to minimize the consequences of any event of Force Majeure.
- 17.3. Any period within which a Party shall, pursuant to the Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.
- 17.4. Not later than twenty (20) days after the Supplier, as the result of an event of Force Majeure, have become unable to perform a material portion of the Supply of Goods, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

### **18. Suspension**

- 18.1. The Procuring Entity may, by written notice of suspension to the Supplier, suspend all payments to the Supplier if the Supplier fails to perform any of its obligations under the Contract, including the carrying out of the Supply of Goods.
- 18.2. The suspension note shall:
- (a) specify the nature of the failure, and
  - (b) request the Supplier to remedy such failure within a period not exceeding twenty (20) days after receipt by the Supplier of such notice of suspension.



## **19. Termination by the Procuring Entity**

19.1. The Procuring Entity may terminate the Contract by providing the Supplier with written notice, which shall not be less than twenty (20) days, in the following cases:

- (a) if the Supplier fails to remedy a failure in the performance of its obligations, as specified in a notice of suspension pursuant to Clause 18 of the GCC CGG above, within twenty (20) days from the notification of such notice or within such further period as the Procuring Entity may have subsequently approved in writing;
- (b) if the Supplier becomes (or, if the Supplier includes Subcontractors, if any of its members becomes) insolvent or bankrupt or enter into any agreements with its creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary;
- (c) if the Supplier fails to comply with any final decision reached as a result of amicable settlement proceedings pursuant to Clause 49 of the GCC;
- (d) if the Supplier submits to the Procuring Entity a statement which has a material effect on the rights, obligations or interests of the Procuring Entity and which the Supplier knows to be false;
- (e) if, as the result of Force Majeure, the Supplier is unable to perform a material portion of the Supply of Goods for a period of not less than sixty (60) days; or
- (f) if the Procuring Entity, in its sole discretion and for any reason whatsoever, decides to terminate the Contract.

## **20. Termination by the Supplier**

20.1. The Supplier may terminate the Contract by providing the Procuring Entity with written notice, which shall not be less than twenty (20) days, in the following cases:

- (a) if the Procuring Entity fails to pay any money due to the Supplier pursuant to the Contract and not subject to dispute pursuant to Clause 50 of the GCC within thirty (30) days after receiving written notice from the Supplier that such payment is overdue;
- (b) if the Procuring Entity is in material breach of its obligations pursuant to the Contract and has not remedied the same within thirty (30) days (or such longer period as the Supplier may have subsequently approved in writing) following the receipt by the Procuring Entity of the Supplier's notice specifying such breach;
- (c) if, as the result of Force Majeure, the Supplier is unable to perform a material portion of the Supply of Goods for a period of not less than sixty (60) days; or
- (d) if the Procuring Entity fails to comply with any final decision reached as a result of amicable settlement pursuant to Clause 49 of the GCC.

20.2. Upon termination of the Contract pursuant to Clauses 19 or 20 of the GCC, or upon expiration of the Contract pursuant to Clause 16 of the GCC, all rights and obligations of the Parties shall cease, except:

- (a) such rights and obligations as may have accrued on the date of termination or expiration,
- (b) the obligation of confidentiality set forth in Clause 25 of the GCC and
- (c) any right which a Party may have under Applicable Laws.

20.3. Upon termination of the Contract by notice of either Party to the other pursuant to Clause 19 or 20 of the GCC, the Supplier shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Supply of Goods to an end in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum.

20.4. With respect to documents prepared by the Supplier and equipment and materials furnished by the Procuring Entity, the Supplier shall proceed as provided, respectively, by Clauses 27 or 34 of the GCC.

20.5. Upon termination of the Contract pursuant to Clauses 19 or 20 of the GCC, the Procuring Entity shall pay to the Supplier the remuneration pursuant to Clause 39 of the GCC for Supply of Goods satisfactorily delivered prior to the effective date of termination;





- 20.6. If either Party disputes whether an event specified in paragraphs (a) through (e) of Clause 19 of the GCC or in Clause 20 of the GCC has occurred, such Party may, within forty-five (45) days after receipt of notice of termination from the other Party, refer the matter to amicable dispute resolution pursuant to Clause 49 of the GCC, and the Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

## **21. OBLIGATIONS OF THE SUPPLIER**

### **22. General**

- 22.1. The Supplier shall perform the Supply of Goods and carry out its obligations with all due diligence and efficiency, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe and effective equipment, machinery, materials and methods.
- 22.2. The Supplier shall always act, in respect of any matter relating to the Contract or to the Supply of Goods, as faithful advisers to the Procuring Entity, and shall at all times be considered responsible for the correct implementation of the Contract by its Subcontractors or Third Parties.

### **23. Law governing the Supply of Goods**

- 23.1. The Supplier shall perform the Supply of Goods in accordance with Applicable Laws and shall take all practicable steps to ensure that any Subcontractor, as well as the Personnel of the Supplier and any Subcontractor, complies with Applicable Laws.
- 23.2. The Procuring Entity shall notify the Supplier in writing of relevant local customs, and the Supplier shall, after such notification, respect such customs.

### **24. Conflict of interest or conflicting activities**

- 24.1. The Supplier shall avoid situations that put its impartiality at risk. In case of Subcontractors, the Supplier shall ensure that no Subcontractor is in a situation of conflict of interest.

### **25. Confidentiality**

- 25.1. The Supplier, including its Subcontractors, shall not, without the Procuring Entity's prior written consent, disclose the Contract, or any of its provision, specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Procuring Entity to any person other than a person employed by the Supplier in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 25.2. The Supplier shall not, without the Procuring Entity prior written consent, make use of any document or information enumerated in Clause 25.1 of the GCC except for purposes of performing the Contract.
- 25.3. Any document, other than the Contract itself, enumerated in Clause 25.1 of the GCC shall remain the property of the Procuring Entity and shall be returned to the Procuring Entity upon finalisation of the Contract if so required by the Procuring Entity.
- 25.4. The obligation of confidentiality shall be extended up to two (2) years after the expiration of the Contract.

### **26. Patent rights**

- 26.1. The Supplier shall indemnify the Procuring Entity against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use or misuse of the Goods or any of their parts.

### **27. Documents prepared by the Supplier to be the Property of the Procuring Entity**

- 27.1. All plans, drawings, specifications, designs, reports, other documents and software prepared by the Supplier for the Procuring Entity under the execution of the Contract shall become and remain property of the Procuring Entity, and the Supplier shall, not later than upon termination or expiration of the Contract, deliver all such documents to the Procuring Entity, together with a detailed inventory. The Supplier may retain a copy of such documents and software.



## **28. Inspections and tests**

- 28.1. The Procuring Entity or its representative shall have the right to inspect and/or to test the Goods to confirm their conformity to the Specifications at no extra cost to the Procuring Entity. The SCC and the Specifications shall specify what inspections and tests the Procuring Entity requires and where they are to be conducted. The Procuring Entity shall notify the Supplier in writing, in a timely manner, of the identity of any representatives retained for these purposes.
- 28.2. The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor(s), at point of delivery, and/or at the Goods' final destination. If conducted on the premises of the Supplier or its Subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring Entity.
- 28.3. Should any inspected or tested Goods fail to conform to the Specifications, the Procuring Entity may reject the Goods, and the Supplier shall either replace the rejected Goods or make alterations necessary to meet Specification requirements free of cost to the Procuring Entity.
- 28.4. The Procuring Entity's right to inspect, test and, where necessary, reject the Goods shall in no way be limited or waived by reason of the Goods having previously been inspected, tested, and passed by the Procuring Entity or its representative prior to the Goods' shipment from their country of origin.

## **29. Packing**

- 29.1. The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Goods' final destination and the absence of heavy handling facilities at all points in transit.
- 29.2. The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the SCC, and in any subsequent instructions ordered by the Procuring Entity.

## **30. Delivery and documents**

- 30.1. Delivery of the Goods shall be made by the Supplier in accordance with the terms specified in the SCC. The details of shipping and/or other documents to be furnished by the Supplier to the Procuring Entity are specified in the SCC.

## **31. Incidental services**

- 31.1. The Supplier may be required to provide any or all of the following services, including additional services, if any, specified in the SCC:
- (a) performance or supervision of on-site assembly and/or start-up of the supplied Goods;
  - (b) furnishing of tools required for assembly and/or maintenance of the supplied Goods;
  - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied Goods;
  - (d) performance or supervision or maintenance and/or repair of the supplied Goods, for a period of time agreed by the parties, provided that this service shall not relieve the Supplier of any warranty obligations under the Contract; and
  - (e) training of the Procuring Entity's personnel, at the Supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied Goods.
- 31.2. Prices charged by the Supplier for incidental services, if not included in the Contract Price for the Goods, shall be agreed upon in advance by the Parties.

## **32. Spare parts**

- 32.1. As specified in the SCC, the Supplier may be required to provide any or all of the materials, notifications, and information pertaining to spare parts manufactured or distributed by the Supplier.



32.2. Spare parts as the Procuring Entity may elect to purchase from the Supplier, provided that this election shall not relieve the Supplier of any warranty obligations under the Contract; and

32.3. In the event of termination of production of the spare parts:

- (i) advance notification to the Procuring Entity of the pending termination, in sufficient time to permit the Procuring Entity to procure needed requirements; and
- (ii) following such termination, furnishing at no cost to the Procuring Entity the blueprints, drawings, and specifications of the spare parts, if requested.

### **33. Guarantee**

33.1. The Supplier guarantees that the Goods supplied under the Contract are new, unused, of the most recent or current models and that they incorporate all recent improvements in design and materials unless provided otherwise in the Contract.

33.2. In case the Supply of Goods concerns second hand / used Goods, the Supplier provides a guarantee certification on the condition of the Goods and guarantees that the Goods are in a satisfactory condition.

33.3. The Supplier further guarantees that all Goods supplied under the Contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the Procuring Entity Specifications) or from any act or omission of the Supplier, that may develop under normal use of the supplied Goods in the conditions prevailing in the country of final destination. This guarantee shall remain valid for twelve (12) months after the Goods, or any of its portions as the case may be, have been delivered to and accepted at the final destination indicated in the Contract, unless specified otherwise in the SCC.

33.4. The Procuring Entity shall promptly notify the Supplier in writing of any claims arising under this warranty.

33.5. Upon receipt of such notice, the Supplier shall, within the period specified in the SCC and with all reasonable speed, repair or replace the defective Goods or parts thereof, without costs to the Procuring Entity other than, where applicable, the cost of inland delivery of the repaired or replaced Goods or the port or place of entry to the final destination.

33.6. If the Supplier, having been notified, fails to remedy the defect(s) within the period specified in the SCC, the Procuring Entity may proceed to take such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Procuring Entity may have against the Supplier under the Contract.

### **34. Equipment and Materials furnished by the Procuring Entity**

34.1. Equipment and materials made available to the Supplier by the Procuring Entity or purchased by the Supplier with funds provided by the Procuring Entity shall be the property of the Procuring Entity and shall be marked accordingly.

34.2. Upon termination or expiration of the Contract, the Supplier shall make available to the Procuring Entity an inventory of such equipment and materials and shall dispose of such equipment and materials in accordance with the Procuring Entity's instructions.

34.3. While in possession of such equipment and materials, the Supplier, unless otherwise instructed by the Procuring Entity in writing, shall insure them at the expense of the Procuring Entity in an amount equal to their full replacement value.

### **35. OBLIGATIONS OF THE PROCURING ENTITY**

#### **36. Assistance and exemptions**

36.1. Unless otherwise specified in the SCC, the Procuring Entity shall use its best efforts to ensure that the Government shall facilitate prompt clearance through customs of any property required for the Supply of Goods and of the personal effects of the personnel and provide to the Supplier any such other assistance as may be specified in the SCC.



### **37. Change in Applicable Laws**

37.1. If, after the date of the signature of the Contract, there is any change in Applicable Laws with respect to taxes and duties which increases or decreases the cost incurred by the Supplier in performing the Supply of Goods, then the remuneration and reimbursable expenses otherwise payable to the Supplier under the Contract shall be increased or decreased accordingly by agreement between the Parties.

### **38. Supply of Goods, Facilities and Property of the Procuring Entity**

38.1. If the Supply of Goods and related services require that the Supplier needs to obtain permits, approvals, and import and other licenses or permissions, including access to premises, from local public authorities, the Procuring Entity shall make its best to ensure the Supplier in complying with such requirements in a timely manner.

### **39. Payments**

39.1. In consideration of the Supply of Goods performed by the Supplier under the Contract, the Procuring Entity shall make to the Supplier such payments and in such manner as is provided by Part 40 of the GCC.

39.2. If advance payments are exceptionally agreed by the Parties, the Supplier shall request the advance payment by submitting an original invoice for the agreed amount upon signature of the Contract.

39.3. If an advance payment is exceptionally agreed by the Procuring Entity, the payment shall be conditional to the receipt and acceptance by the Procuring Entity of a performance guarantee, unless specifically waived by the Procuring Entity.

## **40. PAYMENTS TO THE SUPPLIER**

### **41. Currency of the Contract**

41.1. Unless otherwise agreed, in line with Article 3 of the SCC, the payments to the Supplier for the execution of the Contract shall be made in Australian Dollars (AUS or AU\$), which is the official currency of Kiribati.

### **42. Prices**

42.1. Prices charged by the Supplier for Goods delivered and Services performed under the Contract shall not vary from the prices quoted by the Supplier in its Tender, with the exception of any price adjustments authorized in the SCC, as the case may be.

### **43. Remuneration and reimbursable expenditures**

43.1. The remuneration of the Supplier shall constitute the sole remuneration in connection with the Contract or the Supply of Goods provided.

43.2. The Supplier's request(s) for payment shall be made to the Procuring Entity in writing, accompanied by an invoice describing, as appropriate, the Goods delivered and Services performed, and by documents submitted pursuant to Clause 27 of the GCC, and upon fulfilment of other obligations stipulated in the Contract.

43.3. Payments shall be made promptly by the Procuring Entity, but in no case later than thirty (30) days after submission of an invoice or claim by the Supplier.

43.4. All payments under the Contract shall be made to the accounts of the Supplier specified in the SCC.

### **44. Written Order**

44.1. The Procuring Entity may at any time, by a written order given to the Supplier pursuant to Clause 6 of the GCC make changes within the general scope of the Contract in any one or more of the following:

- (a) Drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Procuring Entity;
- (b) The method of shipment or packing;
- (c) The place of delivery; and/or



(d) The Goods to be provided by the Supplier.

44.2. If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or delivery schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within thirty (30) days from the date of the Supplier's receipt of the Procuring Entity's change order.

#### **45. FAIRNESS AND GOOD FAITH**

##### **46. Good Faith**

46.1. The Parties undertake to act in good faith with respect to each other's rights under the Contract and to adopt all reasonable measures to ensure the realisation of the objectives of the Contract.

##### **47. Operation of the Contract**

47.1. The Parties recognize that it is impractical in the Contract to provide for every contingency which may arise during the life of the Contract, and the Parties hereby agree that it is their intention that the Contract shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of the Contract either Party believes that the Contract is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but failure to agree on any action pursuant to this Clause shall not give rise to a dispute settlement in accordance with part 48 of GCC.

#### **48. SETTLEMENT OF DISPUTES**

##### **49. Amicable Settlement**

49.1. The Procuring Entity and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.

##### **50. Dispute Settlement**

50.1. If, after thirty (30) days, the Parties have failed to resolve their dispute or difference by such mutual consultation, then either the Procuring Entity or the Supplier may give notice to the other party of its intention to commence a court proceeding.

50.2. Any dispute arising between the Parties concerning the interpretation and/or execution of the Contract that the Parties fail to solve amicably, in accordance with Clause 49 of the GCC, shall be exclusively submitted to the competent court of Kiribati.

50.3. Notwithstanding any reference to the initiation of a court settlement, the Parties shall continue to perform their respective non disputed obligations under the Contract unless they otherwise agree; and the Procuring Entity shall pay the Supplier any non-contested payment due to the Supplier.