

International Humanitarian Infrastructure Platform

SHELTER CONSTRUCTION WORKS

CONDITIONS OF PARTICULAR APPLICATION

Harmonized for the humanitarian response

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Conditions Of Particular Application to FIDIC SHORT FORM of Contract for Shelter Construction Works – NOVEMBER 2021 Public Edition

HARMONIZED CONDITIONS OF PARTICULAR APPLICATION prepared by IHIP SHELTER CONTRACT COMMITTEE NOVEMBER 2021 - contact point contact@ihip.earth

The Conditions of Contract are the “General Conditions” which form part of the Short Form of Contract 1999 published by the “Federation Internationale Des Ingenieurs Conseils (FIDIC)” and the following “Conditions Of Particular Application” which include amendments and additions to such General Conditions. The following “Conditions Of Particular Application” (COPA) shall supplement the General Conditions. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions.

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Clause 1 - «General Provisions»

1.1.14 - «Force Majeure»

Replace 1.1.14 with the following:

"Force Majeure" means an exceptional event or circumstance as defined in Sub-Clause 13.2.

1.1.20 - (Additional) «Site Access Clearance»

Site Access Clearance means access to the site has been cleared: there is permission granted by the legal owner. The site has to be fit for purpose. Refer to the Appendix for any Environmental Conditions and additional specifications.

1.1.21 - (Additional) «Mobilization»

Mobilization and/or pre-construction activities consists of preparatory work and operations necessary for the movement of personnel, equipment, supplies, and incidentals to the project site.

1.1.22 - (Additional) «C.O.P.A »

C.O.P.A. means "Conditions Of Particular Application".

1.1.23 - (Additional) «Operation and Maintenance Manuals»

O&M Manuals means the manuals (as amended from time to time) in hard copy and electronic media which set out the policy, practices and procedures for the operation and maintenance of the "Works".

1.1.24 - (Additional) «ESHS »

ESHS means Environmental Social Health and Safety.

1.1.25 - (Additional) « Retention Money »

"Retention Money" means the accumulated retention moneys which the Employer retains under Sub-Clause 11.3 [Interim Payments] and pays under Sub-Clause 11.4 [Payment of First Half of Retention] and Sub-Clause 11.5 [Payment of Second Half of Retention], if applicable.

Clause 1.3 - «Priority of Documents»

Replace Clause (1.3) with the following:

"The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

- a. The Contract Agreement,
- b. The Particular Conditions: in the Appendix,
- c. The Conditions of Particular Applications,
- d. These General Conditions,

- e. The Employer's Policies,
- f. The Scope of Works,
- g. The Specifications,
- h. The Drawings,
- i. The Payment Milestones (if applicable), and
- j. The Bill of Quantities,
- k. The Environmental, Social, Health and Safety (ESHS) conditions,
- l. The Contractor's Code of Conduct,
- m. Any other documents forming part of the Contract.

If a party finds an ambiguity, discrepancy or inconsistency this shall be resolved by the other party issuing a clarification or instruction.

Clause 1.7 - (Additional) « Employer's Use of Contractor's Documents »

As between the Parties, the Contractor shall retain the copyright and other intellectual property rights in the Contractor's Documents and other design documents made by (or on behalf of) the Contractor.

The Contractor shall be deemed (by signing the Contract) to give to the Employer a non-terminable transferable non-exclusive royalty-free license to copy, use and communicate the Contractor's Documents, including making and using modifications of them.

The Contractor's Documents and other design documents made by (or on behalf of) the Contractor shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) the Employer, except as necessary for the purposes of the Contract.

Clause 1.8 - (Additional) « Contractor's Use of Employer's Documents »

As between the Parties, the Employer shall retain the copyright and other intellectual property rights in the Specification, the Drawings and other documents made by (or on behalf of) the Employer. The Contractor may, at the Contractor's cost, copy, use, and obtain communication of these documents for the purposes of the Contract. They shall not, without the Employer's consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract.

Clause 2 - «The Employer»

Clause 2.1 - « Provision of Site »

Replace Clause (2.1) with:

"After Site Access Clearance, the Employer shall provide the Site and right of access thereto at the times stated in the Appendix."

Clause 2.5 - (Additional) « Whistleblowing »

The Employer must provide an appropriate mechanism of communication to all Contractors, Subcontractors and other third party personnel of any allegation of serious malpractices"

The Contractor shall provide immediate notification to Employer of incidents in the following categories. Full details of such incidents shall be provided to the Employer within the timeframe agreed with the Employer:

- (a) confirmed or likely violation of any law or international agreement;
- (b) any fatality or serious (lost time) injury;
- (c) significant adverse effects or damage to any property;
- (d) any pollution or environmental damage as a result of contractual negligence including but not limited to drinking water aquifer ; or
- (e) any allegation of gender-based violence (GBV), sexual exploitation or abuse, sexual harassment or sexual misbehavior, rape, sexual assault, child abuse or defilement, or any other violations against adults or children.

Clause 4 - «The Contractor»

Clause 4.3 - «Subcontracting»

Replace Clause (4.3) with the following:

“The Contractor shall not subcontract the whole of the Works. The Contractor shall not subcontract any part of the Works without prior written consent of the Employer. The Contractor shall be responsible for the works of Subcontractors, for managing and coordinating the Subcontractors and for the acts or defaults of any Subcontractor’s agents, or employees, as if they were acts or defaults of the Contractor.

Only one level of subcontracting will be accepted. The Contractor shall contractually impose the obligation to his Subcontractors to not conclude any more subcontracts. “

Clause 4.5 - (Additional) « Access to site »

The Contractor acknowledges that prior to the Contractor being provided with access to and use of the Site, “Site Access Clearance” should be provided by the Employer.

The Contractor shall not commence any Works, including mobilization and/or pre-construction activities, unless the Employer is satisfied that appropriate measures are in place to address environmental, social, health and safety risks and impacts.

If specified in the Employer Specification, the Contractor shall submit, on a continuing basis, a Contractor’s Worksite Environmental and Social Management Plan to manage the Environmental, Social and Health and the impacts of the Works on any Project Area.

Clause 4.6 - (Additional) « Progress Reports »

Unless otherwise stated in the Appendix, monthly progress reports, in a format stated in the Specifications (or if not stated in a format accepted by the Employer) shall be prepared by the Contractor and submitted to the Employer. The first report shall cover the period up to the end of

the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the month to which it relates.

Reporting shall continue until Completion or, if outstanding work is listed in the Taking-over Notice, the date of which such outstanding work is completed.

Any requirements to be included in the reports should be stated in the Specifications.

Clause 4.7 - (Additional) « Inspection and audit by the Employer»

“The Contractor shall permit and shall cause its Subcontractors to permit, the Employer and/or persons delegated by the Employer to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors delegated by the Employer if requested by the Employer.”

Clause 4.8 - (Additional) « Payments to third parties»

The Employer may request the Contractor to supply reasonable evidence that the Contractor has paid the Contractor’s Personnel, Subcontractors and Suppliers all amounts due in accordance with its obligations. Unless the Contractor:

- (a) supplies this reasonable evidence to the Employer; or
- (b) (i) satisfies the Employer in writing that the Contractor is reasonably entitled to withhold or refuse to pay these amounts; and

(ii) submits to the Employer reasonable evidence that the Contractor’s Personnel, Subcontractor or Supplier (as applicable) have been notified of the Contractor’s entitlement,

then the Employer may (at the Employer’s sole discretion) pay directly to the Contractor’s Personnel, Subcontractor or Supplier part or all such amount, as are due to and for which the contractor has failed to submit evidence. Any such payment shall be deducted from amounts owing, or to be owed, to Contractor, and no such payment will give rise to any duty or obligation by the Employer with respect to such Contractor’s Personnel, Subcontractors or Suppliers.

Clause 4.9 - (Additional) « Quality Assurance »

The Contractor shall implement a quality assurance system to demonstrate compliance with the requirements of the Contract. The system shall be in accordance with the details stated in the Contract. The Employer shall be entitled to audit or test any aspect of the system.

Details of all procedures and compliance documents shall be submitted to the Employer for information before each design and execution stage is commenced.

Compliance with the quality assurance system shall not relieve the Contractor of any of his duties, obligations or responsibilities under the Contract.

Clause 4.10 - (Additional) « Unforeseeable Physical Conditions »

In this Sub-Clause, “physical conditions” means natural physical conditions and man-made and other physical obstructions and pollutants, which the Contractor encounters at the Site when executing the Works, including sub-surface and hydrological conditions but excluding climatic conditions.

Unforeseeable means not reasonably foreseeable by an experienced Contractor before submission of the offer.

If the Contractor encounters adverse physical conditions which he considers to have been Unforeseeable, the Contractor shall give written notice to the Employer as soon as practicable within 14 days.

This notice shall describe the physical conditions, so that they can be inspected by the Employer, and shall set out the reasons why the Contractor considers them to be Unforeseeable. The Contractor shall continue executing the Works, using such proper and reasonable measures as are appropriate for the physical conditions, and shall comply with any instructions which the Employer may give. If an instruction constitutes a Variation, Clause 10 [Variations and Claims] shall apply.

If and to the extent that the Contractor encounters physical conditions which are Unforeseeable, gives such a notice, and suffers delay and/or incurs Cost due to these conditions, the Contractor shall be entitled subject to Sub-Clause 10.5 [Variation and Claim Procedure] to:

- (a) An extension of time for any such delay, if completion is or will be delayed, and
- (b) Payment of any such Cost, which shall be included in the Contract Price.

The Employer may take account of any evidence of the physical conditions foreseen by the Contractor when submitting the Tender, which may be made available by the Contractor, but shall not be bound by any such evidence.

Clause 5 - « Design by Contractor »

Clause 5.3 - (Optional) « Operation and Maintenance Manuals »

The Contractor shall prepare, and keep up-to-date, a complete set of operation and maintenance manuals for the Works.

The format and other relevant details of the Operation and Maintenance Manuals shall be as stated in the Specifications and, in any case, these manuals shall:

- (a) be in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair the Works to ensure that the performance of the Works, Section and/or Plant (as the case may be) continues to comply with the performance criteria specified in the Specifications; and
- (b) include an inventory of spare parts, equipment manuals and warranties, required for the Employer’s future operation and maintenance of the Works, Section and/or Plant (as the case may be).

Before Completion, the Contractor shall submit provisional O&M Manuals for the Works or Section (as the case may be) to the Employer.

If during the Period for notifying defect any error or defect is found in the provisional O&M Manuals, the Contractor shall promptly rectify the error or defect at the Contractor's risk and cost.

The Works or any Section shall not be considered to be completed for the purposes of issuing the Taking - Over Notice until the Employer has received the final O&M Manual.

Clause 11 - « Contract Price and Payment »

Preparation Notes: In the case installment payments is preferred to Monthly payments use the sub-clauses (11.2 11.3 11.4 11.5 11.6) below:

Clause 11.2 - « Monthly Statements »

The standard article is deleted.

Clause 11.3 - « Interim Payments »

Replace Clause (11.3) with the following:

“Within 28 days of delivery of each invoice, the Employer shall pay to the Contractor the amounts shown below, less the advance payment at the rate stated in the Appendix, less any amount for which the Employer has specified his reasons for disagreement. Payments will be made as follow:

- XX % of the contract amount, initial payment, shall be paid when the mobilization to the Site is completed.
- XX% of the total contract amount only shall be paid upon total completion of the works, as per Sub-Clause 8.1, and upon a receipt of an invoice.
- XX% of the total contract amount only shall be paid upon Taking-Over Notice notified by the Employer as per Sub-Clause 8.2, and upon a receipt of an invoice, subject to Clause 9.
- XX% of the contract amount only shall be paid by the Employer to the Contractor subject to the remedying of defects as specified in Sub-Clause 9.1, and the length specified in the Appendix.”

Clause 11.4 - « Payment of First Half of Retention »

The standard article is deleted.

Clause 11.5 - «Payment of Second Half of Retention »

The standard article is deleted.

Clause 11.6 - «Final Payment »

The standard article is deleted.

Clause 11.9 - (Additional) « Advance payment »

If no amount of advance payment is stated in the Appendix this sub-Clause will not apply. The amount of the advance payment shall be stated in the Appendix, and shall not be more than 30 % of the Accepted Contract Amount. When the local banking system allows it, the Contractor shall obtain

(at the Contractor Cost) and provide to the Employer an Advance Payment Guarantee, in the form of an unconditional bank certified cheque, in the amount equal to the advance payment. This bank certified cheque should be returned to the Contractor once this advance payment is fully repaid through deductions from the interim payments at a rate stated in the Appendix.

Clause 11.10 - (Additional) « Retention Money »

At each Interim payment at the rate defined in the Appendix, when the local banking system allows it, the Retention Money should be made available to the Employer through an unconditional bank certified cheque from the Contractor (at the Contractor's cost).

Clause 12 - «Default»

Clause 12.5 - (Additional) « Termination by Employer»

If the totality of the funding of the works comes from a donor conditioning the funding of the work to a specific deadline and if the contract end date is before this specific deadline, the Employer shall be entitled to terminate the Contract if the donor's funding is not available to continue the work after this deadline has been met.

Clause 12.6 - (Additional) « Termination by Contractor»

In the event the loan or credit, from which part or whole of the payments to the Contractor are being made, is suspended, if the Contractor has not received the sums due to him upon expiration of the payment period referred to in Clause 11 [Contract price and Payment] for payments under Interim Payment Certificates, the Contractor shall be entitled to give a Notice to the Employer of the Contractor's intention to terminate the Contract. If the Contractor does not receive the amount due under any payment certificate within 42 days after sending this Notice to the Employer, the Contractor may, without prejudice to the Contractor's entitlement to financing charges under Sub-Clause 11.8 [Delayed Payment], take one of the following actions, namely

- (a) suspend work or reduce the rate of work, or
- (b) terminate the Contract by giving notice to the Employer, with a copy to the Engineer, such termination to take effect 14 days after the giving of the notice.

Clause 13 - «Risk and Responsibility»

Clause 13.2 - «Force Majeure»

Insert before the first paragraph:

In this Clause, "Force Majeure" means an exceptional event or circumstance:

- (a) which is beyond a Party's control,
- (b) which such Party could not reasonably have provided against before entering into the Contract,

- (c) which, having arisen, such Party could not reasonably have avoided or overcome, and
- (d) which is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

- (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (ii) rebellion, terrorism, sabotage by persons other than the Contractor's Personnel, revolution, insurrection, military or usurped power, or civil war,
- (iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel,
- (iv) munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and
- (v) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

Clause 13.3 - (Additional) «Site Safety»

The Contractor shall ensure that both itself and the Contractor's Third Parties at all times take all steps reasonably necessary to maintain the health and safety of those performing services on the Site in connection with the Works. The Contractor shall ensure that it maintains First Aid equipment on Site in-line with the local medical standards of the Country. The Contractor shall appoint a designated person to act as an accident prevention officer at the Site and agrees to ensure that such person proactively maintains safety and seeks to prevent accidents wherever possible. The Contractor should report to the Employer within 24 hours of any incident.

The Contractor shall:

- (a) Comply with all applicable safety regulations,
- (b) Take care for the safety of all persons on the Site,
- (c) Use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to all persons, and
- (d) Provide fencing, lighting, guarding and watching of the Works until completion and taking over under Clause 8 [Taking-Over].