



**ERG GROUP**

**GENERAL SPECIFICATIONS  
FOR  
WORKS TENDER**

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## 1. SCOPE OF THE GENERAL SPECIFICATIONS

These specifications together with the other contract documents (technical appendix, prices, specifications, drawings, etc.) form an integral part of the contract entered into by and between Client and Contractor. The clauses contained herein are applicable unless otherwise specified in the contract. In the event of any discrepancy, the clauses in the contract and its appendices shall prevail over those in these General Specifications.

## 2. GENERAL PROVISIONS AND DEFINITIONS

The following terms as used herein will be deemed to mean as follows

- 2.1 2.1Client:  
The Company entering into the contract with the Contractor
- 2.2 2.2Contractor  
The Contracted company charged with execution of the work covered by the tender.
- 2.3 2.3Client's Representative  
The person appointed to represent the Client as specified in art. 5.0.
- 2.4 2.4Project Manager  
The person with the necessary technical and professional skills who acts as Project Manager, in accordance with current applicable legislation, as specified in art. 6.0.
- 2.5 2.5Foreman:  
The person with the necessary technical experience and professional qualifications tasked with representing the Contractor in the absence of the Project Manager, as specified in art. 6.0.
- 2.6 2.6Supervisor  
The person with the necessary technical and professional skills who acts as Supervisor, in accordance with current applicable legislation, as specified in art. 6.0.

## 3. SAFETY REGULATIONS

Inspection of and familiarity with the site and working conditions.

- 3.1 The Contractor, its employees and all those persons for whom it is responsible, shall comply with all applicable laws and regulations regarding health and safety in the workplace, the prevention of accidents and occupational hygiene.
- 3.2 Contractor accordingly undertakes to scrupulously comply with all applicable laws and regulations, as well as any special provisions which apply within the Factories, Warehouses and Sales Points of the Client, which the Contractor confirms that it knows, has been advised of and in respect of which it has received full documentation from Client.
- 3.3 Contractor confirms it has already visited the areas where the Works are to be carried out and is fully aware of the inherent risks at the workplaces as covered by the tender and has received from the Client all necessary information regarding the risks and prevention and emergency measures adopted by the Client.
- 3.4 Moreover,
- 3.5 for services of an intellectual nature, for the simple supply of materials and equipment and for works or services lasting not longer than two days: Contractor confirms that it has read the document entitled "Health and Safety Information" produced by the Client in accordance with art. 26, para. 1b) of Legislative Decree 81/08, available at [www.erg.it](http://www.erg.it); for all other types of tender: Contractor confirms that it has read the "Interference Risk Assessment Document" (DUVRI) prepared by Client in accordance with art. 26, para. 3 of Legislative Decree 81/08, available at [www.erg.it](http://www.erg.it). In this regard, prior to commencing the works under the tender, Client and Contractor shall meet to share the contents of the DUVRI risk assessment report and agree on cooperation and coordination in accordance with the provisions of art. 26, para. 2 of Legislative Decree 81/08 The costs of the measures to be taken to eliminate, or failing this, reduce to the minimum any workplace health and safety risks arising out of coinciding work in the prices quoted above, have not been subject to economic negotiation.

Contractor further agrees to inform its workforce of the contents of the documents referred to above.

- 3.6 3.5 Contractor further confirms that in calculating the price, consideration has been taken of all circumstances and Contractor hereby waives any additional payment or recompense, undertaking all liabilities and charges.

#### **4. PLANNING**

- 4.1 4.1 The works under the Tender may be illustrated by “preliminary drawings” provided by the Client. The purpose of these drawings is to provide an indication of the overall arrangement, layout and scale of the works. Contractor shall at own expense employ a reliable Registered Engineer to draw up the executive project for the works, complete with calculations for the load-bearing structures, including those in metal and reinforced concrete. Nonetheless Client retains the indisputable right to use own technicians or technicians chosen by Client, to draw up the executive project complete with calculations for the load-bearing structures, including those in metal and reinforced concrete, and in such event the project must be signed in approval by the Project Manager who shall assume joint responsibility with the Contractor. Contractor shall moreover at own expense realise the architectural project supplied by the Client and the construction details on a scale of 1:50 on the basis of calculations for the load-bearing structures previously referred to. With respect to structural metalwork and reinforced concrete Contractor shall in any event give due notice to the appropriate Authorities, in the manner and terms provided by law, and shall keep on site documents, samples of concrete cubes and iron reinforcements, all as prescribed in current legislation. Contractor shall further bear the costs of submitting to the relevant Authorities the static test results and any other documentation as might be provided by Client. The executive project realised by Contractor and including the particulars mentioned above, shall be submitted to Client before work is commenced; Client reserves the right to approve the executive project, notwithstanding Contractor bearing all responsibility for the project itself. The same rules apply to any modifications and variations to the executive project requested by Client “during execution”. Upon completion of the works Contractor shall provide Client with all updated detailed drawings of the works carried out, at no extra cost, in reproducible copy, which shall remain the property of Client.

- 4.2 Contractor shall in any case:  
verify the bearing capacity of the foundations and at Client’s request, submit all certificates of the relevant tests or trials;  
in calculating the structure, take account not only of its weight but also of any fixed, incidental or movable loads as indicated by Client;  
verify and check projects, calculations and drawings, and accept responsibility for them accordingly. In the event that Contractor fails to communicate in writing any observations or reservations prior to commencement of works, the project will be deemed to have been approved and accepted by Contractor;  
carry out the work in accordance with best practice and highest standards and using materials of the highest quality.
- 4.3 Contractor shall moreover ascertain whether there are any discrepancies between the drawings supplied by Client and legal regulations, and advise Client immediately if such is the case so that Client can make the necessary modifications.

#### **5. CLIENT’S REPRESENTATIVE**

- 5.1 Client may choose to be represented by a nominee who need not be one of its employees and who will be entitled to attend at the execution of the works without thereby relieving Contractor of its responsibilities.
- 5.2 Client’s representative shall be entitled to verify proper compliance by Contractor, who will be required to provide solid demonstration of as much, with all clauses of the contract, and may refuse any work which in his incontestable opinion has not been carried out correctly and in full accordance with the highest standards. In such event Contractor shall carry out the work again at own expense. In the event that Contractor fails to re-perform the disputed work within the terms set out by Client’s representative, Client may have the

work performed by another company.

Extra costs accruing to the Client in such event will be debited to the Contractor and discounted from the invoice/s, without prejudice to Client's entitlement to seek appropriate compensation for damages.

- 5.3 Client's Representative, or any other appointed party, may at any time and in any circumstances access the offices, workshops, warehouses and/or the premises of the Contractor and its suppliers, to carry out any controls the Client may deem necessary.
- 5.4 On performing his role Client's Representative shall not be liable to Contractor or to third parties for any event or damages occurring during the work, or as a consequence of same.  
Client's Representative shall not be responsible for formalities relating to the management of the work site, supervision of the work force, the material execution of the works and maintenance and functioning of the works of any kind, all of which are and shall remain the exclusive responsibility of the Contractor.

## **6. PROJECT MANAGEMENT**

- 6.1 Contractor shall at own expense appoint a project manager with all the necessary professional skills and qualifications as required by law.

The duties of the Project Manager are those covered by current applicable legislation.

The name of the person appointed must be communicated in writing by Contractor to Client.

- 6.2 In the event that Contractor, on account of the nature of the work, believes that the continuous presence of the Project Manager at the work places is unnecessary, Contractor shall, at own expense, appoint an experienced and professionally qualified Foreman, in addition to the Project Manager, to be present at the work place for the entire duration of the work. In the absence of the Project Manager the Foreman shall represent the Contractor and as such Client may forward to the Foreman all necessary communications relating to the works covered by the tender. The name of the person appointed must be communicated in writing by Contractor to Client.
- 6.3 Client shall be entitled to appoint a Supervisor, in accordance with the provisions of current legislation (chapter IV of Legislative Decree 81/08), whose functions and duties will be those described under the above-mentioned regulations.

## **7. CHARGES TO BE BORNE BY THE CONTRACTOR**

In addition to items referred to in other articles in these Specifications and to those covered by the contract, Contractor shall bear all of the following costs, by way of example but not exclusively:

- 7.1 Services performed by own technical and administrative personnel as well as the specialist and regular work force for the management and execution of the works.
- 7.2 Services performed by own work force, equipment and instruments for taking measurements, tracking and tests.
- 7.3 Costs for statutorily required insurance, and all employee payments and contributions.
- 7.4 Taxes, duties, licences and other charges associated with the contract and imposed by government and/or other authorities with jurisdiction over the contract.
- 7.5 All costs relating to workforce travel and transfers plus their board and lodging.
- 7.6 Consumable and filler materials, assembly and fixture accessories, site vehicles and scaffolding, protective and safety clothing and in general, all equipment necessary for carrying out the works. All in accordance with statutory requirements and internal regulations applicable in Client's Factories, Warehouses and Sales Points.
- 7.7 The regular and special maintenance of site vehicles and equipment, as well as their repair and any consumption (fuel, lubricant etc.).
- 7.8 Transport costs, insurance, surveillance and safekeeping of materials, equipment, work huts and site vehicles necessary for the execution of the works, it being understood that Constructor holds Client harmless from any liability on the event of theft, fire and other damage.
- 7.9 Movement on site and in the service areas, of equipment, vehicles and Contractor and Client materials.

- 7.10 The collection, at own expense and risk, at the appropriate points at Client Warehouses and/or Factories, as well as the transportation and unloading on site of all materials supplied by Client, as well as their 24 hour surveillance and safeguarding.
- 7.11 Return to the collection points, as indicated by Client, of all residual materials and swarfs.
- 7.12 The collection, transportation and disposal, in compliance with current legislation, of all waste products resulting from the execution of the works such as, by way of example but not limited to:  
swarfs (cuts of insulation material and/or fragments of metal used for insulation);  
empty containers of varnish, paint and similar.
- 7.13 The erection of workers huts, workshops and other temporary constructions on site. The dismantling of said structures, clearing out and cleaning the site and service area, inclusive of tidying up the areas in question, at Client's specific request and within the terms determined by Client. In the event that Contractor fails to meet the obligations as above, Client will perform such obligations, charging the relative costs directly to Contractor, as well as reserving the right to claim compensation for any damage caused thereby. Contractor undertakes to refrain from carrying out any work other than that requested by Client anywhere on the site, for whatever reason whether for itself or for third parties.
- 7.14 The use of own generators or other heat engine equipment, without any additional expense for Client, in the event of interruption of the electricity supply.
- 7.15 Water and electricity feeds from the mains as indicated by Client, to the various points of use and specifying, as regards electricity, that the mains switches must be owned by Contractor and have the appropriate characteristics.
- 7.16 Telephone connection for the on-site service and payment of the bills.
- 7.17 Supply of drinking water and any other service for the work force, inclusive of toilet and washing facilities.
- 7.18 Appropriate protection for any machinery, equipment, materials etc. which might be liable to damage during the works.
- 7.19 Any kind of protection deemed necessary on account of the proximity of machinery, pipes, tanks and/or other items, or the concurrence of other works.
- 7.20 First aid and subsequent medical facilities, and hospital costs for the workforce in the event of accident and/or illness.
- 7.21 Updates to the building plans, due to modifications carried out during the works.
- 7.22 Day and night signage and hazard warnings.
- 7.23 Due care not to allow work already installed to deteriorate but rather to keep such work in good and clean order, up until delivery of all completed work to Client.
- 7.24 Daily cleaning of the site and service areas during the execution of works as well as the removal of temporary obstructions and/or the removal of the work site at indisputable request by Client. Failure to do so shall entitle Client to organise this directly, with all associated costs to be borne by Contractor, and notwithstanding possible claims by Client for compensation for damages.
- 7.25 As the Contractor will be working in areas where other works/services may be taking place, whether by Client or by third parties, at the same time or subsequently, the Contractor:  
prior to commencement of works, undertakes to check that the relevant working areas are such that works can proceed in conditions of total safety.  
moreover, undertakes to maintain and deliver the working areas in conditions of total safety to any other contractors and/or to Client.  
in relation to the above, Contractor hereby specifically holds Client harmless from any liability.

Any difficulties due to the concurrent execution of other works/services by third parties and/or the Client,

however they arise, will not entitle Contractor to claim any additional payment or to modify the date for the completion of the works.

- 7.26 Any other charges, even if not specifically mentioned herein, such as might be necessary to execute and complete the work in total safety, in full compliance with accepted standards and in the terms agreed.

## **8. TEMPORARY INSTALLATIONS**

As regards the temporary installations referred to in para. 7.13, Client may, if it so chooses, make available to Contractor areas necessary for Contractor site activities, having signed the appropriate free-of-charge loan for use agreement. Contractor shall grant Client access to all areas at any time for audits to be carried out.

## **9. EQUIPMENT AND MACHINERY FOR THE EXECUTION OF THE WORKS**

- 9.1 The use of any tool, equipment or machinery by Contractor, shall be at Contractor's complete and total risk. Before and during use Contractor shall in any case check the exact compliance of tools, equipment and machinery with all current regulations and particular with the provisions of Legislative Decree 81/08. Client will not normally supply Contractor with tools, equipment or machinery. In the event of the Contractor, duly authorised by the Client, using site vehicles or equipment exceptionally supplied by the Client, their use shall be subject to the above provision.
- 9.2 If Contractor should suffer losses or damage of any kind and due to any cause, during execution of the works, it will not be due any indemnity payment by Client.

Contractor accordingly undertakes all risks and charges arising out of losses and damage to the works being carried out or completed, or to the site vehicles, materials and equipment.

## **10. CONTRACTOR OBLIGATIONS AND RESPONSIBILITIES**

- 10.1 Contractor confirms that the activities will be carried out using its own management structure and at own risk, using own capital and equipment and own work force, regularly hired, paid and insured. In connection with the above, Contractor will carry out the activities undertaking full liability with respect to Client and the Public Authorities and third parties, indemnifying Client against all charges associated with the execution of the activities.
- 10.2 Contractor shall provide evidence of all necessary licences and authorisations required for the purposes of acting as a 'contractor'. In the absence of any of the requirements arising out of the above, such as would place the Contractor in an irregular administrative and/or legal position, Client reserves the right to terminate the contract.
- 10.3 With respect to work carried out at the Factories and Warehouses, Contractor may not commence any work without Client issuing the relevant Work Permit duly signed in each part by Client's authorised personnel and Contractor.
- 10.4 The use of any tool, equipment or machinery by Contractor, shall be at Contractor's complete and total risk. Contractor shall in any case check, before and during use, the full compliance of tools, equipment and machinery with all current regulations and in particular with Legislative Decree 81/08 Client will not normally supply the Contractor with tools, equipment or machinery. In the event of the Contractor, duly authorised by the Client, using site vehicles or equipment exceptionally supplied by the Client, their use shall be subject to the above provision. As regards Legislative Decree 334/99, Legislative Decree 238/05 and subsequent modifications and additions, for all works relating to plant or system components at risk of major accident hazard (MAH), to be carried out at the IGCC/SDA premises, the firms shall submit a quality control programme to the Client for approval.
- 10.5 For all electrical work, in accordance with the provisions of standard 11-27/1, personnel employed must have the necessary requisites in accordance with the standards, and in particular must have been trained and certified by the employer as a Qualified Person (PES), Instructed Person (PAV), Ordinary Worker (PEC), or Person appointed to manage the activity (Work Manager). In case of work involving live currents, the Employer must certify that the appropriate training has been undertaken.
- 10.6 In the event that Contractor carries out activities under the contract introducing hazardous substances or mixtures to Client's premises, Contractor must obtain prior authorisation from Client and submit the duly

completed safety certificates.

- 10.7 Prior to the commencement of works, Contractor shall submit to Client a risk assessment document, completed in accordance with the provisions of Legislative Decree 81/08 arts. 17 and 28, relating to specific activities to be carried out by personnel on the Client's premises - unless Contractor is required to produce a safety operations plan -SOP - for one site alone.
- 10.8 Contractor hereby waives any additional recompense and/or indemnity for any such instructions as the Client may issue from time to time to avoid delays in the regular execution of other work taking place.
- 10.9 Contractor shall comply with all legal requirements, decrees and regulations in force. In particular Contractor shall comply with laws in force regarding employment and social security, including, but not limited to, the regulations in Legislative Decree 81/08 regarding the prevention of accidents at the workplace, occupational health and safety, hygienic working conditions and compulsory insurance against occupational accidents and illnesses, and any other provisions in force or which might come into force during execution of the Tender for safeguarding the well-being of the work force. Contractor moreover commits to indemnify the Client and ERG against any claim the work force might make against them for whatever reason. In accordance with the provisions of Presidential Decree no. 445 dated 29 December 2000, Contractor confirms that with respect to entitled employees and the Tax Authorities/Public Bodies, the following are in good order: (i) payment of wages and pension contributions; (ii) payment of income tax at source for employee workers (social security and other benefit contributions); (iii) VAT payments on invoices relating to work done under contract. To this end Contractor shall attach to each invoice a valid certification of labour compliance ('DURC') without which the invoice will not be paid. In any event Contractor shall indemnify and hold ERG and its subsidiaries and/or affiliates harmless from and against any liability in the event of non-compliance or irregular compliance with regard to the provisions of this clause. In the event of an accident involving the work force during execution of the works on the Client's premises, Contractor shall advise Client accordingly with details of the accident and of the victim and the circumstances of the accident.
- 10.10 Contractor shall apply a regime of pay, regulations and contributions that is at least equal to the regime under collective employment contracts in force and any additions thereto. In all cases of joint liability, Client reserves the right of recovery from Contractor of any sums paid out to Contractor's employees and on their behalf regarding tax and social security/welfare contributions.
- 10.11 Contractor shall at all times whenever so requested by Client provide proof of the above.
- 10.12 In addition to compliance with applicable regulations, Contractor and its employees undertake to comply with all regulations set out by Client as regards safety and fire prevention as well as general access to and behaviour in the premises and plants belonging to the Client.
- 10.13 Contractor shall obtain from Client's Representative a copy of said regulations prior to commencement of works.
- 10.14 Contractor shall provide its work force not only with necessary personal protection kits for carrying out the works under contract but also such as may be demanded by Client in relation to specific risk conditions for the plant or area where said personnel will be working.
- 10.15 Contractor shall carry out all work under the Tender in full compliance with all laws and regulations in force, including laws/regulations relating to the use of workers with valid residence permits and proper waste management and disposal.
- 10.16 Contractor shall operate in such a way that all financial documentation (invoices, credits, debits, statements, etc.) submitted to Client as per contract and/or any future amendments thereto, are a true reflection of the relevant facts regarding all activities and operations executed on behalf of Client so that Client is in a position to provide complete and accurate records and documentation.
- 10.17 Contractor shall keep on site a work log with daily updates on the rate of progress and with particular reference to:
  - description of work carried out
  - presence of work force and machinery
  - atmospheric conditions
  - incidents and any damage
  - suspension and resumption of works specifying period and reason
  - possible complaints and/or doubts expressed by the parties.Said log book must be available on request for inspection by Client's personnel.

- 10.18 With regard to Contractor's activities on Client's jetties, Contractor confirms that it is enrolled in the appropriate registers, in accordance with the provisions of art. 68 of the Italian Navigation Code. Contractor shall be liable for all costs, charges, obligations and penalties for any non-compliance.
- 10.19 It is understood that there will be no employment relationship, pursuant to the contract, between Client and Contractor's workforce employed in the execution of the works.
- 10.20 Contractor shall be liable for all damage to persons and things caused to Client or third parties due to failure to fulfil any contractual obligations.
- 10.21 Contractor may not employ under-age workers in any of the activities covered by Legislative Decree 262/2000 and temporary workers in activities which could potentially expose the worker to specific risks and for which solid experience is a requirement (e.g.: welding, overhead working, assembly/dismantling of scaffolding, confined spaces, etc.)
- 10.22 In the event of employment of foreign personnel, Contractor shall advise Client accordingly for the purpose of allowing the correct procedures to be followed (understanding the official language in the event of an emergency, possible interpreting assistance, form A1 for temporary work for workers based abroad, etc.)
- 10.23 In the event of employment of foreign personnel, Contractor shall only use personnel with valid residence permits in accordance with current legislation.
- 10.24 Contractor shall enable Client to verify the status of workers employed by the Contractor.

## **11. CHARGES TO BE BORNE BY THE CLIENT**

Unless otherwise specified in the contract, Client shall bear the following charges:

- 11.1 Making available an area for use as a construction site.
- 11.2 Making available industrial water in accordance with Client's requirements, from the nearest water supply point.
- 11.3 Making available electricity for generators and lighting, from the nearest socket.
- 11.4 Any reductions and/or suspensions in the supply of water/electricity will not entitle Contractor to claim additional payments or indemnities.

## **12. CONFORMITY OF THE WORKS TO THE CONTRACT - DELIVERY - TESTING**

- 12.1 The works shall be carried out in total compliance with the highest standards, in compliance with the specifications of the contract and in full compliance with laws, decrees and regulations in force at the time.
- 12.2 From time to time Client will approve the technical execution of the works and services not already fully defined within the contract documents, as well as any additional work and/or modifications, without assuming any liability in that respect and without exempting Contractor from his responsibilities.
- 12.3 Client reserves the right to communicate in writing any other technical demands during execution of the works.
- 12.4 Upon completion of the works, Client and Contractor will come to an arrangement regarding tests and controls and attestations necessary to ascertain that the works have been executed and completed in compliance with the contract documents and that they are ready for delivery to the Client, ready for use.
- If the tests, controls and attestations are positive, both parties shall draw up and sign a 'works delivery report'.
- In the opposite case, Contractor shall, at the simple request of Client, demolish and/or re-execute, entirely at own expense, whatever the Client deems to be below standard and/or non-compliant with the contractual specifications.

In the event that Contractor fails to remedy the above situation, Client may proceed directly or through another company, with the demolition and re-performance of the work as above.

In any event, all relative costs shall be borne by Contractor, and Client may further claim compensation for damages, including indirect damage due to the delayed utilisation of the tendered works.

- 12.5 The warranty period shall run from the signing of the “works delivery report” in accordance with art. 13.0.
- 12.6 Taking delivery of the works on the part of the Client in no way exonerates Contractor from any negative test results, and Client remains fully entitled to express reservations on the suitability of the works for the purposes for which they were carried out, the quality of execution and the quality and suitability of the materials used by the Contractor, and these reservations may only be resolved by means of a positive outcome at the final test in accordance with the following paragraph.
- 12.7 The tests will be carried out by Client and its representatives, or, when necessary, by other bodies unconnected to either party.  
Testing may involve two separate groups of operations to be carried out at different times:  
preliminary tests  
verification and final testing of works executed in accordance with contract regulations.  
Both in case of preliminary tests and final tests, the schedule will be determined by the tester.  
The techniques for determining various physical dimensions and their incorporation for the purpose of determining of the plant’s global elements will be discussed and form the basis of a programme put forward by the tester and agreed with the Contractor. Wherever possible, measurement techniques will be based on current standards. The final test certificate will be drawn up by the tester and forwarded to the Contractor, who may communicate his observations to the Client.  
Contractor shall supply appropriate technical assistance during testing, providing all equipment and tools necessary as well the necessary technical personnel, bearing all the relative costs, including energy and fuel consumption.  
Client shall supply such water as is necessary, at existing water supply points only, and will also pay the tester fee.  
In the event of a negative test result Contractor may be granted a period of time deemed appropriate by the tester to remedy any shortcomings. There will then be a second test the costs of which will be borne entirely by Contractor.  
A favourable opinion by tester will be the sole determining factor for release of the guarantee deposit, which however will only occur once all tendered works have been tested with positive results.  
Signing by Contractor of the test certificate also certifies acceptance of the works on the part of the Client.
- 12.8 It is in any case understood that the tests, checks and acceptance of all works in their entirety shall not relieve the Contractor of his obligations towards the Client or of his civil and criminal liability (for materials, assembly, mechanical and functional guarantees) in accordance with the law.

### **13. WARRANTIES**

- 13.1 Contractor warrants that the works shall be fit for purpose and shall be carried out in full compliance with the highest standards, in conformity with contractual specifications, and they will have no faults or defects, including hidden defects. Contractor further warrants that materials supplied by Contractor and used in the execution of the works will be of prime quality and without fault or defect, including hidden defects, and with characteristics appropriate for the execution of the tender. Contractor further warrants that it will fulfil all contractual obligations.
- 13.2 The warranty period shall be for 18 months from the date of taking delivery of the works, unless a different period is specified in the contract, notwithstanding the application of section 1669 of the Italian Civil Code.
- 13.3 During the warranty period Contractor shall, at own expense, repair, modify and/or replace, promptly and at the simple written request of the Client, all defective parts due to faulty materials or imperfect execution, and which in any case fail to meet operational requirements and/or requirements under the guarantee, without any obligation for Client to respect the terms of section 1495 of the Italian Civil Code.
- 13.4 Should the Contractor fail to meet the Client’s requirements under the previous paragraph with the utmost urgency and in any case within a term to be specified, Client may have the work executed by third parties, charging all relative costs to the Contractor, and in any case with the right to claim compensation for

damages, including those caused by delayed utilisation of the works tendered.

- 13.5 For all repaired, modified and/or replaced parts, the warranty is automatically renewed for the same initial period, from the date of the intervention.

#### **14. VARIATIONS TO THE WORKS**

- 14.1 Within the completion time frame, as set out in the contract and/or in any case before taking delivery of the works, Client may require, and Contractor shall duly carry out, additions to or reductions in the works scheduled.

- 14.2 Following a request for variation, Contractor shall prepare and promptly submit to Client's Representative a detailed estimate of the proposed increase or reduction, net of the Tender cost, for carrying out the variation in question, based on the price lists attached to the contract. After the Client and Contractor have agreed on an increase in or reduction to costs on account of the variation, execution of the variation shall be authorised through issue of an "Amendment" to the contract. Only variations based on a written order will be recognised as valid. If said orders fail to indicate modifications to the completion date for the works, it is understood that they are to be carried out within the time-frame originally assigned for the entire works. Client may, during the execution of the works, ask Contractor for extensions to or reductions in the schedule as originally determined, without the Contractor being thereby entitled to increase the unit costs, or to request additional charges for Client unless specified in the contract.

Moreover, as regards the present article, Contractor hereby definitively confirms his waiver of the application of section 1661 of the Civil Code.

#### **15. MATERIALS SUPPLIED BY CONTRACTOR**

- 15.1 15.1Materials supplied by Contractor shall conform to contract specifications and be of prime quality and without fault and/or defect, including hidden defects. They may be used subject to Client's approval.

- 15.2 15.2Said approval does not relieve the Contractor of its responsibilities or nor does it imply acceptance of the materials by Client which will only occur following a final and positive inspection of the works.

- 15.3 15.3Contractor undertakes, at all times, to keep in the site warehouse, a sufficient quantity of materials to guarantee continuity in the work, and according to conditions and procedures that allow Client to carry out any inspections it might deem necessary.

- 15.4 15.4Any delays in the availability of materials supplied by Contractor will not entitle Contractor to request changes to the contractual terms of delivery.

- 15.5 15.5Client may at any time reject materials that are unsuitable or which fail, for any reason, to comply with contractual specifications.  
In such event Contractor shall renew and replace materials at own cost.

- 15.6 15.6If Contractor fails to act as set out above within the term specified by Client, Client may proceed directly to remedy the situation charging any costs to Contractor, who remains liable for any damages caused by any removal or replacement carried out by Client.

- 15.7 15.7In the event that Contractor uses materials in an amount or of a quality that is superior to the specifications, or that have been processed to a higher degree of accuracy, this shall not entitle Contractor to increase the price, and the metric calculation will be carried out on the basis of materials or works of the size and quality specified in the contract.

- 15.8 Client may carry out all such tests as it may deem necessary in order to determine the suitability of the materials.

#### **16. MATERIALS SUPPLIED BY THE CLIENT**

- 16.1 All materials and equipment made available by Client shall be loaded by Contractor at the Client warehouses or storage areas or alternatively on railway wagons or trucks according to Client's instructions.

- 16.2 When taking delivery of materials and machinery supplied by Client, Contractor shall check their condition

and advise Client immediately of any defects, thereby undertaking full responsibility for all defects encountered subsequently

- 16.3 Contractor shall meet all obligations relating to VAT, the packing list and direct tax (Presidential Decree 633/72, Presidential Decree 627/78, Presidential Decree 600/73), taking account of modifications and additions to records and documentation regarding goods received under free issue and their movement and processing.
- 16.4 Any delays in the delivery of materials supplied by Client will not entitle Contractor to charge an amount different from the amount indicated in the contract.
- 16.5 In the event that Client makes available to Contractor materials of a size and/or gauge other than those set out in the contract technical specifications, the Contractor shall not be entitled either to variations in the fee agreed or to variations in the contractual terms of delivery.

## **17. PRICE FOR THE CONTRACT AND WORKS ACCOUNT LEDGER**

The amount to be paid for execution of the works under contract may be measurement based or fixed price and is specified in the contract.

- 17.1 17.1 Measurement based work  
For work paid on a measurement basis, Client may make any variations and/or cancellations as it sees fit, whether before commencement of works or during their execution, without Contractor being thereby entitled to claim any payment or indemnity of any kind other than that specified in the contract
- 17.2 17.2 Fixed price work  
For fixed price work, Contractor confirms that at own risk and sole responsibility it has directly verified the quantity of the works to be executed (calculations, measurements, dimensions, weights etc.) and all other data and circumstances relating to the works and has borne them in mind in determining the overall cost.
- 17.3 17.3 Time based work  
In the event that Client orders work from the Contractor based on units of time, payment in such cases will be in accordance with agreed rates. These rates will apply to work carried out during normal working hours as well as overtime, day and night-time work, business days and holidays, and will include all charges relating to use of equipment, salaries, social security, welfare and accident prevention contributions, bonuses, transfer and attendance allowances for small amounts, travel costs, profits, taxes and general expenses, and will form part of total payment for the Contractor.
- 17.4 17.4 Rentals  
Should Client ask Contractor to loan machinery and/or site vehicles, these will be paid for at the agreed rates. These rates will apply to work carried out during normal working hours as well as overtime, day and night-time work, business days and holidays, and will include all relevant costs for the consignment of the machinery and/or vehicles on site, ready for use, together with accessories and any other items necessary for their maintenance and regular operation (lubricants, fuel, spare parts, etc.) as well as the work of mechanics, drivers and any other aids to their operation, and will form part of total payment for the Contractor
- 17.5 17.5 Works account ledger  
Bookkeeping for work done will be on-going as the work is completed and definitive upon completion. Accounting will be cost-based for measurement based work and percentage based for fixed price work carried out up until issue of the progress report. For work based on units of time/rentals, accounting will take the form of specific lists describing the work requested and authorised, the names and qualifications of and hours worked by the individuals employed, and/or details of the loaned equipment used. The above documentation must be approved by the Client's Representative. In the event of termination of the tender only the works that are usable by the Client will be entered into the ledger

## **18. PAYMENTS**

Unless otherwise specified in the contract, payments will be made against invoice according to the following terms and procedures:

- 18.1 90% of the amount under the WORK PROGRESS REPORT ('SAL') to be issued on a monthly basis by Contractor. This amount will be paid 60 days from the end of the month in which the work progress report was submitted for approval to Client by Contractor. Said progress reports must be submitted to Client for checking and approval no later than the 15<sup>th</sup> of the month following the month referred to in the report. Whenever Client's approval of the work progress report, for reasons not imputable to Contractor, is more than 60 days from the end of the month in which they were submitted to Client, Contractor may issue invoices for an amount corresponding to 90% of the amount in the Work Progress Reports submitted, to be settled by the Client within 15 days of date of invoice. If during subsequent checks by Client it is found that corrections need to be made to the work progress reports, Client will offset the difference between amounts paid against invoices and amounts actually owed on the basis of the authorised work progress reports.
- 18.2 The balance, equal to 10% of the work progress reports.  
Payment of this amount shall be made at the end of the guarantee period, or conversely, 60 days from the end of the month following the date on which Contractor submits the invoice to Client after issuing the 'works delivery report' subject, at Contractor's sole expense, to an unconditional bank guarantee in favour of Client, for an equal duration and amount, issued by Client's nominated bank and worded as required by Client.  
In certain circumstances Client reserves the right to authorise, in place of the bank guarantee, the issue of a first demand insurance guarantee, issued by Insurance Companies approved by Client and likewise worded as required by Client
- 18.3 Payments are permitted exclusively in countries where the Contractor has registered/operating/commercial offices.

## **19. TERMS OF DELIVERY**

- 19.1 Contractor shall submit to Client for approval a suitable schedule guaranteeing completion of the works in accordance with the terms of delivery set out in the contract.
- 19.2 One approved by Client, the schedule is binding on Contractor. Client reserves the right to modify the approved schedule as required, also during execution of the works, and Contractor shall accept such amendments without being entitled to change delivery dates or to receive additional payments or indemnities.
- 19.3 Contractor acknowledges that compliance with the works schedule is an essential part of the order. Accordingly, for the entire duration of the works, Contractor shall maintain a sufficient labour force, and sufficient vehicles and materials, to be able to guarantee completion of the works in full compliance with the works schedule as above.
- 19.4 In the event of work being delayed in terms of the envisaged schedule, Client shall be entitled to separate off a part of those works and appoint third parties to perform them, subject to verification of the work already carried out.
- 19.5 Said verification must be positive, upon penalty of refusal by Client to acknowledge the works as having been properly carried out.
- 19.6 Any additional costs borne by the Client as a consequence of the circumstances outlined in the previous two paragraphs will be charged to Contractor, with corresponding deductions from the total price for the contract, save for Client's right to claim compensation for any damages caused.

## **20. DELAYS IMPUTABLE TO THE CLIENT**

- 20.1 Any delays to the work, in whole or in part, for reasons imputable to the Client and prejudicial to compliance with the terms of delivery, will entitle Contractor to an extension to the delivery dates by the number of days equal to the number of days delay imputable to the Client, without taking into account any financial consequences of the same.
- 20.2 Should Contractor establish that the conditions for application of the above clause are existing, within eight days of occurrence of the event Contractor shall, upon penalty of forfeiture of his rights, provide written notice to Client, who will provide written response to same.
- 20.3 If Client accepts the Contractor's claim, in whole or in part, new terms of delivery will be established in writing.

20.4 In connection with the above, Contractor will not be entitled to any indemnity or additional payment

## **21. DEFERMENT - SUSPENSION OF WORKS AT THE REQUEST OF THE CLIENT**

21.1 Client may defer the start date of the works. Client may moreover order the suspension of the work, in whole or part, for such periods of time as it may deem appropriate.

21.2 In the above case, the work site shall remain unaltered with respect to equipment and materials, unless the Client authorises otherwise.

21.3 Contractor will be entitled to an extension of the completion date for the works, equal to the duration of the deferment and/or suspension, without taking into account the financial consequences of same. The Contractor will not as such be entitled either to additional payments, refunds or indemnities of any kind.

## **22. STRIKES**

In the event of strike action by the Contractor's work force, the Contractor shall ensure their immediate removal from the sites where the work is being carried out, and shall moreover be liable for any damage to persons and/or property as a result of or in any case during the interruption of work or as a result of failed supervision of the work site or the abandonment of machinery

## **23. FORCE MAJEURE**

23.1 Accidental and exceptional events, which are beyond the control of the parties, such as explosions, fires, floods, etc. shall be considered events of force majeure.

23.2 In calculating any extension to the delivery dates, for every day the event of Force Majeure continues the same time may be added to the completion date for the work, without taking account of any financial consequences.

23.3 The onset and termination of such events must be promptly communicated to Client and their duration must be certified by the relevant Authorities.

23.4 Adverse atmospheric conditions, such as snow, rain, etc.. are not considered events of Force Majeure.

23.5 Events of Force Majeure will not entitle Contractor to any indemnity or additional payment either due to the greater duration of the works or for any loss of equipment or for stoppages on site or for any other reason.

23.6 The following are not considered events of Force Majeure:

Site stoppages imposed by the relevant Authorities due to failure by Contractor to observe safety regulations;

Delay on the part of the Contractor in the supply of materials and/or services;

Delays in Delivery from sub-contractors;

Strikes limited to the Contractor's factories and work force including localised disputes, protests, and participation by Contractor's employees in strikes of any kind other than national strikes involving the whole category.

23.7 Should the event persist longer than 30 days the Client may terminate the contract. In any event Contractor shall do everything necessary to minimise any damage to the Client due to the event/s of Force Majeure

## **24. PENALTIES FOR LATE DELIVERY**

24.1 Unless otherwise specified in the contract, in the event that Contractor fails to comply with the completion dates under the contract, whether for the work as a whole or in part, Contractor will be liable for penalties indicated in the contract, save for compensation for damages caused to Client by the delay.

24.2 Payment of the penalties shall be made by Contractor at the simple request of Client, who may withhold the penalty amount from any sums due, with the further option of enforcing the bank guarantee which should accordingly contain a clause to cover such an event.

24.3 If for reasons imputable to Contractor, work has not been completed upon expiration of the period corresponding to the maximum penalty level, Client shall have the incontestable right to terminate the

contract on the grounds of non-performance by Contractor, with the Client retaining the right to be paid the penalties under the contract in addition to claiming compensation for damages.

24.4 Client reserves the right to withhold from the Contractor's invoices the penalty amounts already accrued.

## **25. INVARIABILITY OF PRICES**

- 25.1 Unless explicitly agreed to the contrary, prices and tariffs once agreed shall remain fixed and invariable, irrespective of the occurrence of any kind of circumstance, including unforeseen circumstances, which render the Contractor's work excessively burdensome. Accordingly the provisions of sections 1467 and 1664 of the Civil Code are not applicable.
- 25.2 Whenever the order explicitly allows for revision of the prices established in the contract, the party intending to make recourse to that revision shall submit a claim no later than 2 months after the date on which circumstances have occurred entitling that claim, upon penalty of forfeiture of that right.
- 25.3 Contractor's requests to revise the prices must be notified to Client by registered letter with return receipt and shall be submitted together with all the official documentation necessary to justify the variation and the amount involved.
- 25.4 A revision to prices will only be granted for the part of the work which has not already been carried out at the time the variation is applied. The works ledger will be determinant as to which works are affected.
- 25.5 Any extensions to the contractual term for delivery of the works due to causes imputable to Contractor or events of Force Majeure, will not entitle the Contractor to demand any revision in prices or any other revision, for the period of the extension.
- 25.6 Accounting for the revision to prices relating to all works associated with the order will be a one-off process to be carried out upon completion of the works in question.

## **26. INSURANCE**

- 26.1 Contractor undertakes to stipulate all statutorily required insurance relating to its activities.
- 26.2 Contractor undertakes to stipulate appropriate insurance cover for all damage to persons and property of the Client and/or third parties which may be caused by the circulation and/or use of vehicles employed.
- 26.3 Contractor further undertakes to stipulate an insurance policy covering all construction risks, up to a maximum no lower than the contract price for damage to property, including Client's own, as well as all risks associated with third party civil liability, with appropriate maximum coverage, for damage to persons and/or things such as might in any case occur during or as a result of activities covered by the contract. Maximum coverage as specified under the previous paragraph may not in any case be less than €2,000,000 (two million euro). As regards third party civil liability cover, Client, Contractor, Third Party Contractors and Suppliers shall all be deemed 'third parties' with respect to each other within the policy.
- 26.4 The policies covered by paragraphs 26.2 and 26.3 above shall also include valid cover in the event of gross negligence on the part of the Insured party and gross negligence and/or wilful misconduct by employees and/or persons for whose work the Insured party is legally liable. These policies should further include waiver by Insured party of the right of recourse against Client (and his Managers and/or employees and/or persons for whose work the Insured party is legally liable) and any Subsidiaries or Affiliates. The policies should also include a clause to the effect that the Insurance Company will not pay out for any damages to the Contracting party without the previous agreement of the Client, and will not effect cancellations, suspensions of cover or early termination of the insurance policy without at least thirty days' notice to be submitted to the Client by registered letter with return receipt.
- 26.5 Client may at any time view the policies covered by this article.
- 26.6 Without prejudice to obligations under the previous paragraphs, in any event Contractor undertakes all risks associated with the work covered by the contract and shall pay compensation for all damages, without exclusion, in the event that such damage is neither recoverable or recovered under the policies referred to above.

## **27. CONFIDENTIALITY UNDERTAKING**

- 27.1 Contractor shall not disclose to third parties nor use in any way, other than strictly in relation to the execution of the works, any technical information regarding procedures, drawings, equipment, machinery

etc. made available to it by the Client or which Contractor becomes aware of as a consequence of execution of the works.

- 27.2 This confidentiality undertaking is binding on Contractor and is for an indefinite period.
- 27.3 Should Contractor fail to comply with the confidentiality undertaking, it will be liable for compensation to Client for all damages caused as a result thereof.
- 27.4 Contractor moreover remains responsible to Client for precise compliance by own work force, sub-contractors and auxiliary workers and their employees with said confidentiality undertaking.

## **28. PROHIBITION ON SUB-CONTRACTING**

- 28.1 Contractor is prohibited from sub-contracting the execution of the works to third parties, upon penalty of termination of the contract and compensation to Client for any damages and expenses. Contractor is further prohibited, upon penalty of termination of the contract and compensation to Client of any damage and expense, from sub-contracting to third parties execution of a part of the works, unless explicitly authorised in writing by the Client. In such event sub-contractor is prohibited from further sub-contracting the part of works in question.
- 28.2 The request, to be made in writing, from the Contractor to the Client, for authorisation to sub-contract a part of the works to third parties, with a clear indication of the type and extent of the work/s involved, shall be accompanied by copy of company searches showing the ownership structure of any company/companies to whom contractor proposes to sub-contract the service/s in question. The request will be refused in the event of failure to follow this procedure.
- 28.3 Notwithstanding any authorisation issued by the Client relating to sub-contracting part of the works to third parties, Contractor remains liable to Client in any event for the correct execution of the services and for all obligations undertaken.
- 28.4 In the event of sub-contracting, at the terms and within the limits specified above, Contractor undertakes to cause sub-contractor to take on the same obligations and charges with respect to its own employees that the Contractor has undertaken with the Client, in particular as regard work place health and safety, social security, insurance and those specified in the contract.

## **29. COMMUNICATION BETWEEN THE PARTIES**

All communications between Contractor and Client regarding the Tender (commencement, suspension, recommencement, verification, handover of services) shall be made in writing. If the Contractor subscribes to the I-Faber S.p.A portal document exchange service, Contractor shall authorise the document issued by I-Faber S.p.A entitled "*Regolamento del servizio Icity.collaboration*" and the document issued by the Client entitled "*Regolamento di adesione al progetto automazione ciclo passivo*" and adhere to the terms and conditions contained therein.

## **30. PUBLICITY**

Contractor and all those in any way involved in the execution of the works are prohibited from any promotional activity relating to the works or the Client's installations, unless specifically authorised in writing by the Client to do so.

## **31. PATENTS OR TRADEMARKS AND RELATIVE LICENCES**

Client shall not be liable, and Contractor accordingly holds Client harmless from any liability for infringement of patents and trademarks relating to the use of materials, machinery, or work methods. Contractor shall be liable for the payment of any royalties and licensing rights.

## **32. TERMINATION**

Subject to provisions on termination and/or early completion in other provisions of the contract, Client shall be entitled to terminate the contract in accordance with section. 1456, in the following circumstances:

- 32.1 Failure by Contractor to commence services by the date specified in the contract or in the single job/delivery orders, or failure to complete them, for reasons imputable to Contractor, within the agreed time

frame.

- 32.2 Failure by Contractor to execute the activities in compliance with the conditions as set out in the contract and in particular the employment of staff and/or equipment which do not meet the agreed prerequisites, or failure to promptly replace malfunctioning equipment or parts thereof.
- 32.3 Transfer by Contractor of the contract to third parties in the absence of written consent by Client or subcontracting of any part of the work without the previous written agreement of the Client;
- 32.4 Modifications and/or variations to the activities and/or work project by Contractor at own initiative and without the written approval and/or authorisation of the Client;
- 32.5 Failure by Contractor to comply with current laws on insurance, pay and employee contributions as well as accident prevention regulations;
- 32.6 Failure by Contractor to stipulate the insurance policies as set out in the order, or to renew them;
- 32.7 Contractor insolvency vis à vis creditors or an obligation to transfer assets to creditors;
- 32.8 Contractor becomes subject to any insolvency proceedings as provided by law, or it may be presumed that such proceedings are imminent on the basis of clear indications; Contractor has or is about to be placed in receivership ;
- 32.9 Events of Force Majeure continuing for more than thirty (30) days;
- 32.10 Certifications submitted or produced by the Contractor, for the purposes of being awarded the contract or its execution, are found to be irregular in any manner or form
- 32.11 Insufficiency of all necessary authorizations and licences for the purpose of carrying out activities the subject-matter of the order.

In all of the above circumstances with the exception of those covered by paragraphs 32.8 and 32.9, Client shall moreover be entitled to make recourse to the procedure provided by section 1454 C.C., instructing Supplier, in writing, to remedy the circumstances in question within the time -frame specified by the Client, and in any event not less than 15 (fifteen) days from receipt of the communication. If said period has expired without the situation being resolved, the contract shall be deemed cancelled and the Client shall be entitled to damages to be paid by the Supplier within 60 (sixty days) of receipt of the relative debit note.

- 32.12 Contractor does not have a valid certification of labour compliance ('DURC') or failing that, cannot produce the necessary receipt on F24 form for payments covering the period in question.

### **33. RIGHT OF WITHDRAWAL**

Client may exercise the right of withdrawal at any time. Withdrawal will not apply to work already carried out. Contractor may not claim any additional payment or indemnity for loss of earnings or any other for works tendered and not carried out subsequent to withdrawal.

### **34. NON-TRANSFERABILITY OF RECEIVABLES**

In accordance with the provisions of section 1260, para. 2 of the Italian Civil Code, transfer to third parties of any receivable for Contractor, for the works under contract, is as a rule not permitted, and as such Contractor is liable to Client and any Client assignees for any violation of this stipulation. Contractor is moreover totally prohibited from granting third parties special mandates for payments or in any case from resorting to other forms of delegated payment.

In certain circumstances Client reserves the right to authorise transfers of receivables to banking institutions of its choosing.

When authorised, the transfer will be deemed to apply to all receivables arising out of contracts tendered with the Contractor. Authorisation for transfers may be revoked at any time at the discretion of the Client, affecting receivables accruing subsequent to the revocation

**35. CONFLICT OF INTEREST**

No agent, or employee of the Contractor may give the Client or his agents or employees, nor may they receive from the Client or his agents or employees, any commission, recompense, gifts or special benefits of significant value, relating to the order.

Likewise they may not have private business dealings with agents or employees of the Client or of companies belonging to the same Group. In the event of such relationships existing the Client must be promptly informed in writing. Personnel authorized by Client may audit the accounts of the Contractor for the sole purpose of determining compliance with this clause.

**36. ERG GROUP CODE OF ETHICS AND ORGANIZATION, MANAGEMENT AND CONTROL MODEL**

Contractor confirms knowledge of the contents of Legislative Decree 8 June 2001 nr. 231, as well as the Organization and Management Model and the Code of Ethics adopted by the Client (published on the web site [www.erg.it](http://www.erg.it)) and undertakes to conduct itself in accordance with the provisions contained therein.

Contractor declares moreover that it is aware of the fact that compliance with those provisions is an essential element of Client's corporate structure and represents the basis for the intention of Client to enter into this contract.

Failure on the part of the Contractor to comply with any of the above provisions represents a serious breach of the obligations contained in this contract and entitles the Client to terminate the same with immediate effect, in accordance with the provisions of section. 1456 of the Italian Civil Code, without prejudice to the right to compensation for any damage caused.

**37. JURISDICTION**

The Courts in whose jurisdiction the Client registered offices are located at the time of any dispute shall have exclusive jurisdiction over any dispute relating to the interpretation and execution of the contract.