

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

SUPPLEMENTARY GENERAL CONDITIONS

WORKS

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General provisions

Article 1 -

Article 2 - Scope

The provisions of these supplementary general conditions shall apply to contracts, which make express reference hereto, for work undertaken in the buildings or grounds of the Council. They supplement the Council of Europe General Conditions.

Works contracts may provide for exceptions to certain of these provisions, which shall be set out in Specific contractual documents. Specific contractual documents, where applicable, shall include a list of the articles of these general conditions to which exceptions are made.

Article 3 - Definitions

For the purposes of this document and the specific contractual documents:

- The "Building Owner" is the contracting authority, ie the Council or its agent, for which the works are performed. It is hereby stipulated that, in all contractual documents, the term "Council" shall mean the Council of Europe.
- The "Project Manager" is the natural person or legal entity, public or private, who/which, by virtue of their technical expertise, is tasked by the Council with ensuring the architectural, technical and financial conformity of the performance of the works covered by the contract, to manage the execution of works contracts, to propose to the Council the settlement of financial statements and to assist the Council in acceptance operations; during the different warranty periods; and, more specifically, as regards the guarantee of completion. If the Project Manager is a legal entity, it shall designate the physical individual with sole capacity to represent it, in particular for accepting and signing purchase orders.
- The "Provider" is the economic operator which concludes the works contract with the contracting authority's representative. For a consortium of economic operators, "Provider" shall mean the consortium as represented by its duly appointed agent. In the event of such representation, a general letter of agreement shall specify the distribution of responsibilities and powers.
- "Services" means all the services to be provided to the Council by the Provider.
- "Notification" is the act of communicating information or a decision to a contracting party or parties by any physical or electronic means enabling the date and time of its receipt to be established with certainty. The date and time of receipt, which may be entered on a receipt acknowledgment, shall be considered to be the date and time of the notification.
- A "purchase order" is the Council's decision laying down the terms of performance of all or part of the deliverables or works concerned by the contract.
- "Acceptance" is the act whereby the Council declares its acceptance of the work with or without reservation. This act constitutes the starting point of the warranty periods in the conditions established in section V of the present general conditions.

Where the contract provides that a party shall give notification, notice, consent, approval, authorisation, a certificate or a decision, that notification, notice, consent, approval, authorisation, certificate or decision shall, except if stipulated otherwise, be given in writing, and the terms "notify", "give notice", "consent", "approve", "authorise" "certify" or "decide" shall have the same consequences. Consent, approval, authorisation, a certificate or a decision shall not be abusively withheld or delayed.

General obligations of the parties

3.1 Form of notifications and information

Notification to the Provider of any decision or information given by the Council from which a time-limit is to be calculated shall be:

- delivered direct to the Provider, or its duly authorised representative, against receipt;
- made by online communication or using electronic media;
- or made by any other means permitting certification of the date and time of receipt of the decision or information.

Such notification may be made to the Provider's address as stipulated in the Provider's bid or, failing that, to the Provider's registered office, except if these documents require the Provider to elect another domicile.

In the event of a consortium, the notification shall be made to the agent acting for the entire consortium.

The framework contracts and also all the contracts subject to a Schedule of unit prices (BPU) shall operate on the basis of purchase order forms issued by the Council of Europe as and when needed.

The Council of Europe shall submit requests in line with its needs and shall not be committed to any guaranteed volume of services.

3.2 Calculation of time-limits for the supply of deliverables

3.2.1 Any time-limit stipulated in the contract shall begin running at 00.00 hours on the day following the date of the event from which the time-limit is calculated.

The dates and times applicable are those set out in the specific contractual documents for deliveries or the supply of deliverables.

3.2.2 When a time-limit is laid down in days, it shall be understood to be expressed in calendar days and shall expire at midnight on the last day of the time-limit.

3.2.3. When a time-limit is laid down in working days, it shall be understood to exclude Saturdays, Sundays and public holidays. If the last day of the time-limit is a Saturday, Sunday or public holiday, the time-limit shall be extended to the end of the first subsequent working day at midnight.

3.2.4 When a time-limit is laid down in months, it shall be reckoned from the start day to the same-numbered day of the month concerned. If there is no same-numbered day in the month during which the time-limit ends, it shall expire on the last day of that month at midnight. If the last day of the time-limit is a Saturday, Sunday or public holiday, the time-limit shall be extended to the end of the first subsequent working day at midnight.

3.3 Representation of the Council

As from notification of the contract, the Council shall appoint a natural person authorised to represent it in dealings with the Provider for the purposes of performing the contract. Other natural persons may be authorised by the Council during the performance of the contract.

As from the notification of their name(s) to the Provider, by the required date or contractual deadline, the representative(s) shall be deemed to have sufficient authority to take any necessary decisions binding the Council.

3.4 Provider

3.4.1 Representation of the Provider

When the contract is drawn up the Provider shall appoint one or more natural persons authorised to represent it in dealings with the Council for the purpose of performing the contract. Other natural persons may be authorised by the Provider during the performance of the contract.

As from the notification of their name(s) to the Council, by the required date or contractual deadline, the representative(s) shall be deemed to have sufficient authority to take any necessary decisions binding the Provider.

3.4.2 Notification of changes in the Provider's legal or business situation

The Provider shall notify the Council without delay of any changes occurring during the performance of the contract which concern:

- persons authorised to enter into undertakings on its behalf;
- the legal form under which it pursues its activities; and/or
- the information it provided concerning acceptance of a sub-contractor or approval of terms of payment; and in general any significant changes in its operations which may affect the performance of the contract.

3.5 Project Management – Site Management

Project Management may be handled either by the Council or by a third party designated in the Specific contractual documents.

3.6 Co-contractors and sub-contractors

3.6.1 Appointment of co-contractors and sub-contractors

If the acceptance of one or more co-contractors or sub-contractors does not result from acceptance of the bid, their appointment shall be confirmed after the Council has given its agreement through a supplementary clause or specific document signed by the Council and the Provider concluding the co-contracting or sub-contracting contract; if the Provider is a co-contractor but is not the agent for its consortium, the supplementary clause or specific document shall be countersigned by the consortium's agent.

Furthermore, a sub-contractor may begin work on a site only on condition that, on the one hand, the Council has accepted it and approved its terms of payment and, on the other hand, the said sub-contractor has submitted a specific health and safety plan to the work health and safety coordinator, where such a plan is required by law.

The firm sub-contracting part of the works assigned to it shall retain full liability for the performance of those works vis-à-vis the Council and is in no way discharged from any of its contractual obligations.

Upon signature of the specific document or supplementary clause establishing acceptance of the co-contractor or sub-contractor and approval of the terms of payment, the Council shall transmit to the Provider and each sub-contractor concerned their respective copies of the specific document or supplementary clause. Upon receipt of this notification, the Provider shall inform the Council of the name of the natural person authorised to represent a sub-contractor.

A Provider using sub-contracting without prior acceptance of the sub-contract and prior approval of the terms of payment shall be subject to the application of the measures provided for in Article 38. The same applies to cases where the Provider has knowingly given inaccurate information in support of its sub-contracting request.

3.6.2 Time-limits for the appointment and intervention of co-contractors and sub-contractors

The co-contracting or sub-contracting firm shall be granted the minimum time-limits imposed by French laws and decrees in the area of health and safety, to run from its appointment and acceptance by the Council, in order to prepare its worksite in the same conditions as the Provider firm for the work package

concerned. Late proposals of co-contracting or sub-contracting not permitting compliance with legal health and safety obligations shall not be accepted.

3.6.3 Direct payment

3.6.3.1 The signature of the draft statement of account by a consortium's agent shall be deemed as acceptance, for each co-contractor, of the amount of the deposit or final settlement payment to be paid to them directly from the part of the statement of account pertaining to the work package or part of a work package assigned to that co-contractor.

3.6.3.2 Unless otherwise provided for in the Specific contractual documents, there shall be no direct payment to the sub-contractors of a Provider or a consortium.

3.7 Purchase orders

3.7.1 Notification of the start-up of works shall be established by the person responsible for worksite scheduling.

3.7.2 Purchase orders under framework contracts shall be established, signed, dated and numbered by the Council.

3.7.3 When the Provider considers it necessary to submit reservations concerning the requirements of an purchase order, it shall notify them to the Project Manager within fifteen (15) days, failing which the observations shall be time-barred.

3.7.4 The Provider shall comply strictly with purchase orders notified to it, whether or not it has submitted reservations concerning those purchase orders.

3.7.5 In the event of co-contracting, purchase orders shall be addressed to the consortium's agent, who alone shall be entitled to submit reservations to the Council.

3.7.6 Purchase orders concerning sub-contracted deliverables shall be addressed to the Provider, who alone shall be entitled to submit reservations.

3.8 Calling of the Provider to meetings – site meetings

The Provider or its representative shall go to the offices of the Building Owner or Project Manager or to the worksites whenever requested to do so and shall be accompanied, where applicable, by its sub-contractors.

In the case of a consortium, the obligation set out in the previous paragraph shall apply to all its members.

Article 4 - Health and safety and working conditions

4.1 Obligations of the Provider

The Provider shall be required to comply with the laws and regulations on health and safety and working conditions of the country where its staff are employed. The Provider shall also comply with the provisions of the eight fundamental conventions of the International Labour Organization (ILO), in cases where these are not integrated in the laws and regulations of the country where these staff are employed. It must be able to demonstrate proof of this compliance, while performing the Contract and during the deliverables warranty, upon request by the Council. The eight fundamental conventions of the ILO ratified by France are as follows:

- Convention concerning freedom of association and protection of the right to organise (C 87, 1948);
- Convention concerning the application of the principles of the right to organise and to bargain collectively (C 98, 1949);
- Convention concerning forced labour (C 29, 1930);
- Convention concerning the abolition of forced labour (C105, 1957);

- Convention concerning equal remuneration (C 100, 1951);
- Convention concerning discrimination (employment and occupation, C 111, 1958);
- Convention concerning minimum age for admission to employment (C 138, 1973);
- Convention concerning the worst forms of child labour (C 182, 1999).

4.2 Dignity

The Provider shall ensure that each member of its staff behaves in a manner that respects others' freedom or dignity.

In particular, the Provider shall be subject to Rule No. 1292 of the Council of Europe on the protection of human dignity at the Council of Europe, as published on the Council of Europe's website at the following address: <http://www.coe.int/fr/web/portal/call-for-tenders>

4.3 Legislative changes

In the event of a change in the legislation on health and safety and working conditions during the performance of the contract, the Provider shall comply with it as soon as possible.

4.4 Application to sub-contractors

The Provider shall inform its sub-contractors that the obligations laid down in this Article apply to them. It shall remain responsible for compliance with these obligations throughout the contract's duration.

Article 5 - Protection of the environment – consideration of environmental issues – asbestos-related risk

The Provider shall ensure that the deliverables comply with legislative and regulatory requirements in force concerning the environment, human health and safety (in particular regarding asbestos-related risks) and neighbourhood conservation. It shall furnish proof thereof at the Council's request at any time during the performance of the contract or the warranty period for the deliverables.

To this end, the Provider shall take measures to control any potential adverse effects on the environment, in particular waste produced during the contract's performance, emissions of dust, smoke or pollutants, noise, repercussions for fauna and flora and the pollution of surface and/or ground water.

In the event of a change in environmental protection legislation during the performance of the contract, any modifications requested by the contracting authority's representative so as to comply with the new rules shall result in the signature of one or more supplementary clauses by the parties to the contract, in particular with regard to the prevention of asbestos-related risks.

Article 6 - Guarantee relating to industrial or commercial property

6.1 Guarantee of the Council

The Council shall guarantee the Provider against claims from third parties regarding patents, licences, designs and models, trademarks or brand names whose use is imposed by the contract. In such cases, it shall be the responsibility of the Council to obtain, at its own expense, the necessary assignments, licences or authorisations.

The stipulations of the previous paragraph shall not be applicable if the contract specifies that the patents, licences, designs and models, trademarks or brand names have been proposed by the Provider.

6.2 Guarantee of the Provider

With the exception of the case provided for in the paragraph above, the Provider shall guarantee the Council and the Project Manager against claims from third parties regarding patents, licences, designs and models, trademarks or brand names used in the performance of the contract.

In such cases, it shall be the responsibility of the Provider to obtain, at its own expense, the necessary assignments, licences or authorisations. The Council may subsequently seek any redress it feels necessary or instruct another party of its choosing to seek redress.

The Council shall own in perpetuity all the documents, products, references, studies, files or other elements specially established or produced to permit the performance of the works and their subsequent use. The Provider may not issue any additional invoices for the subsequent use of that documentation.

Article 7 - Insurance – Performance bond – Civil liability

7.1 The Provider hereby declares that it holds professional liability insurance policies covering the legal guarantees and obligations such as those laid down in the applicable French legislation, or equivalent, notably in articles L. 241-1 and L. 241-2 of the French Insurance Code.

7.2 Providers shall produce in support of their offer a certificate attesting to these insurance policies, which complies with French regulations and is less than six months' old.

7.3 The Council shall have no liability vis-à-vis the Provider's operatives with regard to any risk of illness or accident which may arise during the performance of the contract.

7.4 The Provider certifies that its status and legal situation are in conformity with applicable law and regulations and permit it to carry out the tasks provided for in the contract.

7.5 A retention bond guaranteeing payment to the Council of any sums due to it in any respect whatsoever under the contract may be applied.

Prices and method of evaluating works – price adjustments – settlement of accounts - invoicing

Article 8 - Content and nature of prices

8.1 Content of prices

8.1.1 The prices entered in the Overall All-inclusive Price Breakdown (by the joint agent, the consortium or the firm that is the Provider under contract) shall include, in addition to the costs of supplies, labour, overheads and various requirements, the worksite expenses indicated below:

- on-site provision of all the materials necessary for the correct performance of the works;
- implementation of all the equipment for temporary structures and installations, including the necessary transport and losses;
- scaffolding and all regulatory safety and signage arrangements;
- tool costs, including all necessary transport, rentals, damage, losses, power or fuel supplies*, maintenance, repair and operating costs;
** in the event of there being no electric panel for the site, of the site being distant from buildings or of works on installations with the power switched off.*
- all labour costs, including related charges and various allowances for travel and compensation for bad weather conditions, including all exceptional labour costs required to complete all the works within the prescribed deadlines (overtime, bonuses etc);
- insurance costs (cf. Article 7);

- incidental expenses for the installation of the site;
- costs of technical studies and document reproduction required for the site tender and of liaising with other building trades;
- costs of tests and trials;
- patent rights where applicable,
- all constraints of any kind of which the Provider is expected to be aware before submitting its bid;
- site costs, overheads, central office overheads and profit;
- costs related to compliance with labour code safety rules and the decrees and various instructions implementing that code;
- The costs of establishing the original contracts shall be borne by the Council in respect of the written and graphic documents, with each firm receiving a specimen of the written documents (copy or original) concerning their work package. The cost of any additional copies shall be borne by the Provider.

8.1.2 When a contract is concluded with a consortium of economic operators, the prices of the deliverables allocated to each Provider in the Contract shall be deemed to include the corresponding costs and margins, including charges which each Provider may be required to reimburse to the agent.

In such cases, the prices of the works attributable to the agent shall be deemed to include, in addition, the costs and margins relating to the following additional deliverables:

- the construction and maintenance of means of access and service roads required for the shared areas of the site;
- the installation, functioning and maintenance of fencing and health and safety facilities for the shared areas of the site;
- security guarding, lighting and cleaning of the shared areas of the site, as well as their outside signposting;
- the installation and maintenance of the office made available to the Project Manager, where provided for in specific contractual documents;
- measures to compensate for any defaults by other members of the consortium and the consequences of those defaults.

If the contract does not specifically provide for paying the agent's expenses incurred by their coordination work for jointly and severally liable Providers, those expenses shall be deemed to be covered by the prices of the works assigned to the agent. If the contract provides for such a specific provision and where that provision entails payment to the agent of a fixed percentage of the amount of the works allocated to the other members of the consortium, that amount shall be taken as meaning the amounts actually paid to the said members.

8.1.3. In the event of sub-contracting, the prices of the contract shall be deemed to cover the costs of coordination and supervision, by the Provider, of its sub-contractors and of the consequences of any defaults on their part.

8.2 Knowledge of the site and surrounding area and elements relating to the performance of works

The Provider shall be deemed to have familiarised itself with the site and surrounding area, and the prices shall be deemed to take into account all the elements relating to the performance of the works. In particular, the Provider shall be deemed to:

- have gained a full and comprehensive knowledge of the site and surrounding area as well as the access conditions and the availability of roads and various networks and all the general or local elements relating to the performance of the works;
- have gauged all the difficulties inherent to the site, means of communication and labour resources, in particular the fact that the buildings will remain in operation during the period of the works or that works will be interrupted for the Sessions of the Parliamentary Assembly, the Committee of Ministers or the Congress of Local and Regional Authorities or other political events.
- have approached the Department responsible for the contract at the Council and the competent services or authorities in order to obtain any relevant further information;

- have checked that the site facilities are compatible with the visible or known servitudes of the site and the political calendar, in particular the Sessions of the Parliamentary Assembly, the Committee of Ministers or the Congress of Local and Regional Authorities;
- have checked the quantities indicated in the Overall All-Inclusive Price Breakdown in order to be able to submit an overall, all-inclusive price. The quantities therein are estimated by the Project Manager on the basis of their own study. These quantities are approximate, non-contractual and, in all cases, it shall be the responsibility of the firm to check and accept them so that they form the definitive and indisputable basis of the all-inclusive prices of the contract.
- Have familiarised itself with all the contractual documents, general documents and specific documents and all the clauses contained therein.

8.3 Price adjustments

8.3.1 Base index and updating of prices

The prices shown in the Overall All-Inclusive Price Breakdown shall be deemed to have been established on the basis of the conditions at m₀, the month in which the firm submitted its tender.

The prices set out in the firm's bid shall be deemed firm and non-revisable for the entire duration of the works. The firm prices shall be updated in the conditions provided for in the Specific contractual documents. The prices of any conditional tranches shall be updated in the same conditions. Where no specific provision is made, updates shall be calculated as follows:

- If the date of establishment of the contract or the supplementary clause ordering the start-up of works is more than one hundred and eighty (180) days after the effective date of tender, the price shall be updated using the formula below.
The ex. VAT price set out in the contract shall then be updated from the value date of that contract to the date of establishment of the contract or the supplementary clause.
- The date of effect of the commencing of works shall be taken as meaning the date of intervention of the firm as given in the implementation schedule.
- In the event of the firm having to make several successive interventions on the worksite, regardless of whether or not time-limits are set for each intervention, it shall be the date of the first intervention that shall be used as the update month for the same work package.
- Unless exceptions are made in the Specific contractual documents, the formula to be used to update prices shall be the following:

$$P_a = P_0 \times (BT_{xx} / BT_{xx_0})$$

P_a = updated Price of the contract.

P_0 = initial Price of the contract ex. VAT (price set out in the tender)

Index BT_{xx} = Index of the package concerned published on the date of the contract/supplementary clause for the start-up of works if this is more than 6 months after month m_0 .

Index BT_{xx_0} = Index of the package concerned published on the date of month m_0 defined on the date of entry into force of the contract

- Unless exceptions are made in an article of the Specific contractual documents, providing for the revision of prices, they shall be revised according to the indexes set out in that article of the Specific contractual documents and applied using the formula below:

$$P = P_0 \times [(0.85 \times \text{index de référence} / \text{index de référence}_0) + 0,15]$$

P_0 = Initial unit prices of the contract ex. VAT

P = Revised unit prices ex. VAT

Reference index $_0$ = Value of the last known index on the date of entry into force of the contract

Reference index = Value of the last known index on the day of revision.

8.3.2 Distinction between all-inclusive prices and unit prices:

Prices shall be either all-inclusive prices or unit prices.

An all-inclusive price is any price paying the Provider for works, part of works or a fixed set of deliverables defined by the contract and which is expressly mentioned in the contract as being all-inclusive or is applied in the contract only to a set of deliverables which is unlikely to recur.

A unit price is any price which is not all-inclusive in the sense defined hereinabove, including any price applied to a type of works or component of works whose characteristics are indicated solely for evaluation purposes.

8.3.3 Price breakdown and detailed price breakdown:

The details of prices shall be established using a breakdown of all-inclusive prices and a detailed breakdown of unit prices. The breakdown of an all-inclusive price shall be presented in the form of a evaluative detailed breakdown showing, for each type of works or each component of works, the quantity to be executed and the corresponding unit price and indicating which percentages of the unit prices in question correspond to overheads and to the risk and profit margin, with the latter percentage applying to the total of direct costs and overheads.

The detailed breakdown of a unit price shall indicate the content of the price, showing:

- disbursements or direct costs, broken down into outlay on salaries and staff allowances, social charges, expenditure on materials and consumables, expenditure on equipment;
- the overheads expressed in percentages of the disbursements above;
- the risk and profit margin, expressed as a percentage of the two previous items combined.

If the breakdown of an all-inclusive price or the detailed breakdown of a unit price is not included among the contractual documents and if the specific tender documents do not require it to be submitted within a certain time-limit, a purchase order may be issued, ordering that it be submitted.

Article 9 - Payment of the Provider

9.1 Settlement of accounts

The accounts pertaining to the contract shall be settled via statements of account and a balance, established and regulated as indicated in Article 10.

9.2 Prices of works

9.2.1 In the event of an all-inclusive price being applied, that amount is due once the relevant works, part of works or set of deliverables has been executed. Any differences observed, for each type of work or each element of work, between the quantities actually executed and the quantities indicated in the price breakdown, even though the latter has contractual value, cannot result in a modification of the price. The same shall apply to any errors contained in the breakdown.

9.2.2 In the event of a unit price being applied, the amount due shall be determined by multiplying this price by the quantity of types of work executed or the number of elements of work implemented.

9.2.3 In the event of a mixed formula combining all-inclusive prices and unit prices being used, the stipulations relating to each of these methods shall be applicable to the calculation of the amount due to the Provider.

9.2.4 The price breakdown shall indicate what must be paid to the Provider. If the contract does not establish the allocation of amounts to be paid to the Provider and any sub-contractors respectively, that allocation may be derived from the evaluative detailed breakdowns appended to the contract.

9.3 Supplies

Unless otherwise specified in the Specific contractual documents, as a general rule, there shall be no deposits paid for supplies.

The only supplies that may qualify for any payment of a deposit shall be on-site supplies that have been duly recorded by the site supervisor and secured against any external risks. It is stipulated that, even after payment of its statements, the Provider shall remain responsible for its works in their entirety until acceptance of the works.

9.4 Payment in the case of conditional tranches

Unless otherwise specified in the Specific contractual documents, the contract shall not fix a reverse termination fee in the event of non-performance of a conditional tranche.

Unless otherwise specified in the Specific contractual documents, the time-limit for performance laid down in the specific documents shall not give the Provider any entitlement to a tide-over allowance.

9.5 Payment in the case of a consortium

9.5.1. In the case of a contract concluded with a joint-liability-only consortium, payment for the works performed shall be made into a single account opened in the name of the consortium or its agent, unless the contract provides for the allocation of payments between the firms concerned and specifies the methods for that allocation.

9.5.2. In the case of a contract concluded with a consortium that is jointly and severally liable, payment for the works performed by each individual firm shall be made to those respective firms.

9.6 Pro-rata account

Where applicable, a pro-rata account may be set up under the procedures described in the specific documents.

Article 10 - Procedure for settling accounts

10.1 Claims for payment

10.1.1 The Provider shall submit its claim for payment to the Project Manager, in the form of a draft statement of account. This draft statement of account shall establish the total amount which the Provider may claim in respect of works performed since the start of the contract, established on the basis of the initial prices of the contract, with no updating or review of prices. If additional deliverables have been supplied, the prices indicated on the purchase order shall be applicable for as long as the definitive prices have not been established.

10.1.2 The amount to be paid for works shall be established as follows: if the contract defines works implementation phases and indicates the amount to be paid upon completion of each phase, the draft statement of account shall include the corresponding amount for each phase implemented. The Provider shall send this claim for payment to the Project Manager by any means permitting certification of the date.

10.1.3 The Project Manager shall accept or rectify the draft statement of account drawn up by the Provider.

10.2 Unless otherwise specified in the Specific contractual documents, there is no provision for monthly payments.

10.3 Final claim for payment

10.3.1. After the completion of the works, the Provider's final claim for payment shall be set out in a draft final statement of account establishing the total amount which the Provider may claim in respect of performing the entirety of the works tendered for, basing its evaluation on the deliverables actually supplied. The draft final statement of account shall be established on the basis of the initial prices of the contract.

10.3.2. The Provider shall transmit its draft final statement of account to the Project Manager, by any means permitting certification of the date, within forty-five (45) days dating from the notification of the works acceptance decision or, in the absence of such notification, at the end of one of the time-limits set in Articles 32.1.3 and 32.3.

However, if the provisions of Article 32.5 are applied, the date of the report recording the performance of works referred to in that article shall be indicated in place of the date of notification of the works acceptance decision as the starting point of the aforementioned time-limits.

If the provisions of Article 32.6 are applied, the date of notification of the works acceptance decision shall be the date taken as the starting point of the aforementioned time-limits.

In the event of a delay in the transmitting of the draft final statement of account by the Provider, and after formal notice that has not been acted upon, the Project Manager shall establish the final statement of account at their own initiative at the expense of the Provider. This final statement of account shall then be notified to the Provider with the general statement of account as defined in Article 10.4.

10.3.3. The Provider shall be bound by the information indicated in the draft final statement of account.

10.3.4. The Project Manager shall either accept or rectify the draft final statement of account established by the Provider. The accepted or rectified draft shall then become the final statement of account.

If the draft final statement of account is rectified, payment shall be made on the provisional basis of the amounts accepted by the Project Manager.

10.4 General statement of account - Final settlement payment

10.4.1. The Project Manager shall establish the draft general statement of account which shall give a summary of the deposits and the final settlement payment.

10.4.2. The draft general statement of account shall be signed by the Council and subsequently become the general statement of account.

The Council shall notify the general statement of account to the Provider before one of the dates below, whichever is latest:

- forty (40) days after the Provider submitted the draft final statement of account to the Project Manager;
- twelve (12) days after the publication of the reference index permitting review of the final settlement payment.
- If the Council does not notify the signed general statement of account to the Provider within the time-limits stipulated above, the Provider shall serve it with formal notice to do so.

10.4.3 As of the date of the Provider's acceptance of the general statement of account, in accordance with the procedures laid down in Article 10.4.4, this document shall become the general and final statement of account, granting entitlement to the final settlement payment.

10.4.4. Within forty-five (45) days as of the notification of the general statement of account, the Provider shall send the general statement of account duly signed, with or without reservations, back to the Council, with a copy to the Project Manager, or indicate the reasons why it refuses to sign. If the general statement of account is signed without reservation by the Provider, it shall then become the general and final statement of account of the contract.

If the Provider disputes the amounts due, the Council shall pay the sums accepted in the final statement of account, within a time-limit starting on the date of receipt of the notification of the general statement of account with the Provider's reservations attached or the date of receipt of the reasons why the Provider

refuses to sign. Upon settlement of the dispute, the Council shall pay any additional amount, if applicable. This dispute shall be settled in the conditions mentioned in Article 42 of these general conditions.

If the reservations are partial, the Provider shall be bound by its implicit acceptance of the elements in the general statement of account on which it does not express reservations.

10.4.5 If the Provider has not sent the signed general statement of account back to the Council, within the time-limit of forty-five days laid down in Article 10.4.4, or has sent it back within that time-limit but without giving reasons for its refusal thereof or, as the case may be, detailed reasons for its reservations, specifying the amount it is claiming, this general statement of account shall be deemed to have been accepted and shall become the general and final statement of account of the contract.

10.5 Payment in the case of a consortium

10.5.1. If the Provider is a consortium that is jointly and severally liable and its members are therefore paid on an individual basis, the statement of accounts shall be broken down into as many sections as there are members to be paid on an individual basis, showing the amount due to each one.

10.5.2. If the Provider is a joint-liability-only consortium, only the Provider or the agent shall be authorised to submit draft statements of account and accept the general statement of account, and only the complaints formulated or submitted by that entity shall be admissible.

Article 11 - Settlement of the price of additional or changed deliverables

Certain deliverables not planned within the programme may be mentioned for information purposes (as options). The Provider shall propose the unit or all-inclusive price indicated and shall implement, where applicable, the quantities requested on the basis of that price.

The works included as options or conditional tranches shall, where applicable, be the subject of a contractual validation.

Any changes made to the content of a conditional tranche, on grounds of partial availability of the necessary funding, shall be the subject of a written supplementary clause and accepted by both parties.

The Supplier shall not be entitled to any claim in the event of the services concerned not being implemented.

For these optional works, the firm shall remain bound by the proposed amount for a period stipulated in the Specific contractual documents. It shall not be entitled to any compensation in the event of those works not being implemented.

Article 12 - Increase and reduction of the amount of works

12.1 Prerogatives of the Council

The Council reserves the right to reduce and/or increase the amount, weight and substance of the works and make any changes it considers necessary, under the following conditions:

- notification to the Provider of the quantitative or qualitative change through a supplementary clause;
- each supplementary clause shall have appended to it the corresponding estimated price increase or reduction in relation to the prices set out in the Schedule of unit prices or the Overall All-Inclusive Price Breakdown and the new global amount of the contract.

12.2 Compensation

Unless otherwise specified in the Specific contractual documents, neither an increase nor a reduction in the amount of works in relation to the contractual amount shall entitle the Provider to any compensation.

Article 13 - Loss or damage

13.1 No compensation shall be awarded to the Provider for any loss, damage or deterioration resulting from its negligence, lack of foresight, lack of resources or handling errors.

13.2 The Provider shall be liable at its own expense, risk and peril for the necessary arrangements to ensure that the supplies and worksite equipment and facilities, as well as the works being constructed cannot be removed or damaged by storms, flooding and any other natural phenomena normally foreseeable in the weather conditions and locality where the works are being carried out.

13.3 In the event of loss, damage or deterioration caused on its worksites by a natural phenomenon that was not normally foreseeable, or for any other force majeure, the Provider may not claim any compensation, including for the complete or partial loss of its floating equipment, as the costs of insuring that equipment are deemed as being included in the prices indicated in the contract.

Time-limits for performance – penalties and bonuses

Article 14 - Time-limits for performance

14.1 Time-limits

The time-limits set out in the project schedule shall cover the removal of equipment and cleaning of the site. They also cover periods of paid leave but do not include periods of adverse weather conditions (see below).

14.2 Contracts

The contractual time-limits for performance shall be specified in the schedule of the project. This document is incorporated in the contract and countersigned by the Provider.

It is pointed out that the time-limits stipulated in the implementation schedule are independent of the preparation period, in that their start date may fall within or outside that period.

The Provider shall maintain sufficient staff, equipment and supplies on the worksite, while the performance time-limit is running, to meet the deadlines set.

14.3 Extension of time-limits for performance

14.3.1 Works implementation schedule

Once the works implementation schedule for the project has been finalised, the Provider shall report any circumstance or event that might provide grounds for extending the time-limit for implementation to the Council by registered letter with acknowledgment of receipt within seven (7) days. Any proof required by the Council to ascertain the genuine nature of the difficulties reported must be provided. Where no pertinent proof is provided, the Council shall not be under any obligation to grant a time-limit extension. Once the Council has agreed to the time-limit extension, it shall be the responsibility of the Provider to provide, within five (5) days, a new works implementation schedule taking account of this time-limit extension.

14.3.2 Adverse weather conditions

In the case of works whose execution could be affected by adverse weather conditions, an extension of the time-limit for the performance of works may be envisaged. That extension shall be equal to the number of days actually recorded during which work was stopped owing to adverse weather conditions. These days of full or partial stoppage shall be recorded in a special log kept by the Council or its representative.

This extension shall not exceed fifteen (15) additional days per operational phase.

14.3.3 Days of adverse weather conditions

For the recording of days of adverse weather conditions that may give rise to an extension of the time-limit for the performance of works, the Provider (or its agent) shall report to the Council the days on which work was actually stopped which were not provided for in the implementation schedule.

14.3.4 Definition of adverse weather conditions

Depending on the nature of the works concerned, any day fulfilling one of the conditions defined below shall be considered as a day of adverse weather conditions that may give entitlement to an extension of the contractual time-limit:

A. Rain and snow

If over 15 mm of water (or the equivalent of snow measured in melt-water) has fallen between 6.00 and 18.00 hours.

B. Wind

If average wind speed is higher than 65 kmph for 5 hours between 7.00 and 18.00 hours.

C. Frost

If, at 7.00 hours, the outside temperature is below -6°C and is still below -5°C at 18.00 hours.

These conditions shall apply only to the outside works performed within the framework of the present contract. No deferral of time-limits on grounds of adverse weather conditions shall be accepted in the case of works carried out inside buildings unless there is prior agreement of the Council that adverse weather conditions actually impact on the smooth running of the works.

The Provider shall make all necessary physical arrangements to protect its works and materials from adverse weather conditions. Where such protective arrangements are not made, no late performance shall be accepted. Any damage due to the poor protection of works shall not give rise to any compensation or extension of the time-limit for the performance of works.

For the application of conditions A, B and C above, only the observations recorded at the nearest weather station, communicated by Météo France, shall be taken into consideration.

14.3.5 Public holidays

The provisional project schedule shall be deemed to take account of all public holidays, religious festivals or French national holidays (for works carried out in France) occurring during the works. No extension of the overall time-limit shall be granted on grounds of public holidays, religious festivals or national holidays other than those indicated in the schedule.

14.4 Extension or deferral of time-limits relating to conditional tranches

Where the time-limit set by specific contractual documents for performing a conditional tranche is defined in relation to the origin of the time-limit for performing another tranche, it shall be extended, in the event of that other time-limit being extended or the establishment of late performance by the Provider, by a duration equal to that of the extension or lateness.

Where the Specific contractual documents provide, in the case of a conditional tranche, for a tide-over allowance and define the starting point of the Provider's entitlement to that allowance in relation to the origin of the time-limit for performing another tranche, the time-limit extension or the establishment of late performance by the Provider shall defer the allowance entitlement for a period equal to that of the extension or lateness.

Article 15 - Late performance penalties – early completion bonuses – other bonuses

15.1 Late performance penalties

15.1.1 Any lateness in delivering works or a deliverable tranche thereof subject to a partial time-limit shall give rise, without prior formal notice, to the application of a penalty fixed in the Specific contractual documents.

Penalties applied to a consortium that is jointly and severally liable shall be divided between the co-contractors following the agent's instructions. Pending those instructions, the full amount shall be withheld from the agent, without engaging the liability of the Council vis-à-vis the other Providers. The penalties shall be applicable to the first statement of account following the establishing of lateness.

15.1.2. Penalties shall be incurred when the Project Manager establishes that deliverables are late.

15.1.3. In the event of termination, the penalties shall be applied up to and including the day of notification of the termination decision or up to and including the day when the Provider ceases operations, if the termination results from one of the cases provided for in Article 35.1.

15.1.4. The provisions of the previous two sub-paragraphs shall be applicable to any penalties provided for in the Specific contractual documents for the late performance of certain works, parts of works or sets of deliverables subject to partial or specific time-limits or deadline dates fixed in the contract.

15.2 Late submission of DOE and DIUO documents

In addition to the documents which it is mandatory to supply prior to or during the execution of works, the contract-holder shall submit to the project manager:

- by the latest when requesting the acceptance of works: the installation specifications, the operating manuals, the guidelines for the maintenance of equipment components installed, the manufacturer warranty conditions relating to that equipment, as well as reports confirming waste removal

- within one month following the date of notification of the works acceptance decision: the other components of the Final works implementation file (DOE) and the documents required for the compiling of the File of subsequent works on installations (DIUO).

A copy of the documentation required for the compiling of the DIUO shall also be forwarded to the health and safety coordinator.

Failure to submit documents within the deadlines set out above shall result in the application of the penalties provided for in the specific tender documents. Furthermore, if the failure to submit the documents results in costs being incurred, those costs shall be borne by the Supplier. Those costs shall be deducted directly from the final statement.

15.3 Delay in the lifting of reservations pertaining to acceptance operations

Delays in performing works to be carried out in connection with the lifting of reservations following acceptance operations shall be governed by the rules set out in Article 14.3.1.

15.4 Early completion bonuses

No bonuses shall be awarded in cases where deliverables are completed before expiry of the time-limit set. The Council may decide, however, that the gain made in relation to a partial time-limit compensates for all or part of late completion in respect of another partial time-limit.

Article 16 - Failure to comply with health and safety observations

16.1 All the firms shall, where applicable, comply with the Prevention Plan drawn up at the beginning of the contract.

16.2 In cases requiring coordination of health and safety matters, the Provider shall provide the health and safety coordinator, within the legally prescribed time-limits, with all the regulatory information and documents required for the fulfilment of the coordinator's mission and, in particular, keep the coordinator informed in good time of any difficulty encountered on the worksite.

In the event of repeated failure to comply with health and safety regulations or grave and imminent danger established by the Council, the Provider shall be liable to a penalty of 5‰ (five per thousand) of the VAT-inclusive amount of the purchase order(s) covering the project, updated and revised where applicable, per infringement.

Furthermore, the provisions of Article 24.2 must be complied with.

16.3 At the Council's request, any Provider on the site might be required to act as an emergency substitute for other Providers having defaulted for the installation or restoration of health and safety arrangements.

In such cases, the intervention of the substitute Provider shall be paid by making a deduction from the amounts due to the defaulting Provider.

A refusal by a Provider to comply with an emergency request in a health and safety matter shall render them liable to the penalties indicated above.

Article 17 - Failure to comply with instructions for site cleaning and protection

In the event of a Provider failing to comply with instructions for site cleaning and protection described in the specific contractual documents, the Provider shall be liable to a penalty of €200 per day of default. The Project Manager shall report the problems identified to the Provider through formal notification. The penalties shall be applied, on a provisional basis, by debiting each successive statement of the amounts due to the Provider.

Article 18 - Clearing of site facilities and site restoration

18.1 The works implementation schedule includes the clearing of site facilities and site restoration. Consequently, any delay observed in these operations shall be sanctioned as a delay in the completion of works. In the event of a delay in these operations and after the serving of formal notice by registered letter with acknowledgement of receipt which has not been acted upon, the Council shall be entitled to remedy the situation at the Provider's expense without prejudice to application of the penalty referred to in Article 17.

18.2 The final cleaning of the delivered works prior to their acceptance shall be carried out by the Provider. In the case of allocation of work packages, the package comprising such cleaning operations shall be designated in the Specific contractual documents, the corresponding costs being included in the Provider's bid.

Article 19 - Lateness or absences at site meetings

19.1 The Provider shall be represented at site meetings by an individual approved by the Site supervisor. The Site supervisor shall be entitled to demand that the agents or staff of the firm operating on the site be changed or replaced, on grounds of insubordination, incapacity or unethical conduct.

19.2 Any unjustified absence or lateness on the part of a Provider's representative at coordination meetings and site meetings to which they have been duly convened through notification, may be sanctioned, at the proposal of the Site supervisor, by the following penalty:

- €50 for unjustified absence or over one hour of lateness, and per meeting,
- €100 after five (5) absences, and per meeting,
- €150 after ten (10) absences and per meeting.

The register of attendance shall be established by the Project Manager.

19.3 The penalties shall be applied, on a provisional basis, by debiting each successive statement of the amounts due to the Provider.

Implementation of works

Unless otherwise specified in the Technical Specifications:

Article 20 - Sourcing of materials and products

20.1 The Provider shall be free to choose the source of construction materials, products or components, on condition of being able to demonstrate that they fulfil the requirements laid down in the contract. The Provider shall provide the Project Manager with documents ensuring the traceability of the products and materials used.

20.2 Where the source of construction materials, products or components is established in the contract, the Provider may change it only if the Project Manager gives written authorisation. The corresponding prices may be changed only if the authorisation given states that the change of source entails the application of new prices, in which case the Project Manager shall give notification of the provisional prices within fifteen (15) days after giving the authorisation.

If the Project Manager makes authorisation conditional on acceptance by the Provider of a specified price reduction, the Provider may not dispute the prices resulting from that reduction.

Article 21 - Quality of materials and products – application of standards

21.1 Construction materials, products and components must comply with the stipulations of the contract and present the specified characteristics, in particular in terms of categories, classes and performance levels specified with reference to standards.

The standards referred to in the contract are those in force three months before the first day of the month when the prices were established, except for the standards whose immediate application is rendered mandatory by French regulations.

21.2 In the event of the contract referring to French standards not derived from European standards, materials or products whose characteristics are established with reference to standards applicable in other States parties to the World Trade Organization Agreement on Government Procurement may be accepted if those characteristics are recognised as being equivalent to those specified.

Article 22 - Verification of quality of materials and products – Tests and trials

22.1 Conformity of materials

The conformity of construction materials, products and components with contractual specifications may be established by:

- a certificate issued by a body established within the European Economic Area and accredited as satisfying standards NF EN ISO/CEI 17025 and NF EN 45011 by the French Accreditation Committee (COFRAC) or any other accreditation body signatory to the relevant European multilateral agreement adopted within the framework of European coordination of accreditation bodies;
- tests and trials defined by the contract, in particular with reference to standards, regarding both the type of tests and their frequency and expected results.

Where there is no specification, in the contract or standards, of the methods to be used, the Provider shall submit written proposals of methods for acceptance by the Project Manager.

22.2 Special case

If the contract refers to particular quality marks as being considered proof of conformity, certificates issued by other bodies fulfilling the requirements of Article 22.1 may also be accepted as proof of conformity if recognised as equivalent.

The provisions of Article 21.2 shall be applicable to requests relating to such equivalence.

22.3 Role of the Provider

The Provider shall store the construction materials, products and components in such a manner as to facilitate the verifications envisaged and take all appropriate steps to ensure that the materials, products and components may be easily distinguished as awaiting verification or being accepted or rejected; any rejected materials, products and components shall be swiftly removed from the site, with the provisions of Article 32 being applicable if necessary.

22.4 Verifications

Verifications shall be carried out according to the stipulations in the Specific contractual documents; the Project Manager shall indicate whether they are to be carried out on the worksite or in the factories, stores or quarries of the Provider and sub-contractors or their Providers. Verifications shall be carried out by the Project Manager. The Specific contractual documents may make provision for a laboratory or testing body to carry out verifications in the place of the Project Manager.

In the event of the Project Manager or their agent carrying out the tests personally, the Provider shall provide the necessary equipment but shall not have to bear the cost of the Project Manager's or agent's remuneration.

The Provider shall transmit to the Project Manager the certificates attesting to the results of the verifications carried out. In the light of those certificates, the Project Manager shall decide whether or not the construction materials, products or components may be used.

22.5 Samples and sample removal

The Provider shall provide all the samples required for verification at its own expense.

If appropriate, the Provider shall equip manufacturing equipment with devices for removing samples of materials at the different stages of production.

22.6 Further verifications

If supplies of construction materials, products or components cannot be accepted in the light of the results of verifications provided for in the contract or by standards, the Project Manager may prescribe further verifications, in agreement with the Provider, that may make it possible to accept all or part of the supplies, with or without a price reduction; the expenses relating to these further verifications shall be borne by the Provider.

22.7 Costs

The verifications carried out by a laboratory or testing body shall be organised and paid for by the Provider. The costs of tests and trials which the Project Manager carries out or has carried out but which are not provided for in the contract shall not be borne by the Provider.

22.8 Travel expenses

The Provider shall not have to bear the travel and subsistence expenses incurred by the Council, the Project Manager or their agents in the course of verifications.

Article 23 - Verification of quantities of materials and products

Quantities of materials and products shall be counter-checked against the stated amounts.

For materials and products for which there are consignment notes, the indications of weight in those notes shall be presumed to be correct; nonetheless, the Project Manager is entitled to carry out, for each delivery, a counter-check on a scale. The costs of that counter-check shall be:

- borne by the Provider if the weighing reveals a weight difference to the detriment of the Council that is higher than the normal allowance for transport
- borne by the Council if that is not the case.

Article 24 - Preparation of works

24.1 Preparation period

The time-limits stipulated in the works implementation schedule are independent of the preparation period, in that their start date may fall within or outside that period.

24.2 Worker health and safety

The measures and arrangements established by the French labour code regarding health and safety shall be covered by the plans stipulated therein, pursuant in particular to sections 2, 4 and 18 of chapter L. 4532 or article R. 4512-7 of that code. Where the responsibility for drawing up such plans lies with the Provider, they shall be communicated to the health and safety coordinator and also, where required by the regulations, to the Council. Failure to submit such plans shall prevent commencing of any works.

The provisions of the present paragraph shall be binding on each of the members of a consortium as well as on all their sub-contractors.

Moreover, the provisions of Article 16.2 shall also be complied with.

24.3 Quality management

The Provider shall take any necessary steps to secure the required quality of works, including in terms of organisation, checks carried out on its own actions (or those of its sub-contractors), traceability of works supervision and traceability of the materials for which it is responsible and methods of communication with the other site operatives.

Article 25 - Execution studies

25.1 Documents provided by the Provider

25.1.1 Providers may have to bear the cost of preparing all the construction drawings and corresponding design calculations serving as the basis for the work packages awarded to them.

Those drawings shall be produced on the basis of and using information from the project plans: general technical guide documents of the Project Manager.

All the construction drawings shall be submitted for endorsement by the Project Manager and approval by the Inspection Office (where applicable).

The construction drawings shall comprise the documents listed in the Specific contractual documents.

25.1.2 The purpose of the examination of project conformity of the execution studies carried out by Providers and their approval by the Project Manager is to give assurance to the Council that the documents produced by the Providers comply with the stipulations of the project prepared by the Building Owner.

This examination of project conformity shall comprise the detection of anomalies normally detectable by a skilled tradesman. It shall not include the checking or auditing of the documents prepared by the Providers. Endorsement of these documents does not release the Provider from its own liability.

Providers shall bear the costs of preparing all of the workshop and site plans concerning implementation methods, temporary structures and site equipment.

25.1.3 Providers shall also bear the costs of systematically updating all the plans, design calculations, equipment use and maintenance guides etc used in the preparation of the final implementation file (*dossier des ouvrages exécutés – DOE*, required under French tendering law) and the subsequent maintenance file (*Dossier d'Intervention Ulérieure sur l'Ouvrage - DIUO*, required under French tendering law).

The approved construction drawings prepared by the Providers shall be submitted in electronic form, as an AUTOCAD file complying with the Council's graphic charter and in hard copy form (2 copies).

25.2 Documents provided by the Project Manager

Where the tasks assigned to the Project Manager include the production of all or some of the documents required for the implementation of works, the contract shall be deemed to contain all those documents.

If the Project Manager is required, during the performance of the contract, to provide the Provider with documents required for the implementation of the works, the Provider shall not bear liability for the content of those documents. However, the Provider shall have an obligation to check, prior to any execution, that those documents do not contain any errors, omissions or contradictions normally detectable by a skilled tradesman; it must report any such errors, omissions or contradictions in writing immediately to the Project Manager.

25.3 Allocation of the execution studies

Allocation of the execution studies is stipulated in the Specific contractual documents.

Article 26 - Installation, organisation, health and safety of the site

26.1 Site facilities

26.1.1 Where there is no pro-rata accounting arrangement, the site facilities required for the performance of the works undertaken within the scope of the contract shall be provided and paid for by the Provider. A detailed site facility plan may be required for major operations.

The Council reserves the right to sanction any Provider not complying with the arrangements established in that plan.

The Provider shall comply with the following obligations:

- to complete, in a timely manner, all administrative formalities with the competent departments of the Council required for the functioning of the site, and in particular a request for temporary connections to water and electricity supplies;
- to provide signage and regulatory protection for the site;

- to maintain means of access to the site, with all the protection and signage installed;
- to generally provide all the services necessary to the collective organisation of works;
- to clean all the premises and areas made available to it;
- to restore to their original state all the surfaces used for the contractor's own site facilities, as recorded in an inventory prior to the start-up of works in the presence of the Council. Any abnormal damage to the premises or areas made available must be repaired at the expense of the Provider responsible.

26.1.2 The Provider shall bear all costs related to the setting up and maintenance of its site facilities, including service roads for pedestrian and vehicle access that are closed to the public.

Unless otherwise specified in the Specific contractual documents, the Council shall provide the Provider, under normal conditions, with the supplies of power and fluids required for the implementation of the deliverables covered by this contract, notably water and electricity.

26.2 Other costs to be borne by the Provider

The Provider shall procure any sites, at its own expense and risk, which it may require for its site facilities, should those areas provided by the Council not be sufficient. The Provider shall procure any sites, at its own expense and risk, which it may need as a temporary depositing area for surplus spoil, in addition to any sites provided by the Council for definitive or temporary deposits.

26.3 Administrative permission

The Provider shall take responsibility for all types of administrative permission, such as permission for the temporary occupation of public or private land, road access authorisations, crane oversail licences or permission for the anchoring necessary for the execution of the construction work covered by the contract.

The Council and the Project Manager shall provide assistance in order to help the Provider obtain the other administrative permission it needs, including for areas required for the setting up of worksites and the temporary depositing of spoil.

26.4 Access measures

The Provider shall comply with the safety, security and access measures in force at the Council. The Provider may not claim an extension of the time-limit for performance, compensation or a price supplement on this ground.

26.4.1 The Council shall guarantee the Provider free access to all premises or areas where it must perform its task, subject to the condition that the Provider's staff have accepted the access, security and safety rules in force at the Council.

26.4.2 Access to worksites in Strasbourg shall be via a single entrance per building, identified as follows:

- | | |
|--------------------------------|------------------------|
| • Palais de l'Europe: | Entrance II - PC Ouest |
| • D-Building: | Main entrance |
| • Human Rights Building: | Service entrance |
| • Agora: | PC Est |
| • M-Building: | Service entrance |
| • European Youth Centre (EYC): | Main entrance |

26.4.3 Deliveries of equipment shall be made using the goods unloading area(s) of the relevant building except if the Council has granted an ad hoc derogation. The equipment shall be moved within the buildings solely via the corridors and service lifts intended for this purpose. The Provider shall be deemed to have included in its price all the constraints imposed by the clearance dimensions and the routings inside and outside the buildings covered by the contract.

26.4.4 The Provider shall inform the Council of any materials delivery dates no later than two (2) days beforehand and shall supply the registration number of the delivery vehicle(s). The Provider shall be

responsible for providing all suitable handling equipment needed for unloading and transporting goods delivered to its worksite.

The Provider's managers (supervisors, heads of team) shall be issued with passes, or badges, valid for all the buildings covered by the contract for the duration thereof.

Each firm shall submit the list of staff assigned to this worksite to the Council, if possible one month prior to the start of the works. Each worker shall be issued with a pass giving them access to the site, valid for the duration of the works.

In exchange for a currently valid identity document, the Provider's other operatives shall be issued with a numbered temporary pass badge permitting them to move around the authorised building. The badge shall be returned at the end of each day or with each change of building, until works are completed. The Council's representative shall be informed of any operations concerned by such measures at least 24 working hours before the beginning of the works. The request shall specify:

- the firm's name
- the building concerned
- the type and duration of the work
- each operative's surname and first name
- any specific needs and obligatory regulatory formalities (welding and cutting permits, dust emissions etc)

Passes shall be strictly personal. Any misuse shall be severely sanctioned. The Provider shall report, within fifteen (15) days, any change in the status of persons issued with a pass (changes of posting, persons having left its employment etc).

No firm or staff member of a firm shall be authorised to enter a building if the security officer is not in possession of an intervention request drawn up by the Project Manager.

26.5 Action against undeclared work

26.5.1. The Provider, or each of the members of the consortium where applicable, shall ensure that its staff wear a means of identification at all times indicating both the individual's name and the name of the employer when within the site area.

26.5.2. The Provider, or each of the members of the consortium where applicable, shall establish an exhaustive log of all the individuals it employs on the site.

26.5.3. That log shall be kept up-to-date and made available for consultation by the Project Manager and any other competent authority. The Council may ask to see the log at any time.

26.5.4. The Provider shall notify its sub-contractors that the obligations set out in the present Article are applicable to them. It shall remain responsible for compliance by sub-contractors for the entire duration of the contract.

26.6 Site health and safety and security measures

26.6.1. The Provider shall take all security and safety measures to avoid any accidents involving staff or third parties on its site. It shall comply with all the regulations and instructions of the competent authority.

In particular it shall provide lighting and security for its site as well as both inside and outside signage. It shall also provide fencing around its sites where necessary.

It shall take all necessary precautions to avoid works causing danger to third parties, including for public traffic where this has not been diverted.

Points where there is a potential danger to passing traffic or pedestrians, along and across routes, must be protected by temporary barriers or any other appropriate arrangement; they must be lit and, if necessary, guarded.

26.6.2. The Provider shall take the necessary steps to ensure the proper hygiene standards of site facilities intended for use by staff, including by setting up road, drinking water and sewer systems, where justified by the scale of the site.

26.6.3. All the security and health and safety measures stipulated above shall be the responsibility of the Provider.

26.6.4. In the event of the Provider failing to comply with the above stipulations and without prejudice to the powers of the competent authorities, the Project Manager may take the necessary measures at the expense of the Provider after serving formal notice which is not acted upon.

In the event of an emergency or danger, such measures shall be taken without serving prior notice.

The intervention of the competent authorities or the Project Manager shall not discharge the Provider from its liability.

26.6.5. The Project Manager shall inform the Provider of any functional problems caused by the staff working on the site and hindering its smooth operation

It shall be the responsibility of the Provider to take any necessary steps to remedy the functional problems reported.

26.7 Signage of sites with regard to public areas

When the works impinge on public areas, signage intended for the public must comply with relevant regulations. Signage shall be produced, under the supervision of the competent services, by the Provider, which shall be responsible for supplying and installing signs and signalling devices, and without prejudice to the application of Article 26.6.4.

If the performance of works entails a diversion of traffic, the Provider shall be responsible, under the same conditions, for the installation and maintenance of signage at the edges of areas where traffic is interrupted and for the signposting of diversion routes.

The policing of traffic around worksites or at the edges of areas where traffic is interrupted and along diversion routes shall be the responsibility of the competent services.

The Provider shall notify the competent services, at least five (5) days in advance, of the date on which works are to commence, mentioning, where applicable, the mobile nature of the worksite.

The Provider shall inform the competent services, along the same lines and within the same time-limits, of the clearing or moving of the worksite.

26.8 Maintaining routes and drainage

26.8.1 The Provider shall conduct the works in such a way as to maintain in decent conditions any routes of whatever nature passing through the worksite, including those used as thoroughfares, and also the drainage system. This paragraph shall apply subject to the details provided, where applicable, in specific contractual documents relating to the conditions in which restrictions may be imposed on such routes and drainage.

26.8.2. In the event of the Provider failing to comply with the above stipulations and without prejudice to the powers of the competent authorities, the Project Manager may take the necessary measures at the Provider's expense after serving formal notice which is not acted upon.

In the event of an emergency or danger, such measures may be taken without serving prior notice.

26.9 Special constraints for works executed close to inhabited, frequented or protected areas

When works are executed close to inhabited or frequented areas or areas qualifying for protection under environmental conservation, the Provider shall take the necessary steps, at its own expense and risk, to attenuate, as far as possible, the nuisance caused to users and neighbours, including potential nuisances of difficulties of access, machinery noise, vibrations, smoke and dust.

26.10 Demolition of built structures

26.10.1 Unless expressly authorised to do so, the Provider may demolish built structures located in the area occupied by the worksite only after submitting a request to do so to the Project Manager eight (8) days beforehand.

26.10.2 In the area of waste sorting or disposal, the Provider shall comply with the stipulations of Article 5 and the special provisions of the contract, where these exist, with a view to the reuse or some other form of recovery of materials and products resulting from demolition or dismantling work.

26.11 Inflammable and/or explosive materials

The Provider shall ensure that no material at risk of exploding or catching fire remains on the worksite and shall be under obligation, in the event of any such material remaining, to process it.

26.12 Case of work packages

In the case of allocation of work packages requiring coordination, the obligations listed in the present Article 26 shall be shared between the Providers of the different contracts in conformity with the stipulations set out in the specific contractual documents.

Article 27 - Damage caused by the works or the methods used to execute them

27.1 The Provider shall be liable for damage of any kind it causes to staff or property of the Council as a result of the carrying out of works or the methods used to execute them, unless the Provider demonstrates that the manner of carrying out the works or the methods used were imposed by stipulations of the contract or instructions.

27.2 The Council shall be liable for damage of any kind caused to the Provider's staff or property in the event of a clear case of negligence by the Council linked to the performance of the contract.

Article 28 - Removal of equipment and unused materials

28.1 As the works progress, the Provider shall clear, clean and restore the areas made available to it by the Council for the execution of the works.

28.2 Should all or part of this stipulation not be implemented, and following failure to respond to notification given and the serving of formal notice by the Council, any equipment, installations, materials, rubble and waste not removed upon expiry of a period of thirty days after the serving of formal notice shall be compulsorily transported, depending on their characteristics, either to a depot or to sites appropriate to their classification, at the Provider's expense and risk, or sold at public auction.

28.3 The measures set forth in Article 28.2 shall be applied without prejudice to any specific penalties applicable to the Provider that may have been stipulated in the contract.

Article 29 - Construction flaws

29.1 Measures

If the Project Manager has reason to believe that there is a construction flaw in a piece of work, they may, up to the expiry of the warranty, give notice of measures intended to identify that flaw. These measures may include, where appropriate, the partial or total demolition of that piece of work.

The Project Manager may also carry out these measures itself or have them carried out by a third party, but the Provider must be present when these operations are carried out or have been duly convened.

29.2 Expenses and costs

If a construction flaw is found, the costs of making good the work in question in full or bringing it into conformity with the normally applicable standards and the contract specifications, as well as the expenses incurred by any operations aimed at identifying the flaw, shall be payable by the Provider, without prejudice to the compensation which may then be claimed by the Council.

29.3 Reimbursement

If no construction flaw is found, the Provider shall have the expenses defined in Article 29.1 reimbursed, in the event of having paid them.

Article 30 - Documents supplied after performance

30.1 In addition to the documents which it is under obligation to supply before or during the performance of works, the Provider shall submit to the Project Manager, by the latest when requesting acceptance of the works in accordance with Article 32.1, the installation guides, operating manuals, instructions for maintenance of the equipment components used, the manufacturer's warranty conditions relating to that equipment and the waste disposal reports. Failure to submit the documents mentioned in the present Article within the prescribed time-limit shall result in the application of the penalties provided for in the Specific contractual documents.

30.2 Three copies of each of the documents listed above shall be supplied, including one on a medium allowing reproduction, except for photographic documents; if the documents are supplied in electronic form, they shall comply with the format and characteristics defined in the contract and conform to the Council's graphic charter.

30.3 The contents of the final implementation file (DOE) shall include, at a minimum, the construction drawings in conformity with the executed works prepared by the Provider, operating manuals and maintenance instructions.

30.4 The subsequent maintenance file (DIUO) shall compile information facilitating the prevention of occupational risks during subsequent operations, in particular during the maintenance of the executed works.

30.5 If transmitted in electronic form, all the documents of the final implementation file (DOE) and those required for the compilation of the subsequent maintenance file (DIUO) shall be secure, identifiable and compatible for use with the drawing and calculation software of the Project Manager and the Council specified in the specific contractual documents and conforming to the Council's graphic charter.

Verifications, acceptance and warranty

Article 31 - Verifications of ongoing works

31.1 The project may be subjected to a Technical Inspection of Building Compliance in accordance with Articles L111-23 to 26 and R111-29 to 42 of the French Code of Construction and Housing.

The inspection briefs opted for shall be described in detail and entrusted to the inspection office named in the Specific contractual documents.

31.2 The project shall be subject to a health and safety matters coordination brief, assigned to the firm indicated in the Specific contractual documents.

Article 32 - Acceptance

Unless otherwise specified in the Specific contractual documents,

32.1 Formalities

The Provider shall notify both the Council and the Project Manager, in writing, of the date on which it considers that the works have been or will be completed.

The Project Manager shall carry out the pre-acceptance operations, having convened the Provider, within one month dating from receipt of the aforementioned notification or from the date given in the notification for the completion of works, should this be a later date.

32.1.1 The Council, once notified by the Project Manager of the date of these operations, may attend them or send a representative. The report provided for in Article 32.2 shall mention either the Council's presence or, in its absence, the fact that the Project Manager had notified it.

If the Provider is not in attendance during these operations, the report shall mention the fact that it had been notified.

32.1.2 In the event of the Project Manager failing to establish the date of these operations, the Provider shall inform the Council by registered letter with acknowledgement of receipt. The Council shall then establish the date of the pre-acceptance operations within thirty days of receiving the registered letter sent by the Provider at the latest and notify the Provider and the Project Manager thereof; it shall also inform them that it will attend or send a representative on that day and be assisted, if it considers it useful, by an expert, so that the following specific provisions may be applied:

- if the Project Manager, having been duly convened, is not present or represented on the date set, this absence shall be recorded and pre-acceptance operations shall be carried out by the Council and any assistant it appoints;
- if the attending or represented Project Manager refuses to carry out these operations, this fact shall be recorded.

32.1.3 If the Council fails to set a date for these operations, the works shall be deemed accepted upon expiry of the aforementioned time-limit of thirty (30) days.

32.2 Acceptance operations

The operations carried out prior to the acceptance decision shall comprise, as may be necessary:

- acknowledgement of the works performed;
- any testing provided for in the contract;
- any observation of non-performance of the services provided for in the contract;
- verification of the conformity of equipment installation with the specifications on which Provider warranties are conditional;

- any observation of imperfections or sub-standard workmanship;
- observation of the removal of site facilities and the restoration of land and premises;
- observations concerning the completion of the works.

These operations shall be recorded in a report drawn up on the spot by the Project Manager and signed by them and by the Provider. If the Provider refuses to sign the report, this fact shall be mentioned therein. One copy of the report shall be given to the Provider.

Within five (5) days after the date of the report, the Project Manager shall inform the Provider whether or not they have proposed that the Council declare its acceptance of the works and, if so, the works completion date proposed, as well as any reservations to which they propose making acceptance subject.

In the event of the Project Manager failing to comply with the aforementioned time-limit of five (5) days, the Provider may transmit a copy of the report to the Council, so that the latter may declare acceptance of the works, where applicable.

In the event of application of Article 32.1.2, the report shall be drawn up, dated and signed by the Council, which shall then give notification thereof to the Project Manager. One copy of the report shall be given to the Provider.

32.3 Declaration of acceptance

In the light of the report of the pre-acceptance operations and the Project Manager's proposals, the Council shall decide whether or not acceptance is declared or whether it is declared with reservations. If it declares acceptance with reservations, it shall set a date for the lifting of the reservations. Its decision shall be notified to the Provider within fifteen (15) days after the date of the report.

Acceptance shall take effect on the date set for the completion of works.

With the exception of the case provided for in Article 32.1.3, should the Council fail to give notification of its decision within the aforementioned time-limit, the Project Manager's proposals shall become binding on the Council and the Provider.

32.4 Trials

In the event of certain trials having to be carried out, in line with the stipulations of specific contractual documents, after the executed works have been in service for a fixed period or at certain times of year, acceptance may be declared only subject to the conclusive conducting of those trials.

If such trials, run during the warranty period defined in Article 34.1 are not conclusive, acceptance shall be deferred.

32.5 Deliverables yet to be executed

If it transpires that certain deliverables provided for in the specific contractual documents and yet to be paid for have not been executed, the Council may decide to declare acceptance, subject to the Provider undertaking to execute those deliverables within a period not exceeding three (3) months. The ascertaining of the execution of those deliverables shall result in a report drawn up in the same conditions as the report of the pre-acceptance operations provided for in Article 32.2.

32.6 Reservations

Where acceptance is subject to reservations, the Provider shall remedy the corresponding imperfections or sub-standard workmanship within the time-limit set by the Council or, if no time-limit has been set, three (3) months before the expiry of the warranty period defined in Article 34.1.

In the event of those works not having been carried out within the prescribed time-limit, the Council may have them carried out at the Provider's expense and risk, after formal notice to do so has not been acted upon.

32.7 Non-Conformity

If certain executed works or parts thereof do not entirely conform to the specifications of the contract but the imperfections observed are not such that they would adversely affect the safety, performance or use of the works concerned, the Council may, in view of the minor nature of the imperfections and the difficulties that compliance work would present, desist from ordering the making good of the works considered to be defective and propose a price reduction to the Provider.

If the Provider agrees to the price reduction, the imperfections that gave rise to it shall be covered by this fact, and acceptance shall be declared without reservation.

If the Provider does not agree, it remains under obligation to remedy these imperfections, with acceptance being declared subject to them being remedied.

32.8 Taking possession

Before taking possession of executed works, the Council must first accept them.

However, where there is an urgent need, it may take possession of executed works prior to acceptance, on condition of drawing up a joint inventory beforehand. Taking possession of the executed works in these circumstances shall not constitute acceptance.

Article 33 - Partial acceptance

33.1 The setting in the contract of a time-limit for a tranche of works, an individual piece of work or part thereof which is distinct from the time-limit for the performance of all the works shall entail partial acceptance of that tranche of works, individual piece of work or part thereof.

The provisions of Article 33 shall apply to partial acceptance, subject to the application of Articles 33.3 and 33.4.

33.2 The taking of possession by the Council of certain works or parts thereof prior to the completion of all the works must be preceded by partial acceptance, for which the conditions shall be established by specific contractual documents. Those conditions must, at a minimum, include the establishment of a joint inventory. This partial taking of possession of executed works or part thereof shall not constitute acceptance.

33.3 For the tranche of works, individual piece of work or part thereof for which partial acceptance is effected, the warranty period shall run from the date on which that partial acceptance takes effect if this is mentioned in the specific document.

33.4 In all cases, there shall be a single general statement of account for all the works, with notification of the last partial acceptance decision triggering the start of the time-limit provided for in Article 10.3.2.

33.5 In all cases, the general stipulations on the release of performance bonds shall be applicable only upon expiry of the warranty period for all the works.

Article 34 - Contractual guarantees

34.1 Duration of guarantees

The guarantees provided for in articles 1792 *et seq* of the French Civil Code (ten-year and two-year guarantees) shall be applicable, depending on the damage suffered. These guarantees shall take effect on the day of signature of the final acceptance report for the works, unless otherwise specified in the Specific contractual documents.

The duration of the completion guarantee shall be fixed at one (1) year.

34.1.1 The completion guarantee places the Provider under obligation to fulfil the following requirements:

- to carry out any finishing and making good of works and services requested by the Project Manager;
- to remedy any problems reported by the Council so that the executed work is restored to the state in which it was upon acceptance or after correction of the imperfections observed at that time;
- to carry out, where applicable, consolidation or modification work that prove to be necessary at the end of the trials provided for in the Technical Specifications;
- to submit to the Project Manager the plans of built structures as per their execution in the conditions set out in Article 30.

The costs of further work demanded by the Council or the Project Manager to remedy the aforementioned defects shall be borne by the Provider only if the cause of those defects is attributable to it.

The obligation of completion shall not extend to works necessary to remedy the effects of normal wear and tear.

Upon expiry of the warranty period, the Provider shall be released from its contractual obligations, with the exception of specific guarantees that may be provided for in specific contractual documents. Any performance bonds shall be released in the conditions established in the relevant regulations.

If the Council blocks the release of performance bonds, it shall, at the same time, inform the Provider by any means making it possible to establish a certain date.

34.2 Extension of the warranty period

If, upon expiry of the warranty period, the Provider has not performed the works and services stipulated in Article 34.1 as well as those required, where applicable, pursuant to Article 29, the warranty period may be extended by decision of the Council until the full performance of works and services, whether by the Provider or at the Council's own initiative in accordance with the stipulations of Article 32.6.

34.3 Specific guarantees

Guarantees for certain executed works, and also guarantees of the operation of certain installations, the duration of those guarantees and the specific arrangements for them shall be established by the Specific contractual documents.

Termination of the contract

Article 35 - Termination

35.1 The discontinuation of the contract, by decision of the Council of Europe's Committee of Ministers, may not give rise to a claim for compensation by the Supplier other than for the costs corresponding to the works' progress on the day of the Committee of Ministers decision.

35.2 If the Supplier does not fulfil the conditions stipulated in the present contract or those arising from any written supplementary clause accepted by both parties, or if the services delivered, as defined in the contractual documents, are unsatisfactory, the Council shall deem that there has been a breach of contract and may, consequently, refuse to pay the amounts due under the terms of the contract.

35.3 In the cases provided above, the Council of Europe, moreover, reserves the right, at any time and after notifying the Supplier, to terminate the contract. In the event of termination of the contract, the Council of Europe shall pay only the amount corresponding to the services effectively rendered to its full satisfaction at the time of the contract's termination and it shall require the reimbursement of any amounts already paid in respect of services not rendered.

35.4 The remaining owed amounts shall be paid into the Council's bank account within 60 days of written notice having been served by the Council of Europe on the Supplier on this matter.

35.5 The contract's termination shall not rule out any civil or criminal lawsuits that may be taken against the Supplier owing to its faults.

35.6 Termination on account of extraneous events

35.6.1. Death or legal incapacity of the Provider

In the event of the death or legal incapacity of the Provider, the Council may terminate the contract or agree to its pursuit by the Provider's heirs or trustee. A transfer clause shall be drawn up to this end.

Termination, if pronounced, shall take effect on the date of death or legal incapacity. The Provider or its heirs shall have no entitlement to compensation.

35.6.2. Receivership or judicial liquidation

The contract shall be terminated in the event of receivership if, after serving of notice to the judicial administrator in the conditions stipulated in article L. 622-13 of the French Commercial Code, the judicial administrator does not undertake to subscribe to the Provider's obligations.

In the event of the Provider's judicial liquidation the contract shall be terminated after formal notice served by the Council has not been acted upon. The Provider shall not be entitled to any compensation.

35.6.3. Physical incapacity or default of the Provider

In the event of manifest, lasting physical incapacity of the Provider, such as to jeopardise the proper performance of the contract, the Council may terminate the contract.

Termination shall not entitle the Provider to any compensation.

In the event of default by the Provider that is not covered under the force majeure provisions, the Council shall have the service provided by another Provider and using any appropriate means, at the Provider's expense and risk.

35.7 Termination on grounds of the Provider's negligence

35.7.1 In addition to the conditions laid down by the Act of Engagement, the Council may terminate the contract on grounds of negligence by the Provider or, for a contract divided into work packages, by each Provider separately, in the following situations:

- a. The Provider has breached legal or regulatory requirements in the fields of labour law or protection of the environment;
- b. The Provider has refused to hand back or hand over the buildings, land, equipment, construction products, facilities and supplies entrusted to it or damaged or misused the buildings, land, equipment, construction products, facilities and supplies in question;
- c. The Provider has failed to perform its obligations within the contractual time-limits as required by Article 37, after this failure has been established in a joint inspection and an opinion issued by the Project Manager, and if the Provider has not received notification authorising it to resume performance of the works; in this case, the contract may simply be terminated or terminated at the Provider's expense and risk, with the provisions of Article 37 being applied in the latter case;
- d. The Provider has sub-contracted work in breach of the legislative and regulatory provisions on sub-contracting or fails to comply with the obligations relating to sub-contractors as required under Article 3.6;
- e. The Provider has failed to produce the insurance certificates as required under the contract;
- f. The Provider has declared, independently of the cases provided for in Article 35.1.1, that it is unable to honour its commitments;

- g. The Provider has failed to notify the modifications referred to in Article 3.4.2 and these modifications are such as to jeopardise the proper performance of the contract;
- h. The Provider has committed acts of fraud in the performance of the contract;
- i. The Provider or sub-contractor has failed to comply with the obligations relating to loyalty and confidentiality, personal data protection and security, as required by Article 4;
- j. Following the signature of the contract, the Provider is prohibited from exercising an industrial or commercial occupation;
- k. Following the signature of the contract, the information or documents produced by the Provider in support of its application or bid, or which the Provider was required to produce before the contract was awarded, prove to be inaccurate.

35.7.2 Except in the cases covered by points f, h, j and k above, the Provider shall have been served with prior notice, together with a time-limit to comply, which has remained without effect.

Upon serving notice, the Council shall inform the Provider of the sanction envisaged and invite the Provider to submit observations.

35.7.3 Termination of the contract shall not rule out any civil or criminal action that may be taken against the Provider.

35.7.4 In the cases of termination provided for above, the Council shall pay only the amount corresponding to the services actually supplied to its full satisfaction at the time of the contract's termination and shall require the reimbursement of any amounts already paid in respect of services not supplied.

35.7.5 Amounts remaining due shall be paid into the Council's bank account within sixty (60) days following written notice served by the Council on the Provider.

35.8 Specific clauses

Termination of a Provider's contract on grounds of the Provider's death or legal incapacity, where that Provider is not the joint agent, shall place the joint agent under obligation to take the place of the Provider whose contract is terminated, with no change possible to the performance time-limit for the works.

Termination of a joint agent's contract declared on the same grounds shall place the jointly and severally liable Providers under obligation to appoint a new agent within one month, with no change possible to the performance time-limit for the works.

In all cases where termination of the contract of any one of a consortium's jointly and severally liable Providers results in a stoppage of work on site, the measures required for the safekeeping of the site shall be the responsibility of the joint agent. These measures shall be ordered by the Project Manager after the serving of formal notice to the agent granting a time-limit of no more than eight (8) days.

Article 36 - Statement of account on termination of the contract

36.1 Report

In the event of termination, an ascertainment of the works and parts of works performed, an inventory of materials supplied and also a descriptive inventory of the equipment and facilities on the worksite shall be carried out, with the Provider or its heirs or trustee, receiver or judicial administrator in attendance or having duly been convened. A report of these operations shall be drawn up. That report shall include the opinion of Project Manager on the conformity of the works and parts of works performed with the stipulations of the contract.

This report shall be signed by the Council. Signature by the Council of the report constitutes acceptance of the works and parts of works performed, with the date of effect of termination serving as the effective starting point of the warranty period defined in Article 34.

36.2 Measures prior to site closure

Within ten (10) days following the date of signature of this report, the Council shall establish the measures to be taken prior to site closure to ensure that the works or parts of works performed are properly conserved and made safe. Such measures may entail the demolition of certain parts of works.

If the Provider fails to take those measures within the time-limit set by the Council, the Project Manager shall have them carried out at their own initiative.

Except in cases of termination giving entitlement to compensation, these measures shall be at the expense of the Provider.

36.3 Possibility of repurchase

The Council shall be entitled to repurchase, in full or in part:

- the temporary structures implemented under the contract that are of use in the performance thereof;
- the materials, construction products, hardware, software packages, software and tools supplied, purchased or created for the needs of the contract, insofar as these are required for the worksite.

It shall furthermore be entitled, for the continuation of the works, either to repurchase or to retain at its disposal the equipment specially built for the performance of the contract.

In the event of the previous two indents being applied, the price of repurchase of the temporary structures and the equipment shall be equal to the unamortised portion of their value. If the equipment is retained at the Council's disposal, its rental price shall be determined on the basis of the unamortised portion of its value.

The materials, construction products, hardware, software packages, software and tools supplied, purchased or created shall be repurchased at the contract prices, or otherwise prices derived from the application of Article 10.

36.4 Withdrawal from sites and premises

The Provider shall withdraw from the sites and premises within the time-limit set by the Project Manager.

Article 37 - Coercive measures

37.1 Formal notice served by the Council

With the exception of the cases provided for in Article 36, if the Provider does not conform to the stipulations of the contract or purchase orders issued to it, the Council shall serve it with formal notice to comply within a fixed time-limit, by a decision notified to it in writing.

That time-limit, except in an emergency, shall not be less than fifteen (15) days from the date of serving of formal notice.

37.2 Continuation of works

If the Provider does not comply with formal notice issued to it, the continuation of works may be ordered by the Council, at the Provider's expense and risk. The Council shall be entitled to terminate the contract.

37.3 Ascertainment of work performed and inventories

For the continuation of works in the place of the Provider, an ascertainment of the work performed and existing supplies shall be carried out, with the Provider in attendance or having duly been convened, as well as a descriptive inventory of the Provider's equipment and the handing back to the Provider of any equipment that will not be of use in the completion of the works.

Within one month following notification of the decision to continue the works in the place of the Provider, the latter may be authorised to resume performance of the works if it can demonstrate that it has the necessary means of completing them. After the expiry of that time-limit, the Council shall declare termination of the contract.

37.4 Alternative contract

In the event of termination at the Provider's expense and risk, the measures taken pursuant to Article 36.3 shall be at the expense of the Provider. For the completion of works in conformity with the regulations in force, a contract shall be concluded with another firm. This alternative contract shall be transmitted for information to the defaulting Provider. The general statement of account pertaining to the terminated contract shall be notified to the Provider only after final settlement of the new contract concluded for the completion of the works.

37.5 Presence of the Provider

The Provider whose works are subject to the application of Articles 36.2 and 36.3 shall be authorised to monitor the performance of works but it shall not be allowed to impede the purchase orders of the Project Manager or their representatives.

The same shall apply to any new contract concluded at its expense and risk.

37.6 Expenses

The Provider shall be liable for the surplus expenses ensuing from a new contract concluded following the termination decision provided for in Articles 36.2 and 36.3. Those expenses shall be deducted from any amounts due to it or otherwise from any retention bonds constituted by it, with no prejudice to the rights to be exercised against it, should such funds be insufficient.

The Provider may not benefit from any reduced expenses, even partially.