

CONTRACT FOR TURNKEY PROJECT



This Contract for Turnkey Projects is intended to be suitable for all the many industrial and manufacturer projects, both large and smaller, particularly E&M (Electrical and Mechanical) and other process plant projects, being carried out around the world by all types of employers that wish to implement their projects on a fixed-price turnkey basis and with a strictly two party approach. In accordance with the usual approach of the turnkey contracts, the Contractor carries out all the engineering, management of purchases and construction (EPC - Engineering, Procurement and Construction), providing a fully equipped and ready for operation plant ("turnkey").

This [Contract for Turnkey Projects](#) includes the General Contracting Conditions, which are usually applied in the vast majority of Turnkey Contracts, although there are other conditions that will have to be modified to take into account the circumstances of each contract and which are referred to as Particular conditions; in the Annex to the Contract a Guide is included to draft these Particular Conditions that modify the General Conditions. In addition to this Guide, different type documents are included in the Annexes: Letter of Tender, Contract Agreement, and models for the Dispute Adjudication Agreement. All these documents are part of the documentation that must be submitted by companies that bid for a turnkey project, especially if it is carried out in an international environment.

This model is recommended for general use where tenders are invited on an international basis. Modifications may be required in some jurisdictions, particularly if the Conditions are to be used on domestic contracts.

In the preparation of these Conditions of Contract for Turnkey Projects, it was recognised that, while there are many sub-clauses which will be generally applicable, there are some sub-clauses which must necessarily vary to take account of the circumstances relevant to the particular contract. The sub-clauses which were considered to be applicable to may (but not all) contacts have been included in the General Conditions, in order to facilitate their incorporation into the contract.

The General Conditions and the Particular Conditions will together comprise the Conditions of Contract governing the rights and obligations of the Parties. It will be necessary to prepare the Particular Conditions for each individual contract, and to take account of these sub-clauses in the General Conditions which mention to Particular Conditions.

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GENERAL CONDITIONS

1. GENERAL PROVISIONS

1.1 Definitions

In the Conditions of Contract (“these Conditions”), which include Particular Conditions and these General Conditions, the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

1.1.1 The Contract

1.1.1.1 "Contract" means the Contract Agreement, these Conditions, the Employer's Requirements, the Tender, and the further documents (if any) which are listed in the Contract Agreement.

1.1.1.2 "Contract Agreement" means the contract agreement referred to in Sub-Clause 1.6 [*Contract Agreement*], including any annexed memoranda.

1.1.1.3 "Employer's Requirements" means the document entitled employer's requirement, as included in the Contract, and any additions and modifications to such document accordance with the Contract. Such document specifies the purpose, scope, and/or design and/or other technical criteria, for the Works.

1.1.1.4 "Tender" means the Contractor's signed offer for the Works and all other documents which the Contractor submitted therewith (other than these Conditions and the Employer's Requirements, if so submitted), as included in the Contract.

1.1.1.5 "Performance Guarantees" and "Schedule of Payments" mean the documents so Named (if any), as included in the Contract.

1.1.2 Parties y Persons

1.1.2.1 "Party" means the Employer or the Contractor, as the context requires.

1.1.2.2 "Employer" means the person Named as Employer in the Contract Agreement and legal successors in title to this person(s).

1.1.2.3 "Contractor" means the person(s) Named as Employer in the Contract Agreement and legal successors in title to this person.

1.1.2.4 "Employer's Representative" means the person Named by the Employer in the contract or appointed from time to time by the Employer Under Sub-Clause 3.1 [*The Employer's Representative*], who acts on behalf of the Contractor.

1.1.2.5 "Contractor's Representative" means the person Named by the Contractor in the Contract or appointed from time to time by the Employer Under Sub-Clause 4.3 [*Contractor's Representative*], who acts on behalf of the Contractor.

1.1.2.6 "Employer's Personnel" means the Employer's Representative, the assistants referred to in Sub-Clause 3.2 [*Other Employer's Personnel*] and all other staff, labor and other employees

of the Employer and of Employer's Representative; and any other personnel notified to the Contractor, by the Employer or the Employer's Representative, as Employer's Personnel.

1.1.2.7 "Contractor's Personnel" means the Contractor Representative and all Personnel whom the Contractor utilizes on Site, who may include the staff, labor and other employees of the Contractor and of each Subcontractor; and any other personnel assisting the Contractor in the execution of the Works.

1.1.2.8 "Subcontractor" means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Works; and the legal successors in title to each of these persons.

1.1.2.9 "DAB means the person or three persons named in the Contract, or other person(s) appointed under Sub-Clause 20.2 [*Appointment of the Dispute Adjudication Board*] or Sub-Clause 20.03 [*Failure to Agree Dispute Adjudication Board*]

1.1.3 Dates, Tests, Periods and Completion

1.1.3.1 "Base Date". Means the date 28 days prior to the latest date of submission of the Tender.

1.1.3.2 "Commencement Date" means the date notified under Sub-Clause 8.1 [*Commencement of Works*], unless otherwise defined in the Contract Agreement.

1.1.3.3 "Time for Completion]" means the time for completing the Works or a Section (as the case may be) Under Sub-Clause 8.2 [*Time for Completion*], as stated in the Particular Conditions (with any extension Under Sub-Clause 8.4 [*Extension of Time Completion*]), calculated from the Commencement Date.

1.1.3.4 "Tests on Completion" means the tests which are specified in the Contract or agreed by both Parties or instructed as a Variation, and which are carried out Under Clause 9 [*Tests on Completion*] before the Works or a section (as the case may be) are taken over by the Employer.

1.1.3.5 "Taking-Over Certificate" means a certificate issued Under Clause 10 [*Employer's Taking Over*].

1.1.3.6 "Tests Under Completion] means the tests (if any) which are specified in the Contract and which are carried out Under Clause 12 [Tests after Completion] after Works or a Section (as the case may be) are taken over by the Employer.

1.1.3.7 "Defects Notification Period" means the period for notifying defects in the Works or a section (as the case may be) Under Sub-Clause 11.1 [*Completion of Outstanding Work and Remedying Defects*], as stated in the Particular Conditions (with any extension under Sub-Clause 11.3 [*Extension of Defects Notification Period*]), calculated from the date on which the Works or section is completed as certified under Sub-Clause 10.1 [*Taking Over of the Works and Sections*]. If no such period is stated in the Particular Conditions, the period shall be one Year.

1.1.3.8. "Performance Certificate" means the certificate issued Under Sub-Clause 119 [*Performance Certificate*].

1.1.3.9 "Day" means a calendar day and "Year" means 365 days.

1.1.4 Money and Payments

1.1.4.1 "Contract Price" means the agreed amount stated in the Contract Agreement for the design, execution and completion of the Works and the remedying of any defects, and includes adjustments (if any) in accordance with the Contract.

1.1.4.2 "Cost" means all expenditure reasonably incurred (or to be incurred) by the Contractor whether on or off the Site, including overhead and similar charges, but does not include profit.

1.1.4.3 "Final Statement" means the statement defined in Sub-Clause 14.11 [*Application for the Final Payment*].

1.1.4.4 "Foreign Currency" means a currency in which part (or all) of the Contract Price is payable, but not the Local Currency.

1.1.4.5 "Local Currency" means the currency of the Country.

1.1.4.6 "Provisional Sum" means a sum (if any) which is specified in the Contract as a provisional sum, for the execution of any part of the Works or for the supply of the Plant, Material or services Under Sub-Clause 13.5 [*Provisional Sums*].

1.1.4.7 "Retention Money" means the accumulated Retention moneys which the Employer retains Under Sub-Clause 14.3 [*Application for Interim Payments*] and pays Under Sub-Clause 14.9 [*Payment of Retention Money*].

1.1.4.8 "Statement" means a statement submitted by the Contractor as part of an application for payment under Clause 14 [*Contract Price and Payment*].

1.1.5 Works and Goods

1.1.5.1 "Contractor's Equipment" means all apparatus, machinery, vehicles and other things required for the execution and completion of the Works and the remedying of any defects. However, Contractor's Equipment excludes Temporary Works, Employer's Equipment (if any), Plant, Materials and any other things intended to form a forming part of the Permanent Works.

1.1.5.2 "Goods" means Contractor's Equipment, Material, Plant and Temporary Works, or any of them as appropriate.

1.1.5.3 "Materials" means things of all kinds (other than Plant) intended to form or forming part of the Permanent Works including the supply-only materials (if any) to be supplied by the Contractor under the Contract.

1.1.5.4 "Permanent Works" means the permanent Works to be designed and executed by the Contractor Under the Contract.

1.1.5.5 "Plant" means the apparatus, machinery and vehicles intended to form or forming part of the Permanent Works.

1.1.5.6 "Section" means a part of the Works specified in the Particular Conditions as a section (if any).

1.1.5.7 "Temporary Works" means all temporary Works for every kind (other than the Contractors Equipment) required on Site for the execution and completion of the Permanent Works and the remedying of any defects.

1.1.5.8 "Works" means the Permanent Works and Temporary Works, or either of them as appropriate.

1.1.6 Other Definitions

1.1.6.1 "Contractor's Documents" means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature supplied by the Contractor under the Contract; as described in Sub-Clause 5.2 [*Contractor's Documents*]

1.1.6.2 "Country" means the country in which the Site (or most of it) is located, where the Permanent Works are to be executed.

1.1.6.3 "Employer's Equipment" means the apparatus, machinery and vehicles (if any) made available by the Employer for the use of the Contractor in the execution of the Works, as stated in the Employer's requirements; but no does include Plant which has not been taken over by the Employer.

1.1.6.4 "Force Majeure" is defined in Clause 19 [*Force Majeure*].

1.1.6.5 "Laws" means all national (or state) legislation, statutes, ordinances and other Laws, and regulations and by-laws of any legally constituted public authority.

1.1.6.6 "Performance Security" means the security (or securities, if any) Under Sub-Clause 4.2 [*Performance Security*].

1.1.6.7 "Site" means the places where the Permanent Works are to be executed and to which Plant and Materials are to be Delivered, and any other places as may be specified in the Contract as forming part of the Site.

1.1.6.8 "Variation" means any change to the Employer's Requirements or the Works, which is instructed or approved as a variation under Clause 13 [*Variations and Adjustments*]

1.2 Interpretation

In the Contract, except where the context requires otherwise:

- (a) words indicating one gender include all genders;
- (b) words indicating the singular also include the plural and words indicating the plural also include singular;
- (c) provisions including the word "agree", "agreed" or "agreement" require the agreement to be concerned in writing, and
- (d) "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record.

1.3 Communications

Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices and requests, these communications shall be:

- (a) in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission as stated in the Particular Conditions; and
- (b) delivered sent or transmitted to the address for the recipient's communications stated in the Contract. However:
 - (i) If the recipient gives notices of another address, communications shall thereafter be delivered accordingly; and
 - (ii) If the recipient has not stated otherwise when requesting and approval or consent, it may be sent to the address from which the request was issued.

Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed.

1.4 Law and Language

The Contract shall be governed by the law of the country (or other jurisdiction) stated in the Particular Conditions.

If there are versions of any part of the Contract which are written in more than one language, the version which it is in the ruling language stated in the Particular Conditions shall prevail.

The language for communications shall be that stated in the Particular Conditions. If no language is stated there, the language for communications shall be the language in which the Contract (or most of it) is written.

1.5 Priority of Documents

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

- (a) the Contract Agreement,
- (b) the Particular Conditions,
- (c) these General Conditions,
- (d) the Employer's Requirements,
- (e) the Tender and any other documents forming part of the Contract.

1.6 Contract Agreement

The Contract shall come into full force and effect on the date stated in the Contract Agreement. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by the Employer.

1.7 Assignment

Neither Party shall assign the whole or any part of the Contract or any benefit or Interest in or Under the Contract. However, either Party:

- (a) may assign the whole or any part with the prior agreement of the Party, at the sole discretion of such other Party and
- (b) may, as security in favor of a bank or financial institution, assign its right to any moneys due, or to become due, Under the Contract.

1.8 Care and Supply of Documents

Each of the Contractor's Documents shall be in the custody and care of the Contractor unless and until taken over by the Employer. Unless otherwise stated in the Contract, the Contractor shall supply to the Employer six copies of each of the Contractor's Documents.

The Contractor shall keep on the Site, a copy of the Contract, publications named in the Employer's Requirements, the Contractor's Documents, and Variations and other communications given under the Contract. The Employer's Personnel shall have the right of access to all these documents at all reasonable times.

If a Party becomes aware of an error or defect of a technical nature in a document which was prepared or use in executing the Works, the Party shall promptly give notice to the other Party of such error or defect.

1.9 Confidentiality

Both Parties shall treat the details of the Contract as private and Confidential, except to the extent necessary to carry out obligations Under it or to comply with applicable Laws. The Contractor shall not publish, permit to be published, or disclose any particulars of the Works in any trade or technical paper or elsewhere without the previous agreement of the Employer.

1.10 Employer's Use of Contractor's Documents

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

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

- (a) Apply to throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works.
- (b) entitle any person in proper possession of the relevant part of the Works to Copy, use and communicate the Contractor's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, and
- (c) in the case of Contractor's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Contract, including replacements of any computers supplied by the Contractor.

The Contractor's Documents and other design documents made by (or on behalf of) the Contractor shall not, Without the Contractor's consent, be used copied or communicated to a Third party by (or on behalf) the Employer for purposes other than those permitted under this Sub-Clause.

1.11 Contractor's Use of Employer's Documents

As between the Parties, the Employer shall retain the copyright and other intellectual Property Rights in the Employer's Requirements and other documents made by (or on behalf) of the Employer. The Contractor may, at is cost, copy, use and obtain communication of these documents for the purpose of the Contract.

1.12 Confidential Details

The Contractor shall not be required to disclose, to the Employer, any Information which the Contractor described in the tender as being Confidential. The Contractor shall disclose any other information which the Employer may reasonably require in order to verify the Contractor's compliance with the Contract.

1.13 Compliance with Laws

The Contractor shall, in performing the Contract, comply with applicable Laws, Unless otherwise stated in the Particular Conditions:

- (a) The Employer shall have obtained (or shall obtain) the planning, zoning, or similar permission for the Permanent Works, and any other permission described in the Employer's Requirements as having (or being) obtained by the Employer; and the Employer shall indemnify and hold the Contractor harmless against and from the consequences of any failure to do so; and
- (b) The Contractor shall give all notices, pay all taxes, duties and fees, and obtain design, execution and completion of the Works and the remedying of any defects; and the Contractor shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so.

1.14 Joint and Several Liability

If the Contractor constitutes (Under applicable Laws) a joint venture, consortium or other unincorporated Grouping of two more persons:

- (a) these persons shall be deemed to be jointly and severally liable to the Employer for the performance of the Contract.
- (b) these persons shall notify the Employer of their leader who shall have authority to bind the Contractor and each of these persons; and
- (c) the Contractor shall not alter its composition or legal status Without the prior consent of the Employer.

2. THE EMPLOYER

2.1 Right of Access to the Site

The Employer shall give the Contractor right of access to, and possession of, all parts of the Site within the time (or ties) stated in the Particular Conditions. The right and possession may not be

exclusive to the Contractor. If, under the Contract, the Employer is required to give (to the Contractor), possession of any foundation, structure, plant or means of access, the Employer's Requirements. However, the Employer may withhold any such right or possession until the Performance Security has been received.

If no such time is stated in the Particular Conditions the Employer shall give the Contractor right of access to, and possession of the Site with effect from the Commencement Date.

If the Contractor suffers Delay and/or incurs Cost as a result of a failure by the Employer to give any such right possession either such time, the Contractor shall give notice to the Employer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such Delay, if completion is or will be delayed, under Sub-Clauses 8.4 [*Extension of Time for the completion*], and
- (b) payment of any such Cost-plus reasonable profit, which shall be added to the Contract Price.

After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

However, if and to the extent that the Employer's failure was caused by any error or Delay by the Contractor, including an error in, or Delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time, Cost or profit.

2.2 Permits, Licenses or Approvals

The Employer shall (where he is in a position to do so) provide reasonable assistance to the Contractor at the request of the Contractor:

- (a) by obtaining copies of the Laws of the Country which are relevant to the Contract but are not readily available, and
- (b) for the Contractor's applications for any Permits, licenses or approvals required by the Laws of the Country:
 - (i) which the Contractor's efforts Under Sub-Clause 1.13 [*Compliance with Laws*],
 - (ii) for the delivery of Goods, including clearance through customs, and
 - (iii) for the export of Contractor's Equipment when it is removed from the Site.

2.3 Employer's Personnel

The Employer shall be responsible for ensuring that the Employer's Personnel and the Employer's other contractor on the Site:

- (a) co-operate with the Contractor's efforts Under Sub-Clause 4.6 [*Cooperation*], and
- (b) take actions similar to those which the Contractor is required to take Under subparagraphs (a) (b) y (c) of Sub-Clause 4.8 [*Safety Procedures*] and under Sub-Clause 4.18 [*Protection of the Environment*].

2.4 Employer's Financial Arrangements

The Employer shall submit, within 28 days after receiving any request from de Contractor, reasonable evidence that the financial arrangement have been made and are being maintained which will be able the Employer to pay the Contract Price (as Estimated at that time) in

accordance with Clause 14 [*Contract Price and Payment*]. If the Employer intends to make any material change to his financial arrangements the Employer shall give notice to the Contractor with detailed particulars.

2.5 Employer's Claims

If the Employer considers himself to be entitled to any payment Under any Clause of these Conditions or otherwise in connection with the Contract, and/or to any extension of the Defects Notification Period, he shall give notice and particulars to the Contractor. However, notice is not required for payments due under Sub-Clause 4.19 [*Electricity, Water and Gas*], under Sub-Clause 4.20 [*Employer's Equipment and Free-Issue Material*], or to other services requested by the Contractor.

The notice shall be given as soon as practicable after the Employer became aware of the event or circumstances given rise to the claim. A notice relating to any extension of the Defects Notification Period shall be given before the expiry of such period.

The particular shall specify the Clause or other basis of the claim, and shall include substantiation of the amount and/or extension to which the Employer considers himself to be entitled in connection with the Contract. The Employer shall then proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine (i) the amount (if any) which the Employer is entitled to be paid by the Contractor, and/or (ii) the extension (if any) of the Defects Notification Period in accordance with Sub-Clauses 11.3 [*Extension of Defects Notification Period*].

The Employer may deduct the amount from any moneys due, or to become due, to the Contractor. The Employer shall only be entitled to set off against or make any deduction from an amount due to the Contractor, or to otherwise claim against the Contractor, in accordance with his Sub-Clause or with sub-paragraph (a) and/or (b) of Sub-Clause 14.6 [*Interim Payments*].

3. THE EMPLOYER'S ADMINISTRATION

3.1. The Employer's Representative

The Employer may appoint an Employer's representative to act on his behalf Under the Contract. In his event, he shall give notice to the Contractor of the name, address, duties and authority of the Employer's Representative.

The Employer's Representative shall carry out the duties assigned to him and shall exercise the authority delegated to him, by the Employer. Unless and until the Employer notifies the Contractor otherwise, the Employer's Representative shall be deemed to have the full Authority of the Employer under the Contract, except in respect of Clause 15 [*Termination by Employer*].

If the Employer wishes to replace any person appointed as Employer's Representative, the Employer shall give the Contractor not less than 14 days' notice of the replacement's name, address, duties and Authority, and of the date of appointment.

3.2 Other Employer's Personnel

The Employer or the Employer's Representative may from time to time assign duties and delegate authority to assistants, and may also revoke such assignment or delegation. These assistants may include a resident engineer, and/or independent inspectors appointed to inspect

and/or test items of Plant and/or Materials. The assignment, delegation or evocation shall not take effect until a copy of it has been received by the Contractor.

Assistants shall be suitable qualified persons, who are competent to carry out these duties and exercise this authority, and who are fluent in the language for communications defined in Sub-Clause 1.4 [*Law and Language*].

3.3 Delegated Persons

All these persons , including the Employer’s Representative and assistants, to whom duties have been assigned or authority has been delegated, shall only be authorized to issue instructions to the Contractor to the extent defined by delegation. Any approval, check, certificate, consent, examination, inspection instruction, notice, proposal, request, tests, or similar act by a delegated person, in accordance with the delegation, shall have the same effect as though the act had been an act of the Employer. However:

- (a) unless otherwise stated in the Delegated person’s communication relating to such act, it shall not relieve the Contractor from any Responsibility he has under the Contract, including responsibility for Errors, omissions, discrepancies and non-compliances.
- (b) any failure to disapprove any work, Plant or Materials, shall not constitute approval, and shall therefore nor prejudice the right of the Employer to reject the work, Plant or Materials; and
- (c) if the Contractor questions any determinations or instruction or a Delegated person, the Contractor may refer the matter to the Employer, who shall promptly confirm, reverse or vary the determination or instruction.

3.4 Instructions

The Employer may issue to the Contractor instructions which may be necessary for the Contractor to perform his obligations Under the Contract. Each instruction shall be given in writing and shall state the obligations to which it relates and the Sub-Clause (or other term of the Contract) in which the obligations are specified. If any such instruction constitutes a Variation, Clause 13 [*Variations and Adjustments*] shall apply.

The Contractor shall take instructions from the Employer, or from the Employer’s Representative or an assistant to whom the appropriate authority has been delegated under this Clause.

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- Contrato de Agente de Compras Internacional
- Contrato de Servicios Logísticos
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