

EBRD TERMS AND CONDITIONS OF PURCHASE (GOODS AND SERVICES)

1. Definitions

- 1.1 In these Terms, unless the context otherwise requires, the following words shall have the following meanings:-

“**Bank**” or the “**EBRD**” means the European Bank for Reconstruction and Development, an international financial institution established pursuant to the Agreement Establishing the European Bank for Reconstruction and Development, a multilateral treaty signed in Paris on 29th May 1990, with its headquarters located at 5 Bank Street, London, E14 4BG, United Kingdom;

“**Confidential Information**” means any information deemed to be sensitive (e.g. classified as ‘OFFICIAL USE’, ‘RESTRICTED’ or ‘HIGHLY RESTRICTED’ in accordance with the Bank’s Information Classification scheme) or any non-public, proprietary information concerning the business, administration, operations, assets, finances, systems, internal processes and know-how of the Bank contained in:- (i) written documents delivered or made available to the Contractor marked confidential or similar confidentiality wording on the cover such as ‘OFFICIAL USE’ or ‘RESTRICTED’ or ‘HIGHLY RESTRICTED’; or (ii) electronic data delivered or made available to the Contractor which indicate that the data are confidential or sensitive; or (iii) written documents or electronic data delivered or made available to the Contractor where the Bank advised the Contractor that their content is confidential or sensitive.

“**Contract**” means the specific contract for the sale and purchase of the Goods and/or the supply of Services by the Contractor to the Bank pursuant to a Purchase Order issued in accordance with these Terms. The Contract shall comprise the:- (i) Purchase Order; (ii) these Terms, (iii) any Special Conditions; and the (iv) Specification;

“**Contractor**” means the person, firm, company or other body corporate to whom the Purchase Order issued by the Bank is addressed;

“**Delivery Address**” means such address as is specified in the Purchase Order where:- (i) the Goods have to be delivered; and/or (ii) the Services have to be performed by the Contractor;

“**Delivery Date**” means the delivery date(s) specified in the Purchase Order and/or the date(s) when the Services have to be performed by the Contractor;

“**Good Industry Practice**” means the exercise of that degree of skill, care, diligence, prudence, foresight and judgement which would reasonably be expected from skilled, experienced and market leading contractors engaged in the provision of services similar to the Services.

“**Goods**” means those goods described in the Purchase Order to be delivered to the Bank, including their component parts, spare parts, manuals, documentation and packaging and including any goods or materials provided as part of the Services;

“**Intellectual Property Rights**” means patents, rights to inventions, copyright and related rights, moral rights, trade marks, service marks, rights to goodwill, rights in designs, database rights, know-how, trade secrets and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights;

“Materials” means reports, memoranda, documentation and other printed materials, data, accounts, programmes, software, code, graphics, works of art, guidance, drawings, models, designs, advertisements, information prepared by the Contractor in connection with the Contract.

“Parties” means the Contractor and the Bank together;

“Prohibited Practices” means coercive practices, collusive practice, corrupt practice and fraudulent practices, misuse of Bank’s resources, obstructive practice or theft defined in the Bank’s Enforcement Policy and Procedures published by the Bank. These are currently published at <http://www.ebrd.com/news/publications/policies/enforcement-policy-and-procedures.html>

“Purchase Order” means the Bank's printed purchase order form signed by the Bank's authorised representative or an electronic purchase order form issued by the Bank:- (i) to which these Terms are annexed; or (ii) in which these Terms are referred to in a form of an internet link or by a similar reference.

“Purchase Order Number” means the Bank's purchase order number as specified on the Purchase Order;

“Purchase Order Price” means the total consideration payable by the Bank for the Goods and Services ordered by the Bank under a specific Purchase Order as indicated in the Purchase Order form;

“Services” means the services described in the Purchase Order to be performed by the Contractor for the Bank;

“Site” means the Bank's headquarters or one of the Bank's resident or regional offices, as the case may be;

“Special Conditions” means documentation signed by the authorised representative of the Bank other than these Terms referred to in the Purchase Order form issued by the Bank;

“Specification” means any:- (i) plans; (ii) drawings; (iii) scope of works; and (iv) service description, technical specifications or other information relating to the Goods and/or Services and which have been attached to the Purchase Order or made available to and accepted and confirmed by the Bank, by or on behalf of the Contractor as of or before the date of the Purchase Order is issued by the Bank;

“Terms” means the EBRD Terms and Conditions of Purchase (Goods and Services) as set out in this document.

“Warranty Rights” means all warranty rights, performance guarantees and indemnities in respect of the Goods given or extended to the Contractor by a manufacturer, importer or supplier of the Goods.

- 1.2 The headings in these Terms are for ease of reference only and shall not be taken into account in the construction or interpretation of any provision to which they refer. Words importing the singular include the plural, words importing any gender include every gender and words importing persons include bodies corporate; and (in each case) vice versa. The words “includes” and “including” shall be construed without limitation.

- 1.3 If there is any dispute conflict or inconsistency between the provisions of these Terms and other documents forming the Contract the provisions of those documents shall, only to the extent of any such conflict or inconsistency, take precedence in the following order:- (i) the Special Conditions; (ii) the Purchase Order form; (iii) these Terms; and the (iv) Specifications. However, notwithstanding the above, the terms and conditions set out in Section 21 of these Terms shall take precedence over any conflicting provisions set out in the Special Conditions or the Purchase Order form.

2. The Contract

- 2.1 The Purchase Order constitutes a firm offer by the Bank to purchase the Goods and/or Services on the terms and conditions of the Purchase Order, subject to these Terms and to any Special Conditions and Specifications approved by the Bank.
- 2.2 In case the Contractor does not send a written acceptance to the Bank concerning the Purchase Order, the Bank may rely on the Contractor's:- (i) delivery of Goods; (ii) performance of the Services; or (iii) acceptance of payment by the Bank as evidence of the Contractor's unqualified acceptance of these Terms, the Purchase Order, the Specifications and any Special Conditions. The date when Contract is deemed to be accepted under this Section 2.2 shall be:- (i) when the Goods are delivered to the Bank; (ii) when the performance of the Services commences; or (iii) when the payment of the Bank is accepted by the Contractor.
- 2.3 The Bank reserves the right to the revocation of any Purchase Order if it notifies the Contractor before the Purchase Order is accepted in accordance with these Terms.
- 2.4 A Contract shall be formed upon the acceptance of the Purchase Order by the Contractor which shall be:- (i) the date when the acceptance of the Purchase Order is communicated to the Bank; or (ii) the date when the Contract is deemed to be accepted pursuant to Section 2.2 of these Terms. The terms and conditions set out in the Purchase Order, these Terms, the Specification and any Special Conditions shall apply to each such Contract and supersede any terms and conditions sent by the Contractor and apply to the exclusion of any other terms or conditions subject to which the Purchase Order is accepted or purported to be accepted by the Contractor. The Contract represents the entire understanding between the Parties, in relation to the subject matter of the Contract. Under no circumstances may the terms of the Contract or any Purchase Order issued by the Bank be amended, modified, supplemented, altered or replaced by any purchase order, quotation or similar instrument provided by the Contractor to the Bank which the Contractor purports to apply and the Contractor agrees that no action by the Bank, including payment of any invoice(s) issued by the Contractor in connection with the Contract shall be deemed to be acceptance of any of the terms and conditions contained in such purchase order, quotation or similar instrument provided by the Contractor and such terms and conditions shall be void and of no force or effect, unless accepted both the Bank and the Contractor pursuant to a written agreement signed by the authorised representative of both Parties which expressly excludes the application of these Terms.
- 2.5 No variation to the Contract shall be binding unless made in writing and signed by the duly authorised representatives of both the Bank and the Contractor. Acceptance of variations to the Contract by electronic mail is specifically excluded.

3. Specifications, Testing and Inspection

- 3.1 The quantity, quality and description of the Goods and the scope of the Services shall, subject as otherwise provided herein, be as specified in the Purchase Order, the Special Conditions and in any applicable Specification.

- 3.2 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Bank in connection with the supply of the Goods and the performance of the Services under the Contract.
- 3.3 The Contractor shall comply with all applicable law and the terms and conditions of the Contract concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services.
- 3.4 Before delivering the Goods, the Contractor shall carefully inspect and test them for compliance with the Contract. If requested by the Bank, the Contractor shall give the Bank reasonable notice of the making of such inspection and test and shall allow the representative of the Bank to be present. The Contractor shall keep a proper record of all such inspections and tests and on request supply the Bank with copies of such records. The Special Conditions may provide for additional testing requirements that have to be completed by the Contractor.
- 3.5 The Bank shall be entitled to require one or more samples of the Goods to be submitted to it (at no additional cost to the Bank outside the Purchase Order Price) for inspection and testing prior to despatch.
- 3.6 If as a result of any inspection or testing required by the Contract, the Bank (acting reasonably) is not satisfied that the Goods or any part of the Goods comply in all respects with the Contract (and are likely to do so by the Delivery Date) the Bank will inform the Contractor in writing, within ten (10) days of such inspection or testing. The Contractor shall take such steps as are necessary to ensure compliance with the Contract. If after ten (10) days of the date of such notice the Bank is not satisfied that the Contractor has taken such steps, the Bank reserves the right to treat such failure as a repudiation of the Contract on the part of the Contractor and terminate the Contract in accordance with Section 11.4 of these Terms.
- 3.7 For the avoidance of doubt, any inspection or testing carried out in accordance with these Terms shall not constitute acceptance of the Goods by the Bank and shall not in any way prejudice any right or remedy of the Bank arising under the Contract or under the applicable law or otherwise and does not relieve the Contractor from any responsibility under the Contract. In the event of discrepancies in weight and/or volume of the Goods, the weight and/or volume established by the Bank upon the inspection of the incoming Goods will prevail, unless the Contractor proves that the weight calculated by it was measured correctly in accordance with a generally accepted methodology in the respective trade. In addition, the Bank shall have a right to reject and return the Goods and receive a full refund within thirty (30) days after any latent defect in the Goods becomes apparent.
- 3.8 Any performance certificates and certificates regarding testing and inspection carried out in accordance with these Terms shall be provided to the Bank by the Contractor shall be made free of charges in addition to the Purchase Order Price and certified in writing.

4. Time is of the Essence

Time shall be of the essence for the performance of the Contractor's obligations under the Contract where a Delivery Date is specified in the Purchase Order, and where such date is stated as an estimate or is not specified, then such date upon which the Bank could reasonably have expected such delivery of Goods or performance of Services to be affected by the Contractor.

5. Delivery of Goods and performance of the Services

- 5.1 Subject only to the terms set out in Section 5.8 below, the Contractor shall at its own risk and expense deliver the Goods to the Delivery Address on the Delivery Date in the manner specified in the Contract. Unless agreed by the Bank in writing in the Special Conditions, the deliverables required of the Contractor pursuant to this Contract shall not be treated as severable whether or not the Goods are delivered to the Bank by one or more instalment(s).
- 5.2 If the Contractor at any time has reason to believe that it will be unable to deliver the Goods or perform the Services on the Delivery Date, the Contractor shall immediately notify the Bank of the cause, the expected period of delay and the steps proposed by the Contractor to minimise such delay. Notwithstanding the service of such notice by the Contractor, failure by the Contractor to adhere to any provision as to time contained in or mentioned in the Purchase Order or otherwise in the Contract shall entitle the Bank to treat the Contract as repudiated in whole or in part and the Contractor shall be liable to repay any sum(s) already paid by the Bank in respect of the Contract together with any expenses reasonably incurred by the Bank as a result of such failure by the Contractor, including, but not limited to expenses incurred by the Bank in procuring supply of replacement goods by a third party in place of those the Contractor failed to supply pursuant to the Contract.
- 5.3 In the event that the Contractor fails to deliver the Goods or perform the Services to the Delivery Address on the Delivery Date, if the Bank elects not to terminate the Contract, the Contractor shall, at its own expense, arrange all such additional resources as may be necessary to ensure delivery of the Goods and/or performance of the Services to the Delivery Address as soon as is reasonably practicable thereafter.
- 5.4 The performance of the Contractor of its obligations under Sections 5.2-5.3 above shall be without prejudice to any rights and remedies available to the Bank under the Contract or under the applicable law in respect of any breach by the Contractor of its obligations under the Contract.
- 5.5 In case the Contract involves the delivery of Goods, a packing note quoting the Purchase Order number must accompany each delivery or consignment of the Goods and must be displayed prominently.
- 5.6 The Bank shall be entitled to reject any Goods delivered which are not in accordance with the Contract, including a failure to conform to the Specification and/or the terms set out in the Special Conditions.
- 5.7 The Contractor shall provide the Bank with any instructions or other information required to enable the Bank to inspect and accept delivery of the Goods and the manuals and information necessary to use the Goods (including, but not limited to safety data sheets, assembly instructions, health and safety measures necessary to use and install the Goods, etc.).
- 5.8 The Bank may by notice in writing to the Contractor given at any time before delivery of the Goods to postpone delivery of all or some of the Goods. It shall then be the duty of the Contractor as from the time when the Goods are due and ready for delivery to:- (i) store the relevant Goods or cause them to be stored; (ii) give written notice to the Bank stating where the relevant Goods are stored and on what terms; (iii) take all reasonable steps to safeguard the relevant Goods and prevent their deterioration. The Bank shall reimburse the Contractor for the reasonable and pre-approved costs of storing the relevant Goods in accordance with the Bank's instructions.

- 5.9 Without prejudice to any right of rejection or return which the Bank may have whether at the applicable law or under the Contract, title to and risk in Goods shall vest in the Bank, free of liens and encumbrances, upon delivery of the Goods to the Bank.
- 5.10 In providing the Services, the Contractor shall at all times ensure the diligent, due and proper execution of its obligations by its personnel in accordance with the Good Industry Practice, the Specifications, all applicable laws, enactments, orders, regulations, standards and other statutory instruments and all applicable terms and conditions of this Contract. The Bank may specify quality standards and service levels in the Special Conditions which must be complied with by the Contractor.

6. Working on the Site

- 6.1 The Contractor shall not deliver any equipment nor begin any work on the Site without obtaining prior approval from the Bank. The Bank shall have the right, at any time, to refuse admittance to, or order the removal from, the Site of any personnel or subcontractor or other person acting on behalf of the Contractor who in the opinion of the Bank is not a fit and proper person to be on the Site. Any steps taken under this Section 6.1 shall be confirmed to the Contractor by the Bank and shall not relieve the Contractor of its obligations under the Contract. For the avoidance of doubt, the Contractor agrees that: (i) any access to the Site shall be strictly limited to those areas of the Site, as determined by the Bank, necessary for the Contractor to fulfil the Contractor's obligation to deliver equipment or perform the Services under this contract; (ii) where applicable, any access to Bank information or systems while on the Site shall be limited to such information or systems, as determined by the Bank, necessary for the Contractor to fulfil the Contractor's obligations to perform the Services under this Contract; (iii) while working on the Site or, as the case may be, accessing the Bank's systems, the Contractor shall be accompanied by a representative of the Bank at all times or, as the case may be, supervised by a representative from the Bank's IT department; and (iv) in no event shall the Contractor copy or remove any information or documents from the Site without the prior written consent of the Bank. The Contractor acknowledges and agrees that any such access granted by the Bank to the Site or, where applicable, to the Bank's information or systems whether accessed on the Site or remotely, shall not constitute a waiver, renunciation or modification of any of the immunities, privileges or exemptions of the Bank accorded under the Agreement Establishing the European Bank for Reconstruction and Development dated 29 May 1990, international convention or any applicable law.
- 6.2 The Contractor shall take reasonable care to ensure that in carrying out the Services and delivery of Goods, its personnel and subcontractors do not interfere with the operations of the Bank. The Contractor shall ensure that all its personnel and subcontractors operating on the Site are made aware of, and comply with, the Bank's Health and Safety Policy, the Code of Practice for Contractors, Basic Fire Instructions and Security Procedures for the Contractors and all such other regulations and instructions as may be issued by the Bank.
- 6.3 The Contractor will report immediately to the Bank any:- (i) circumstances or events which might reasonably be expected to affect the safety of any person or the Site; (ii) accident or injury to any person and any damage to the property of the Bank or any third party at the Site; or (iii) circumstances or events in the Site which might reasonably be expected to hinder or prejudice the performance of the Services or the delivery of the Goods.
- 6.4 The Contractor shall be responsible at its own risk and expense for the delivery to, unloading at and removal from the Site of all things of all kinds necessary for carrying out the Services and/or the delivery of the Goods. All such items shall remain the

responsibility of the Contractor who shall be liable for the care, safety and storage thereof and shall remove them at the end of each visit and leave the Site in a clean, tidy and safe condition. The Contractor shall, at the Bank's written request, at its own expense and as soon as reasonably practicable:- (i) remove from the Site any equipment which in the reasonable opinion of the Bank is either hazardous, noxious or not in accordance with the Contract; and (ii) replace such item with a suitable substitute item of equipment.

7. Price and Payment

- 7.1 The price of the Goods and Services shall be the Purchase Order Price. Unless otherwise so stated in the Special Conditions or in the Purchase Order, the Purchase Order Price shall be:- (i) exclusive of any applicable value added tax; and (ii) inclusive of any duties, imports or levies other than value added tax; and (iii) in the case of Goods, inclusive of all charges for their packaging, carriage, insurance and delivery to the Delivery Address.
- 7.2 No increase in the Purchase Order Price may be made without the Bank's prior written consent which must be provided by an authorised signatory of the Bank. The Contractor shall pass through to the Bank any discounts in the cost of the Goods that it may receive from any subcontractors or any reductions in the cost of delivering the Services which were not foreseen on the date when the Purchase Order was issued by the Bank, and which are generally available to the Contractor's other customers.
- 7.3 In consideration of the Contractor carrying out all of its obligations under the Contract, the Bank shall pay the Contractor the Purchase Order Price in accordance with any payment terms set out in the Contract. If no payment terms are set out in the Purchase Order, the Contractor shall be entitled to invoice the Bank in respect of the Purchase Order Price and, subject to the privileges and immunities of the Bank, any applicable value added tax on or at any time after the acceptance of the delivery of the Goods or performance of the Services, as the case may be. Each of the Contractor's invoices shall be submitted to the address specified for such purpose in the relevant Purchase Order and shall quote the Purchase Order Number; invoices shall state any value added tax as a separate item on the invoice and shall contain all information required by the Bank to reclaim or recover any value added tax, as applicable. Payment shall be made in full by the Bank within thirty (30) days of receipt of the invoice by the Bank.
- 7.4 Payment by the Bank shall not constitute any admission by the Bank as to the proper performance by the Contractor of its obligations under the Contract.
- 7.5 The Bank reserves the right to deduct from any sums due and payable to the Contractor any monies due from the Contractor to the Bank whether or not such sums arise out of the Contract.
- 7.6 Offers, quotations and documents in connection with the Contract shall be provided without any charge to the Bank; expenses in relation to cost estimates shall not be reimbursable by the Bank.

8. Confidentiality and Compliance with Bank Policies

- 8.1 The Contractor will keep the Confidential Information confidential and will not disclose that Confidential Information to any third party or make any use of the Confidential Information for any purpose other than fulfilling its obligations under this Contract. Such disclosure is permitted only with the prior written consent of the Bank. The Contractor will, on request from the Bank, promptly return or destroy any Confidential Information.

- 8.2 Notwithstanding the foregoing, the Contractor may disclose such Confidential Information to the Contractor's personnel or permitted subcontractors involved in providing or supervising the provision of the Goods and Services:- (i) where such disclosure is necessary to permit the Contractor's personnel, agents or a subcontractor to perform their duties relating to the Goods or the Services; and (ii) provided that, if disclosed to an agent or a subcontractor, the Contractor undertakes to ensure that such subcontractors are bound by an obligation of confidentiality on terms similar to those set out in this Contract.
- 8.3 Confidential Information shall not include information which:- (i) at the time of disclosure to the Contractor is in the public domain; (ii) after disclosure to the Contractor is published or otherwise becomes available to the public otherwise than as a result of breach by the Contractor (or the Contractor's employees, directors, agents or subcontractors) of its obligations under this Contract; (iii) is already in the possession of the Contractor at the time of disclosure to it and which was not provided by the Bank or by a third party in breach of a confidentiality undertaking; (iv) is received after disclosure to the Contractor from a third party without an accompanying obligation of confidentiality; (v) is independently developed by the Contractor without reference to the Confidential Information; or (vi) subject to the Bank's privileges and immunities, to the extent that is required to be disclosed by law or order of a court or governmental agency, provided that the Contractor shall forthwith provide the Bank with notice of the disclosure requirement prior to making any such disclosure.
- 8.4 The Contractor's personnel who have access to the Bank's premises and/or to documents and information relating to the Bank's policies or operations, may, at the discretion of the Bank be required to sign an undertaking to comply with the Bank's Policy on Use of Bank IT Facilities, Information Security Policy, Access Control Policy and Procedures Detailing Bank Access to Bank IT Facilities and Information Assets, each available on the Bank's intranet at http://www.is.ebrd.com/policies_and_procedures, as may be updated from time to time, and, when operating at all times in the Site, the Health, Safety and Security Policy, available on the Bank's intranet at <http://intranet.ebrd.com/ebdnet/services/hss/health/policy/health-and-safety-policy.pdf>, as may be updated from time to time, and an undertaking of confidentiality prior to commencing their assignment.

9. Warranties and Conditions; Intellectual Property Rights

- 9.1 With respect to the Goods, in addition and without prejudice to all other conditions or warranties express or implied, the Contractor warrants, represents and undertakes to the Bank that:- (i) the Goods delivered to the Bank will be new, unused and not refurbished and they shall be free from defects in or arising from design, materials or workmanship and conform the terms of the Contract (including the Specification); (ii) the Goods will comply with all applicable law in effect at the date of delivery relating to their sale and otherwise; (iii) the Bank is provided with adequate instructions to enable the Bank to make full use of the Goods; and (iv) the Bank shall acquire the Goods free from all liens, charges, encumbrances or other similar adverse rights and neither the Contractor nor any third party shall be entitled to retain title to the Goods or to have any equitable or other rights over the Goods.
- 9.2 With respect to the Services, in addition and without prejudice to all other conditions or warranties express or implied, the Contractor warrants, represents and undertakes to the Bank that: (i) it shall perform the Services with all reasonable care and skill and in a good and workmanlike manner in accordance with all applicable law and Good Industry Practice; (ii) provide suitably qualified and experienced personnel to carry out the

Services or related tasks; and (iii) provide the Services in a timely and efficient manner and complete the Services to the satisfaction of the Bank.

- 9.3 The Contractor warrants and undertakes that the use and/or possession of the Goods by the Bank and/or the provision of the Services to the Bank will not infringe the Intellectual Property Rights of any third party. Contractor shall not use as part of the Services any third party materials that it does not have a right to sub-licence to the Bank.
- 9.4 If any Goods or Services to the Bank are not supplied or performed in accordance with the Contract, then the Bank, within twelve (12) months of the date of their delivery or performance, without prejudice to any of its other rights or remedies under this Contract or under the applicable law, may require the Contractor by notice in writing, to:- (i) repair the Goods and/or to supply replacement Goods or Services at the cost of the Contractor in accordance with the Contract and within such reasonable time period as the Bank might stipulate; or (ii) treat the Contract as discharged and repudiated by the Contractor's breach and require the refund to the Bank of the Purchase Order Price (part thereof) paid by the Bank in respect of such Goods or Services together with statutory interest thereon together as well as any expenses reasonably incurred by the Bank as a result of the failure of the Contractor to supply the Goods or perform the Services in accordance with the Contract (including, but not limited to expenditure reasonably incurred by the Bank in procuring supply of replacement goods or performance of other services by a third party in place of those the Contractor failed to supply and/or perform under the Contract). Defects as to the quality of the Goods appearing within six (6) months after the transfer of the title of the Goods shall be deemed to have existed prior to the transfer of risk, unless it shall be unreasonable to maintain that presumption due to the type of defect.
- 9.5 Repaired Goods and/or replacement Goods or Services provided in accordance with Section 9.4 (i) above shall be subject to the provisions of this Contract in the same manner as those originally provided under the Contract and the twelve (12) months period described in Section 9.4 shall start again from the date the Goods are repaired or the date when the replacement Goods or Services are provided to the Bank.
- 9.6 To the extent permitted under the applicable law, the Contractor hereby assigns the Warranty Rights to the Bank and the Contractor hereby agrees, at the request of the Bank, to take all reasonable steps that the manufacturer, importer or other supplier(s) to it of the Goods enter(s) into an agreement with the Bank the effect of which is to grant to the Bank the same Warranty Rights as granted to the Contractor.
- 9.7 Where the non-conforming or non-performed Services or Goods are specifically itemised in the Contract, the Bank may withhold from any payment to the Contractor under this Contract an amount equivalent to such portion of the Purchase Order Price that is directly allocated to such Services or Goods until the Contractor complies with the Bank's notice provided to the Contractor under Section 9.4 (i) above.
- 9.8 The Contractor acknowledges that all Materials, in whatever medium or format, produced for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract, shall be the sole property of the Bank. Contractor agrees to undertake any necessary acts promptly to give effect to the assignment or transfer of any rights in the Materials to the Bank promptly upon creation of such Materials. To the extent that the Contractor uses any third party materials in connection with the Contract, the Contractor shall grant to the Bank a royalty-free, irrevocable, perpetual licence to use such materials to the extent necessary in connection with the Goods and/or Services provided pursuant to the Contract.

- 9.9 The Contractor represents and warrants that it has full capacity and authority to enter into and perform its obligations under the Contract and that the Contract (including any relevant Purchase Order) shall be entered into by its duly authorised representative.

10. Liability

- 10.1 Subject to the terms of Section 10.5 below, the Contractor shall indemnify and keep the Bank indemnified against all loss, liabilities, damages, claims, costs and expenses of whatever nature (included but not limited to legal costs) arising from or incurred in relation to:- (i) death or injury to person or loss of or damage to property to the extent that such death, injury, loss or damage is attributable to the acts or omissions of the Contractor, its officers, personnel, agents or sub-contractors; (ii) the infringement or alleged infringement (including but not limited to the defence of such alleged infringement) or any Intellectual Property Rights caused by or resulting from the use or possession of the Goods by the Bank or the provision of the Services by the Contractor to the Bank; (iii) any injury, damage or loss resulting from the Goods whether from any inherent or manufacturing error, by reason of negligent design, production or otherwise or arising out of the performance of the Services.
- 10.2 The liability of the Contractor to the Bank shall not exceed in respect of non-performance, delay or other breach of the Contract:- (i) two hundred and fifty percent (250%) of the Purchase Order Price; or (ii) one hundred and fifty thousand pound sterling (£150,000.00), whichever is higher.
- 10.3 Without prejudice to Section 10.5 below, in no event shall either the Contractor or the Bank be liable to each other for indirect or consequential loss or damage (whether such as loss of profit or other loss of income, goodwill, contracts or opportunity) in relation to each other in connection with the Contract.
- 10.4 Without prejudice to Section 10.5 below, the Bank shall not be liable to the Contractor under or in connection with the Contract for any loss or damage (outside the obligation of the Bank to pay the Purchase Order Price for the Goods and Services delivered by the Contractor in accordance with this Contract) whether direct, indirect, financial, economic, or consequential, whether or not caused by the negligent act or omission of the Bank.
- 10.5 Neither the Bank or the Contractor excludes or limits liability to the other for:- (i) any negligent act or omission which gives rise to death or personal injury in connection with the Contract; or (ii) fraudulent misrepresentation, fraudulent concealment or other fraudulent action; or (iii) any other liability which cannot be excluded or limited under applicable law.

11. Term and Termination

- 11.1 Unless specified in the Purchase Order or in the Special Conditions, the Contract shall commence on the date of the acceptance of the Purchase Order and shall continue until the earlier of:- (i) the term set out in the Purchase Order or in the Special Conditions expires; or (ii) until terminated in accordance with Sections 11.2-11.4 below; or (iii) until the first anniversary of the date the Purchase Order is accepted in accordance with these Terms.
- 11.2 The Bank shall be entitled to cancel and terminate a Contract in respect of all or part only of the relevant Goods and/or Services, by giving notice to the Contractor at least fifteen (15) days prior to delivery or performance (as appropriate).

- 11.3 A Contract may be terminated forthwith:- (i) by either Party upon giving written notice to the other if the other commits any material breach of this Contract and which (in the case of a breach capable of remedy) shall not have been remedied within thirty (30) days of a written request to remedy the same; (ii) by the Bank if the Contractor makes any arrangement or composition with its creditors or proceedings are commenced for the appointment of a receiver, administrator, liquidator, manager or similar officer in respect of all or part of its assets or if a resolution is passed for winding-up or the Contractor undergoes or suffers any analogous acts or proceedings under the law of the country where the Contractor is registered; (iii) by the Bank if the Contractor is engaged, in opinion of the Bank in Prohibited Practices; or (iv) by the Bank in case of an event of force majeure as described in Section 17.
- 11.4 The Bank may terminate the Contract with immediate effect as provided for in Section 3.6.

12. Effects of Termination

- 12.1 If the Contract is terminated by the Bank pursuant to Section 11.2, the Bank's sole liability shall be to pay such documented expenses as have been properly and reasonably incurred by the Contractor in connection with the Contract prior to the date of cancellation. Contractor shall have a duty to mitigate any costs or expenses and, for the avoidance of doubt, the Bank shall only reimburse unavoidable costs and expenses to the Contractor under the Contract.
- 12.2 If this Contract is terminated pursuant to Section 11.3 (iv) by the Bank, the Bank shall pay the Contractor for all Goods and Services delivered and accepted before the date of termination. Payment will become due to the Contractor thirty (30) days, unless the Bank disputes the amount payable. The amount in dispute will become payable within thirty (30) days of resolving the dispute.
- 12.3 Except as provided for in Section 12.2 above, if this Contract is terminated pursuant to Section 11.3 or Section 11.4 by the Bank, the Contractor shall be liable to and indemnify the Bank for all losses suffered by the Bank as the consequence of termination of the Contract in accordance with the terms and conditions set out in Section 10.
- 12.4 If this Contract is terminated by the Contractor pursuant to Section 11.3, the Bank shall remain liable to pay to the Contractor all sums which have accrued due and owing to the Contractor under the Contract taken into account any limitation of liability of the Bank as set out in Section 10.

13. Audit Rights

- 13.1 The Bank shall have the right to perform audits in connection with the Contract. The Contractor shall, without charge to the Bank, provide reasonable access to:- (i) any records related to the Contractor's performance under the Contract; and (ii) the Contractor's officers, employees and subcontractor(s) engaged in the performance of the Contractor's obligations under the Contract to enable the Bank and/or its auditors, experts and insurers, to conduct appropriate audits and examinations of the operations of the Contractor in relation to the performance of the Contract and to verify that the Contractor is in full compliance with the obligations contained therein.
- 13.2 The Bank shall provide reasonable written notice to the Contractor prior of exercising its right to audit under Section 13.1. Audits shall be carried out during the Contractor's normal working hours.

- 13.3 The Contractor shall permit access to all records and information relating to the Contract, except that the Contractor may refuse to provide access to any information proprietary or relating to the Contractor's other customers or its third party licensors.

14. Notices

- 14.1 Any notice required to be given by either party to the other shall (except as otherwise expressly provided herein or in any relevant Contract) be sent either by first class post, facsimile transmission (receipt confirmed) to the Contractor at its registered office or principal place of business and to the Bank at the address for correspondence shown on the face of the Purchase Order.
- 14.2 Any notice sent by post under Section 14.1, which is not returned to the sender as being undelivered, shall be deemed to have been duly served on the third (3.) day following mailing.
- 14.3 Any notice sent by facsimile transmission in accordance shall be deemed to have been duly served on the date of transmission provided that a confirming copy is sent by first class pre-paid post to the other party to the address referred to in Section 14.1 within twenty-four (24) hours after the fax transmission.

15. Prohibited Practices

The Contractor warrants that it has not engaged in Prohibited Practices. The Contractor shall take all reasonable steps to prevent Prohibited Practices by its personnel. The Bank, without prejudice to any other remedy for breach of contract may, by written notice, terminate the Contract if in its judgement, the Contractor has engaged in Prohibited Practices as provided for in Section 11.3 (iii) of these Terms.

16. Subcontractors

The Contractor shall ensure that any subcontractors fully comply with the Contractor's obligations under this Contract. The Contractor will be liable for the acts or omissions of its subcontractors and the Contractor will not be relieved of its obligations under this Contract by use of such subcontractors

17. Force Majeure

Neither the Bank or the Contractor shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control, and in such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed, provided that if the period of delay or non-performance continues for thirty (30) days, the Bank may terminate as provided for in Section 11.3 (iv) of these Terms.

18. Insurance

For so long as its obligations under the Contract are outstanding, the Contractor shall procure and maintain in effect with reputable insurance companies insurance policies sufficient to cover the Contractor's potential liabilities under this Contract and to satisfy all applicable legal requirements. Unless otherwise advised by the Bank, the Contractor agrees that it shall not be able to claim or benefit from any insurance policy of the Bank while performing its obligations under this Contract.

19. Data Protection

The Contractor confirms that when acting as a data processor, the Contractor shall: (i) only process personal data in accordance with the Bank's instructions; (ii) comply with obligations equivalent to those imposed on a data controller by the Data Protection Act 1998; (iii) adopt and maintain appropriate technical and organisational security measures to protect against unauthorised or unlawful processing of personal data; and (iv) not transfer personal data outside of the European Economic Area except with the Bank's prior written consent. For purposes of this Section, terms and expressions shall have the meaning as defined in the Data Protection Act 1998. This Section 19 is without prejudice to Section 21.2 of these Terms.

20. Announcements and EBRD Logo

The Contractor shall obtain written approval from the Bank prior to making publicity releases, advertisements or announcements or other publicity relating to its appointment under, or disclosing any provision or term of, this Contract. The Bank's logo is a registered service mark and as such may not be reproduced without the express written permission of the Bank. If requested by the Bank, the Contractor shall destroy all Goods bearing the name "*European Bank for Reconstruction and Development*" or "*EBRD*" or similar or any trade marks of the Bank or the logo of the Bank which are not delivered and/or not accepted.

21. Governing Law and Dispute Resolution

- 21.1 The Contract shall be construed in accordance with English law. Any non-contractual obligations arising out of or in connection with the Contract shall be governed by and construed in accordance with English law. Any dispute controversy or claim arising out of, or relating to the Contract or the breach, termination or invalidity hereof or any non-contractual obligations arising out of or in connection with the Contract which cannot be amicably settled, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as in force and effect on the date of this Contract. There shall be one (1) arbitrator, and the appointing authority for the purposes of the UNCITRAL Rules shall be the LCIA (London Court of International Arbitration). The seat and place of arbitration shall be London, England and the English language shall be used throughout the arbitral proceedings. The Parties hereby waive any rights under the Arbitration Act 1996 or otherwise to appeal any arbitration award to, or to seek determination of a preliminary point of law by, the courts of England or elsewhere. The arbitrator shall not be authorised to grant, and the Contractor agrees that it shall not seek from any judicial authority, any interim measures or pre-award relief against the Bank, any provisions of the UNCITRAL Arbitration Rules notwithstanding.
- 21.2 Nothing in the Contract shall be construed as a waiver, renunciation or modification by the Bank of any immunities, privileges and exemptions of the Bank accorded under the Agreement Establishing the European Bank for Reconstruction for Development, international convention or any applicable law. Notwithstanding the foregoing, the Bank has made an express submission to arbitration under Section 21.1 of these Terms and accordingly, and without prejudice to its other privileges and immunities (including, without limitation, the inviolability of its archives), it acknowledges that it does not have immunity from suit and legal process under Article 5(2) of Statutory Instrument 1991, No. 757 (The European Bank for Reconstruction and Development (Immunities and Privileges) Order 1991), or any similar provision under English law, in respect of the enforcement of an arbitration award duly made against it as a result of its express submission to arbitration pursuant to Section 21.1 of these Terms.

22. Miscellaneous

- 22.1 No omission to exercise or delay in exercising on the part of any Party to the Contract any right, power or remedy provided by law or under the Contract shall constitute a waiver of such right, power or remedy or any other right, power or remedy or impair such right, power or remedy. No single or partial exercise of any such right, power or remedy shall preclude or impair any other or further exercise thereof or the exercise of any other right, power or remedy provided by law or under the Contract. Any waiver of any right, power or remedy under the Contract must be in writing and may be given subject to any conditions thought fit by the grantor.
- 22.2 Notwithstanding that the whole or any part of any provision of the Contract may prove to be illegal or unenforceable the other provisions of the Contract and the remainder of the provision in question shall remain in full force and effect.
- 22.3 Each Party shall at all time act as independent parties and nothing contained in the Contract shall be construed or implied to create an agency or partnership. Neither Party shall have the authority to agree to or incur expenses on behalf of the other.
- 22.4 Provided that the terms and conditions of the Contract do not prescribe otherwise, nothing in the Contract is intended to confer on any person any right to enforce any term of this Contract which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.
- 22.5 Termination or expiration of all or part of the Contract shall not affect either of the accrued rights or liabilities of the Parties or affect the coming into force or the continuance in force of Sections 8, 9.9, 10, 12-14, 20-22 which shall continue to be in force on or after the termination or expiration of the Contract.
- 22.6 The Bank may at any time, without notice to the Contractor, set off any liability of the Contractor to the Bank against any liability of the Bank to the Contractor, whether any such liability is present or future, liquidated or unliquidated, under this Contract or not and irrespective of the currency of its denomination. If the liabilities to be set off are expressed in different currencies, the Bank may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Bank of its rights under this Section 22.6 shall be without prejudice to any other rights or remedies available to it under the Contract or otherwise.