

SECTION 6: PARTICULAR CONDITIONS OF CONTRACT

**GLASS REPLACEMENT WORK FOR DOORS &
WINDOWS OF WAYSIDE AND GAAKOSHI
FLATS IN MALÉ**

**Hulhumalé, Republic of Maldives
August 2020**

**SECTION 6 -CONDITIONS OF CONTRACT
PARTICULAR CONDITIONS**

These “Particular Conditions” are amendments and additions to the “General Conditions” that form part of the Conditions of Contract for Construction” First Edition 1999 published by the *Fédération Internationale Des Ingénieurs-Conseils*(FIDIC)

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CONDITIONS OF CONTRACT PARTICULAR CONDITIONS

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<u>Clause No.</u>	<u>Amendments and Additions</u>
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1 GENERAL PROVISIONS

1.1

Definitions

1.1.1

The Contract

1.1.1.4	Amend by deleting the whole content and replacing with the following words in the Sub-Clause:
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Letter of Tender

“**Letter of Tender**’ is referred to the document entitled ‘Form of Letter of Tender’, which was completed by the Contractor and submitted along with the Tender Documents, and includes the signed offer to the Employer for the Works.”

1.1.1.8

Amend by inserting the following words at the end of the Sub-Clause:

Tender

“The word ‘Tender’ is synonymous with ‘Bid’, and the words ‘Appendix to Bid’ with ‘Appendix to Tender’, and the words ‘Tender Documents’ with ‘Bidding Documents’.”

1.1.1.11

Amend by inserting the following Sub-Clause after Sub-Clause 1.1.1.10:

Form of Letter of Tender

“**Form of Letter Of Tender**” means the “Letter of Tender” in the Contract Documents.

1.1.5

Works and Goods

1.1.5.8

Amend by inserting the following words at the end of the Sub-Clause:

Works

“**Works**’ shall also mean to include any project component stated or implied in the Contract. It shall also mean to include any design, engineering or investigative works required in association with the Permanent Works or the Temporary Works.”

1.1.6

Other Definitions

1.1.6.2 Amend by inserting the following words at the end of the Sub-Clause:

Country "All the Permanent Works are to be executed in Republic of Maldives."

1.1.6.10 Amend by inserting the following new Sub-Clause at the end of Sub-Clause 1.1.6.9

Temporary Site "Temporary Site" means the places or temporary land which the Employer hands over under the title "Temporary Land". This site is for the purpose of temporary/fabrication Works that are to be executed and to which Plant and Materials are to be temporarily stored. This Temporary Site will be a place considered to be forming a part of the Site under the Sub-Clause 1.1.6.7.

1.2 Amend by inserting the following words after (d) of the Sub-Clause

Interpretation (e): "In these Conditions, provisions including the expression "Cost plus reasonable profit" require this profit to be one tenth (10%) of this cost."

1.5 Delete Sub-Clause 1.5 and substitute:

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 Letter of Acceptance,
- (c) the Letter of Tender & Appendix to tender
- (d) the Amendment Nos.
- (e) the Particular Conditions of Contract,
- (f) the General Conditions of Contract,
- (g) the Specification,
- (h) the Drawings
- (i) the Priced Bill of Quantities, and
- (j) any other documents forming part of the Contract.

If an ambiguity or discrepancy is found in the documents, the Engineer shall issue any necessary clarification or instruction.

1.12 Amend by inserting the following words at the end of the Sub-Clause:

Confidential Details "The Contactor 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 written agreement of the Employer.

The Contractor further acknowledges that, in performing the Contract, he may have access to confidential information of a non-public or proprietary nature relating to the Employer, its associated entities, their business affairs, clients, customers and employees, governmental and trade secrets and other confidential information data as well as information relating to the Works (together "Confidential Information"). The Contractor undertakes without limit of time: -

(1) to use the Confidential Information only for the purposes of performing the Contract and not use the Confidential Information for his own personal gain or benefit or for the benefit of any person other than the Employer or any associated entity; and

(2) to keep the Confidential Information strictly secret and confidential and in particular not to divulge, publish or disclose the Confidential Information whether in whole or in part and whether directly or indirectly to any third party without the prior written consent of the Employer.

For the avoidance of doubt, these undertakings as to confidentiality shall survive the expiry or termination of the Contract howsoever arising.

In the event of termination of the Contract or at any time upon request of the Employer, all Confidential Information shall be returned to the Employer forthwith, including any paper and electronic copies of the same. In the event that any Confidential Information is held on any electronic device in a third party's possession, custody or control, then the Contractor shall confirm in writing that such Confidential Information has been expunged and destroyed. The Contractor further agrees that damages will not be an adequate remedy in the event of any actual or potential breach of their undertakings hereof.

The above undertakings as to confidentiality shall not apply to information which the Contractor can establish to the Employer's satisfaction: -

(1) is in or enters the public domain otherwise than as a consequence of any unauthorised disclosure, act or omission by the Contractor;

(2) is lawfully and properly in the possession of the Contractor at the time it is disclosed to or obtained by the Contractor (as evidenced by the Contractor's written records) and which was not obtained directly or indirectly from the Employer;

(3) is disclosed pursuant to requirements of law."

1.13

Amend by deleting (b) and inserting the following at the end of the Sub-Clause:

Compliance with Laws

"For the avoidance of doubt, the Contractor agrees that he shall comply with all applicable Laws, ordinances, codes and regulations in the performance of his obligations under the Contract, including the procurement of permits and certificates where required. If at any time during the term of the Contract, the Contractor is informed or information comes to his attention that he is or may be in violation of any Laws, ordinance or code (or if it is so determined by any court, tribunal or other authority), the Contractor shall immediately take all appropriate steps to remedy such violation and comply with such Laws, regulation, ordinance or code in all respects. Further, the Contractor shall establish and maintain all proper records (particularly, but without limitation to, accounting records) required by any Laws, code of practice or corporate policy applicable to him from time to time."

1.14 Amend by inserting the following words at the end of the Sub-Clause:

Joint and Several Liability “Where the Contractor is a group comprising of two or more persons, these persons shall mutually agree on their leader and inform Employer, within 14 days after signing of the contract, of such agreement in the form of a document signed/executed by all these persons for approval of the Employer.

The Employer shall communicate and deal with the leader, appointed as stated above and representing the Contractor, in all aspects in respect to the Contract/Project. In no event will the Employer be involved in any dispute that may arise between the persons that the Contractor is comprised of.”

2 THE EMPLOYER

2.1 Right of Access to the site Amend by inserting the following words at the end of the Sub-Clause:

Contractor may request within 7 days from the date the Contract comes into force and effect, for Temporary Site (temporary land) of reasonable size for the purpose of materials and equipment storage, fabrication and for the need of the Contractor’s staff and employees. If the Contractor fails to request for Temporary Site within this period, it shall be deemed that the Contractor is satisfied with the space within the site. Upon receipt of request for Temporary Site, the Employer may provide the Contractor, at his sole discretion a Temporary Site (temporary land) for free of charge.

Notwithstanding the foregoing, the Contractor shall not be entitled for any extension of time or additional cost in delay by the Employer in handover of the Temporary Site or right of access to, and possession of, the Temporary Site.

2.2 Amend by inserting the following words at the end of the Sub-Clause:

Permits, Licenses or Approvals “This Sub-Clause is subject to the provision that under no circumstances whatsoever shall the Employer be under any duty or obligation to carry out any of the matters stated in paragraphs (a) or (b) of this Sub-Clause, and any failure by the Employer to provide assistance in respect of such matters shall not relieve the Contractor from his duties, obligations or responsibilities under the Contract.”

4 THE CONTRACTOR

4.2 Amend by inserting the following words at the end of the second paragraph of Sub-Clause:

Performance Security “If the Performance Security is in the form of a bank guarantee, it shall be issued either (a) by a bank located in the Republic of Maldives, or (b) directly by a foreign bank acceptable to the Employer. If the Performance Security is not in the form of a bank guarantee, it shall be furnished by a registered financial entity acceptable to the Employer, or licensed to do business in Republic of Maldives.”

4.3 Amend by replacing the last paragraph of the Sub-Clause with the following words:

Contractor’s Representative “The Contractor’s Representative and all these persons shall be fluent in English, failing which the Contractor shall make a competent interpreter available at all times.”

4.10 Amend by adding the following at the end of Sub-Clause 4.10:

Site Data (f) existing utilities and infrastructure

4.19 Delete the second and third paragraphs and amend by inserting the following words at the end of the first paragraph of Sub-Clause:

Electricity, Water and Gas “The Contractor shall obtain temporary electricity and water from the local authorities for his own uses. All the cost should be borne by the Contractor including initial cost and monthly bills. If such services are not available in the Site area, the Contractor shall provide on his own cost alternative methods to obtain electricity, water and any other utility service required to complete the work.”

4.21 Delete the first sentence in first paragraph and amend inserting the following words at the beginning of the first paragraph of Sub-Clause:

Progress Reports “Monthly progress reports shall be prepared by the Contractor and submitted to the Employer in three copies.”

4.25 Amend by Inserting the following new Sub-Clause at the end of Sub-Clause 4.24

Coordination with the Local Service Providers The Contractor shall cooperate and co-ordinate with Maldives State Electric Company (STELCO) and Male’ Water and Sewerage Company (MWSC), during laying service pipes/cables and follow their guidelines and instructions. The Employer shall give necessary reasonable assistance in this regard”

**6 STAFF
AND LABOUR**

6.1 Amend by inserting the following new paragraphs at the end of the Sub-Clause:

Engagement of Staff and Labour “The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labour with appropriate qualifications and experience from sources within the Country.

The Contractor may import any personnel who are necessary for the execution of the Works. The Contractor must ensure that these personnel are provided with the required residence visas and work permits, and shall be solely responsible for complying with procedures and processing of such visas and work permits in the Country. The Contractor shall be responsible for the return to the place where they were recruited from or to their domicile of imported Contractor’s Personnel.”

6.5 Amend by inserting the following new paragraph at the end of the Sub-Clause:

Working Hours “The Contractor shall respect the Country’s recognised festivals, days of rest, and religious or other customs.”

6.6 Amend by inserting the following new paragraphs between the first and second paragraphs of the Sub-Clause:

Facilities for Staff and Labour

“Without prejudice to the foregoing, the Contractor shall provide and maintain such accommodation and amenities as he may consider necessary for all the Contractor’s Personnel, including (without limitation) all fencing, water supply (both for drinking and other purposes), electricity supply, sanitation, cookhouses, fire prevention and firefighting equipment, air conditioning, cookers, refrigerators, furniture, and other requirements in connection with such accommodation or amenities. Upon completion of the Contract, unless otherwise agreed with the Employer, the temporary camps or housing provided by the Contractor shall be removed and the site reinstated to its original condition, subject to the approval of the Engineer.

The Contractor shall arrange for the provision of a sufficient supply of suitable food at reasonable prices for all the Contractor’s Personnel.

The Contractor shall, so far as is reasonably practicable, having regard to local conditions, provide on the Site an adequate supply of water for drinking and other purposes for the use of the Contractor’s Personnel.”

6.7 Amend by inserting the following new paragraphs between the first and second paragraphs of the Sub-Clause:

Health and Safety

“The Contractor shall at all times take the necessary precautions to protect all staff and labour employed on the Site from nuisance by insects, rats, and other pests and reduce their danger to health. The Contractor shall provide suitable prophylactics for the Contractor’s Personnel for the prevention of malaria, and shall take steps to prevent the formation of stagnant pools of water. The Contractor shall comply with all the regulations of the local health authorities in these respects and shall in particular arrange to spray thoroughly with approved insecticide all buildings erected on the Site. Such treatment shall be carried out at least once a year or as otherwise instructed by the Engineer.

In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders, and requirements as may be made by the Employer’s Government or the local medical or sanitary authorities for the purpose of dealing with and overcoming the same.”

6.12 Amend by inserting the following new Sub-Clause after Sub-Clause 6.11:

Alcoholic Liquor or Drugs

“The Contractor shall not, otherwise than in accordance with the Laws of the Country, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift, barter or disposal of it by Contractor’s Personnel.”

6.13 Amend by inserting the following new Sub-Clause after Sub-Clause 6.12:

Arms and Ammunition

“The Contractor shall not give, barter, or otherwise dispose of to any person, any arms or ammunition of any kind or allow Contractor’s Personnel to do so.”

6.14 Amend by inserting the following new Sub-Clause after Sub-Clause 6.13:

Burial of the Dead

“In the event of the death of any of the imported Contractor’s Personnel or members of their families, the Contractor shall be responsible for making the appropriate arrangements for their repatriation to the place where they were originally recruited from or to their domicile or to any other place as required for burial. The Contractor shall also be responsible, to the extent required by any Laws, for making arrangements for burial of any of his local Personnel who may die whilst engaged upon the Works.”

8 COMMENCEMENT, DELAY AND SUSPENSION

8.1 Amend by inserting the following new paragraphs at the end of the Sub-Clause:

Commencement date "The Commencement Date shall be the date the Contractor gets the right of access to Site (excluding Temporary Site) as per Sub-Clause 2.1[Right of Access to the Site]".

12 MEASUREMENT AND EVALUATION

12.3 Amend by deleting the first paragraph of the Sub-Clause 12.3.

Evaluation

Amend by deleting the sub-paragraph (a) of the second paragraph of Sub-Clause 12.3

12.4 Amend by inserting the following new paragraph at the end of the Sub-Clause:

Omissions "Items for the Works described in the Bill of Quantities for which no rate or price has been entered in the Contract shall be considered as included in other rates and prices in the Contract and will not be paid for separately by the Employer"

13 VARIATIONS AND ADJUSTMENTS

13.1 Amend by deleting the first sentence of second paragraph of the Sub-Clause and replacing with the following: -

Right to vary

The Contractor shall execute and remedy any defects therein, and be bound by each Variation, unless the Contractor promptly gives notice to the Engineer stating (with supporting particulars) that the Contractor cannot readily obtain the Goods required for the Variation.

13.1 Amend by deleting the third paragraph including sub-paragraphs (a) to (f) of the Sub-Clause:

Right to vary

13.1 Amend by inserting the following new paragraph at the end of the Sub-Clause:

"Variations can be initiated by the following ways,

Right to vary

- (a) The contractor may initiate his own proposals under Sub-Clause 13.2 [*Value Engineering*], which are intended to benefit both parties; or
 - (b) The Employer may request a proposal under Sub Clause 13.3 [*Variation Procedure*], seeking prior agreement so as to minimise dispute.
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13.8 Amend by deleting the entire contents of the Sub-Clause and replacing with the following: -

Adjustment for changes in Cost "Subject to Sub-Clause 13.7 [*Adjustments for Changes in Legislation*], the Contract Price shall not be subject to any adjustment in respect of rise or fall in the cost of labour, Materials, or any other matters affecting the cost of execution of the Contract."

14 CONTRACT PRICE AND PAYMENT

14.4 Amend by deleting entire Sub-Clause 14.4

Schedule of Payments

14.7 Amend by deleting sub-paragraph (a) of first paragraph of Sub-clause 14.7 and substituting with:

Payment

(a) the advance payment within 42 days after issuing the Letter of Acceptance or within 28 days after receiving the documents in accordance with Sub-Clause 4.2 [*Performance Security*] and Sub-Clause 14.2 [*Advance Payment*], whichever is later:

Amend by adding the following paragraph at the end of the Sub-Clause 14.7;

The Employer shall not be held liable for reimbursement to the Contractor of any fees, charges or costs levied by the Contractor's bank in connection with the transfer of any amount paid to the Contractor by the Employer under the Contract.

20 CLAIM, DISPUTES AND ARBITRATION

20.6 Amend by deleting the contents of the Sub-Clause entirely and replacing with the following:

Arbitration

Unless settled amicably, any dispute in respect of which the DAB's decision (if any) has not become final and binding shall be finally settled under the relevant court of Maldives.

A dispute claim may be commenced prior to or after completion of the Works. The obligations of the Parties, the Engineer and the DAB shall not be altered by reason of any dispute claim being conducted during the progress of the Works.