

GOVERNMENT OF YOBE STATE

GENERAL CONDITIONS OF CONTRACT

FOR THE

PROCUREMENT OF GOODS

2019

Table of contents

TABLE OF CONTENTS.....	2
NOTE TO USERS	4
A. GENERAL PROVISIONS	5
DEFINITIONS	5
CONTRACT DOCUMENTS	6
CORRUPT, FRAUDULENT, COLLUSIVE OR COERCIVE PRACTICES.....	6
B. THE CONTRACT	8
INTERPRETATION.....	8
ENTIRE AGREEMENT.....	8
AMENDMENT.....	8
NON-WAIVER.....	8
SEVERABILITY	8
PARTIAL SUPPLY	8
DOCUMENTS FORMING THE CONTRACT AND PRIORITY OF DOCUMENTS	9
ELIGIBILITY.....	9
GOVERNING LANGUAGE.....	9
GOVERNING LAW.....	10
GRATUITIES / AGENCY FEES.....	10
JOINT VENTURE, CONSORTIUM OR ASSOCIATION (JVA)	10
CONFIDENTIAL INFORMATION	10
COMMUNICATIONS AND NOTICES	11
PATENT AND INTELLECTUAL PROPERTY RIGHTS	11
COPYRIGHT.....	12
ASSIGNMENT	12
SUB-CONTRACTING	12
C. PERFORMANCE OF CONTRACT.....	12
CONTRACTOR’S RESPONSIBILITIES	12
PROCURING ENTITY’S RESPONSIBILITIES	13
SCOPE OF SUPPLY	13
CHANGE ORDERS AND CONTRACT AMENDMENTS	13
PACKING AND DOCUMENTS	14
DELIVERY AND DOCUMENTS AND ACCEPTANCE.....	14
CONTRACT PRICE	14
TRANSPORTATION.....	14
SPARE PARTS	15
TERMS OF PAYMENT.....	15
INSURANCE.....	16
TAXES AND DUTIES.....	16
PERFORMANCE SECURITY	16
SPECIFICATIONS AND STANDARDS	16
INSPECTIONS AND TESTS.....	18
WARRANTY	18
EXTENSIONS OF TIME.....	19
LIQUIDATED DAMAGES	19
LIMITATION OF LIABILITY	20
CHANGE IN LAWS AND REGULATIONS	20

Government of Yobe State
General Conditions of Contract for Procurement of Goods

FORCE MAJEURE20
TERMINATION21
SETTLEMENT OF DISPUTES22

Note to users

These General Conditions of Contract for the Procurement of Goods govern all contractual provisions for this category of procurement and should be read by all bidders before submitting their bids.

A. General Provisions

Definitions

1.1 The following words and expressions shall have the meaning hereby assigned to them. Boldface type is used to identify the defined term:

- (a) **“Completion Schedule”** means the fulfillment of the Related Services by the Contractor in accordance with the terms and conditions set forth in the Contract;
- (b) **“Contract Agreement”** means the Agreement entered into between the Procuring Entity and the Contractor, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein;
- (c) **“Contract Documents”** means the documents listed in the Contract Agreement, including any amendments thereto;
- (d) **“Contract Price”** means the price payable to the Contractor as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions there from, as may be made pursuant to the Contract;
- (e) **“Day”** means calendar day;
- (f) **“Delivery”** means the transfer of ownership of the Goods from the Contractor to the Procuring Entity in accordance with the terms and conditions set forth in the Contract;
- (g) **“GCC”** mean the General Conditions of Contract;
- (h) **“Goods”** means all of the commodities, raw materials, machineries and equipment, products and/or other materials in solid, liquid or gaseous form that the Contractor is required to supply to the Procuring Entity under the Contract, as specified in the SCC;
- (i) **“Government”** means the Government of Yobe State Nigeria;
- (j) **“Procuring Entity”** means the entity purchasing the Goods and Related Services, as specified in the SCC (Ministry, Department, Agency, Parastatal or Unit from any arm of the Yobe State Government);
- (k) **“Related Services”** means the services incidental to the supply of the goods, such as insurance, installation, commissioning, training and initial maintenance and other similar obligations of the Contractor under the Contract;
- (l) **“SCC”** means the Special Conditions of Contract;

- (m) **“Sub-contractor” means any natural person, private or government entity, or a combination of the above, including its legal successors or permitted assigns, who has a Contract with the Contractor to carry out a part of the supply in the Contract, or a part of the Related Services of the Contract;**
- (o) **“Writing” means any hand-written, type-written, or printed communication including telex, cable and facsimile transmission.**

Contract Documents

2.1 Subject to the order of precedence set forth in the GCC Sub-Clause 5.1, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory.

Corrupt, Fraudulent, Collusive or Coercive Practices

3.1 The Government requires that Procuring Entities, as well as Contractors, observe the highest standard of ethics during the implementation of procurement proceedings and the execution of Contracts under public funds.

3.2 In pursuance of this requirement, the Procuring Entity shall:

- (a) exclude the Contractor from participation in the procurement proceedings concerned or reject a proposal for award; and
- (b) declare a Contractor ineligible, either indefinitely or for a stated period of time, from participation in procurement proceedings under public funds; if the Contractor had been convicted of any offence under section 59 of the Law.

3.3 Should any corrupt, fraudulent, collusive or coercive practice of any kind referred to in GCC Sub-Clause 3.4 hereunder come to the knowledge of the Procuring Entity, it shall, in the first place, allow the Contractor to provide an explanation and shall, take actions as stated in GCC Sub-Clause 3.2 and GCC Sub-Clause 38.1(c) only when a satisfactory explanation is not received. Such exclusion and the reasons thereof shall be recorded in the record of the procurement proceedings and promptly communicated to the Contractor concerned. Any communications between the Contractor and the Procuring Entity related to matters of alleged corrupt, fraudulent, collusive or coercive practices shall be in writing.

3.4 The Government defines, for the purposes of this provision, the terms set forth below as follows:

- (a) **“corrupt practice”** means offering, giving, or promising to give, directly or indirectly, to any officer or employee of a Procuring Entity or other governmental/private authority or individual a gratuity in any form, an employment or any other thing or service of value, as an inducement with respect to an act or decision of, or method followed by, a Procuring Entity in connection with the procurement proceeding;
- (b) **“fraudulent practice”** means a misrepresentation or omission of facts in order to influence a procurement proceeding or the execution of a Contract to the detriment of the Procuring Entity;

Government of Yobe State
General Conditions of Contract for Procurement of Goods

- (c) “*collusive practice*” means a scheme or arrangement among two or more Bidders with or without the knowledge of the Procuring Entity (prior to or after Bid submission) designed to establish Bid prices at artificial, non-competitive levels and to deprive the Procuring Entity of the benefits of free, open and genuine competition; and
- (d) “*coercive practice*” means harming or threatening to harm, directly or indirectly, persons or their property to influence the procurement proceedings or affect the execution of a contract.

3.5 The Contractor shall permit the Procuring Entity to inspect the Contractor’s accounts and records and other documents relating to the submission of the Bid and Contract performance.

B. The Contract

Interpretation

4.1 In interpreting the GCC, singular also means plural, male also means female, and the other way around. Headings in the GCC shall not be deemed part thereof or be taken into consideration in the interpretation or construction thereof of the Contract. Words have their normal meaning under the English language unless specifically defined.

Entire Agreement

4.2 (a) The Contract constitutes the entire agreement between the Procuring Entity and the Contractor and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract Agreement.

Amendment

4.3 (a) No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party thereto.

Non-waiver

4.4 (a) Subject to GCC Sub-Clause 4.4 (b), no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

4.4 (b) Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

Severability

4.5(a) If any provision or Condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and the Conditions of the Contract.

Partial Supply

4.6 (a) If partial supply is specified in the Statement of Requirements, references in the GCC to the Supply and to the Delivery Date shall apply to any portion of the Supply (other than references to the Completion Date for the whole of the Supply).

Documents Forming the Contract and Priority of Documents

5.1 The following documents forming the Contract shall be interpreted in the following order of priority:

- (a) the signed Contract Agreement;
- (b) the letter of Notification of Award;
- (c) the completed Bid Submission Sheet as submitted by the Bidder;
- (d) the completed Price Schedules as submitted by the Bidder;
- (e) the Special Conditions of Contract;
- (f) the General Conditions of Contract;
- (g) the Statement of Requirements;
- (h) the Technical Specifications;
- (i) the Drawings if any, and;
- (j) any other document listed in the SCC as forming part of the Contract.

Eligibility

6.1 The Contractor and its Sub-Contractors shall have the nationality of a country other than those specified in the SCC.

6.2 All Goods and Related Services supplied under the Contract shall have their origin in the countries except those specified in the SCC.

Governing Language

7.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Contractor and the Procuring Entity shall be written in English. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in English certified by an appropriate authority, in which case, for purposes of interpretation of the Contract, this translation shall govern

7.2 The Contractor shall bear all costs of translation to the governing language and all risks of the accuracy of such translation.

Governing Law

8.1 The Contract shall be governed by and interpreted in accordance with the laws of Yobe State and the Federal Republic of Nigeria.

Gratuities / Agency fees

9.1 No fees, gratuities, rebates, gifts, commissions or other payments, other than those shown in the Bid or the contract, shall be given or received in connection with the procurement process or in the Contract execution.

Joint Venture, Consortium or Association (JVA)

10.1 If the Contractor is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Procuring Entity for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Procuring Entity.

Confidential Information

11.1 The Procuring Entity and the Contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any confidential or proprietary information, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor such documents, data, and other information it receives from the Procuring Entity to the extent required for the Subcontractor to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Contractor under GCC Clause 11.

11.2 The Procuring Entity shall not use such documents, data, and other information received from the Contractor for any purposes unrelated to the contract. Similarly, the Contractor shall not use such documents, data, and other information received from the Procuring Entity for any purpose other than the design, procurement, or other work and services required for the performance of the Contract.

11.3 The obligation of a party under GCC Sub-Clauses 11.1 and 11.2 above, however, shall not apply to information that:

- (a) the Procuring Entity or Contractor needs to share with institutions participating in the financing of the Contract;
- (b) now or hereafter enters the public domain through no fault of that party;
- (c) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or

- (d) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.
- (e) either party is required by law to disclose.

11.4 The above provisions of GCC Clause 11 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.

11.5 The provisions of GCC Clause 11 shall survive completion or termination, for whatever reason, of the Contract.

Communications and Notices

12.1 Communications between Parties (notice, request or consent required or permitted to be given or made by one party to the other) pursuant to the Contract shall be in writing to the addresses specified in the SCC.

12.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.

12.3 A Party may change its address for notice hereunder by giving the other Party notice of such change to the address.

Patent and Intellectual Property Rights

13.1 The Contractor shall, subject to the Procuring Entity's compliance with GCC Sub-Clause 13.2, indemnify and hold harmless the Procuring Entity and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including Attorney's fees and expenses, which the Procuring Entity may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property rights registered or otherwise existing at the date of the Contract by reason of :

- (a) the installation of the Goods by the Contractor or the use of the Goods in Nigeria; and
- (b) the sale in any country of the products produced by the Goods. Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Contractor, pursuant to the Contract.

13.2 If any proceedings are brought or any claim is made against the Procuring Entity arising out of the matters referred to in GCC Sub-Clause 13.1, the Procuring Entity shall promptly give the Contractor a notice thereof, and the Contractor may at its own expense and in the Procuring Entity's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

13.3 If the Contractor fails to notify the Procuring Entity within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Procuring Entity shall be free to conduct the same on its own behalf.

13.4 The Procuring Entity shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

Copyright

14.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Procuring Entity by the Contractor herein shall remain vested in the Contractor, or, if they are furnished to the Procuring Entity directly or through the Contractor by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.

Assignment

15.1 The Contractor shall not assign, in whole or in part, its obligations under the Contract, except with the Procuring Entity's prior written consent.

Sub-contracting

16.1 The Contractor shall obtain approval of the Procuring Entity in writing of all Sub-Contracts to be awarded under the Contract if not already specified in the Bid. Sub-Contracting shall in no event relieve the Contractor from any of its obligations, duties, responsibilities, or liability under the Contract.

16.2 Subcontractors shall comply with the provisions of GCC Clause 3.

C. Performance of Contract

Contractor's Responsibilities

17.1 The Contractor shall supply all the Goods and Related Services specified in the Scope of Supply in conformity in all respects with the provisions of the Contract Agreement.

Procuring Entity's Responsibilities

18.1 The Procuring Entity shall pay the Contractor, in consideration of the provision of Goods and Related Services, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and manner prescribed in the Contract Agreement.

Scope of Supply

19.1 The Goods and Related Services to be supplied shall be as specified in Part 2 of the Bidding Document: Statement of Requirements.

19.2 Unless otherwise stipulated in the Contract, the Supply shall include all such items not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining delivery of the Goods and Completion Schedule of the Related Services as if such items were expressly mentioned in the Contract.

Change Orders and Contract Amendments

20.1 The Procuring Entity may at any time order the Contractor through a notice in accordance with GCC Clause 12, to make changes within the general scope of the Contract in any one or more of the following:

- (a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Procuring Entity provided such changes do not materially affect the scope of supply;
- (b) the method of shipment or packing;
- (c) the place of delivery; and
- (d) the Related Services to be provided by the Contractor.

20.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Contractor's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Contractor for adjustment under this Clause must be submitted within twenty-eight (28) days from the date of the Contractor's receipt of the Procuring Entity's Change Order.

20.3 Prices to be charged by the Contractor for any Related Services that might be needed, but which were not included in the Contract, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Contractor for similar services.

Packing and Documents

21.1 The Contractor shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy and efficient handling facilities at all points in transit.

21.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the SCC, and in any subsequent instructions ordered by the Procuring Entity

Delivery and Documents and Acceptance

22.1 Subject to GCC Sub-Clause 20.1, the Delivery of the Goods and completion of the Related Services shall be in accordance with the Delivery and Completion Schedule specified in the Part 2: Statement of Requirements.

22.2 The documents to be furnished by the Contractor shall be received by the Procuring Entity at least one week before arrival of the Goods and, if not received, the Contractor shall be responsible for consequent expenses.

22.3 Acceptance by the Procuring Entity shall be processed not later than fourteen (14) days from receipt of the goods at final destination in the form of an Acceptance Certificate, unless any defects in the supply, any damage during transport or any failure to meet the required performance criteria of the supply are identified and reported to the Contractor in accordance with GCC Clause 31 and GCC Clause 32. In such cases the Acceptance Certificate will be issued only for those parts of the Contract supplies which are accepted. The Acceptance Certificate for the remaining supplies will only be issued after the Contractor has remedied the defects and/or any non-conformity in accordance with GCC Clause 31 and GCC Clause 32.

Contract Price

23.1 The Contract Price shall be as specified in the Contract Agreement subject to any additions and adjustments thereto, or deductions there from, as may be made pursuant to the Contract.

23.2 Prices charged by the Contractor for the Goods delivered and the Related Services performed under the Contract shall not vary from the prices quoted by the Contractor in its Bid, with the exception of any price adjustments authorized in the SCC.

Transportation

24.1 The Contractor shall arrange for transportation of the Goods in accordance with the requirements set in the Incoterms specified in the SCC.

Spare Parts

25.1 If specified in the SCC, the Contractor may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the Contractor:

- (a) such spare parts as the Procuring Entity may elect to purchase from the Contractor, provided that this election shall not relieve the Contractor of any Warranty obligations under the Contract; and
- (b) in the event of termination of production of the spare parts:
 - (i) advance notification to the Procuring Entity of the pending termination, in sufficient time to permit the Procuring Entity to procure needed requirements; and
 - (ii) following such termination, furnishing at no cost to the Procuring Entity, the blueprints, drawings, and specifications for the spare parts, if requested.

25.2 The Contractor shall carry sufficient inventories to assure ex-stock supply of spare parts as promptly as possible, but in any case, within the time specified in the SCC for placing the order and opening the Letter of Credit.

Terms of Payment

26.1 The Contract Price, including any Advance Payments, if applicable, shall be paid in the manner as specified in the SCC.

26.2 The Contractor's request for payment shall be made to the Procuring Entity in writing, accompanied by an invoice describing, as appropriate, the Goods delivered, and Related Services performed, and accompanied by the documents pursuant to GCC Clause 22 and upon fulfillment of any other obligations stipulated in the Contract.

26.3 Payments shall be made promptly by the Procuring Entity, no later than the dates indicated in the SCC.

26.4 In the event that the Procuring Entity fails to pay the Contractor any payment by its respective due date, the Contractor may raise a complaint with the Yobe State Bureau on Public Procurement, which may, subject to the approval of the State Executive Council, order the Procuring Entity to settle the outstanding invoice immediately or to pay to the Contractor interest on the amount of such delayed payment at the interest rate set by the Central Bank of Nigeria for the period of delay until payment has been made in full, whether before or after judgment or arbitral award.

Insurance

27.1 The Contractor shall arrange for insurance of the Goods in accordance with the requirements set in the Incoterms specified in the SCC.

Taxes and Duties

28.1 The Contractor's responsibility with respect to taxes and duties shall be in accordance with the applicable Incoterms specified in the SCC.

Performance Security

29.1 In the case of Goods having Warranty obligations the Performance Security shall be reduced to the amount specified in the SCC after delivery and acceptance of the Goods to cover only the Contractor's Warranty obligations in accordance with GCC Sub-Clause 32.3.

29.2 The Procuring Entity shall notify the Contractor of any claim made against the Bank issuing the Performance Security.

29.3 The Procuring Entity may claim against the Security if any of the following events occurs for fourteen (14) days or more:

(a) the Contractor is in breach of the Contract and the Procuring Entity has notified him that he is; and

(b) the Contractor fails to remedy the breach or to pay an amount due therefrom to the Procuring Entity.

29.4 In the event the Contractor is liable to pay compensation under the Contract amounting to the full value of the Performance Security or more, the Procuring Entity may ensure that the Contractor forfeit the full amount of the Performance Security.

29.5 If there is no reason to call the Performance Security, it shall be discharged by the Procuring Entity and returned to the Contractor not later than twenty-eight (28) days following the date of completion of the Contractor's performance obligations under the Contract.

Specifications and Standards

30.1 The Contractor shall ensure that the Goods and Related Services comply with technical specifications and other provisions of the Contract.

30.2 The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Procuring Entity, by giving a notice of such disclaimer to the Procuring Entity.

Government of Yobe State
General Conditions of Contract for Procurement of Goods

30.3 The Goods and Related Services supplied under this Contract shall conform to the standards mentioned in the Technical Specifications in Part 2 of the Bidding Document and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the goods' country of origin.

30.4 Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Statement of Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Procuring Entity and shall be treated in accordance with GCC Clause 20.

Inspections and Tests

31.1 The Contractor shall at its own expense and at no cost to the Procuring Entity carry out all such tests and/or inspections of the Goods and Related Services as are specified in the Statement of Requirements and the SCC.

31.2 The inspections and tests may be conducted on the premises of the Contractor or its Subcontractor and/or at the Goods' final destination, or in another place in Nigeria as specified in the SCC. Subject to GCC Sub-Clause 31.3, if conducted on the premises of the Contractor or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring Entity.

31.3 The Procuring Entity or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 31.2, provided that the Procuring Entity bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all travelling and board and lodging expenses.

31.4 Whenever the Contractor is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Procuring Entity. The Contractor shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Procuring Entity or its designated representative to attend the test and/or inspection.

31.5 The Procuring Entity may require the Contractor to carry out any test and/or inspection not required by the Contract, but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications, codes and standards under the Contract, provided that the Contractor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impede the progress of manufacturing and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.

31.6 The Contractor shall provide the Procuring Entity with a report of the results of any such test and/or inspection.

31.7 The Procuring Entity may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Contractor shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Procuring Entity, and shall repeat the test and/or inspection, at no cost to the Procuring Entity, upon giving a notice pursuant to GCC Sub-Clause 31.4.

31.8 The Contractor agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Procuring Entity or its representative, nor the issue of any report pursuant to GCC Sub-Clause 31.6, shall release the Contractor from any Warranties or other obligations under the Contract.

Warranty

32.1 The Contractor warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.

32.2 Subject to GCC Sub-Clause 30.1, the Contractor further Warrants that the Goods shall be free from defects arising from any act or omission of the Contractor or arising from design, materials, and workmanship, under normal use in the conditions prevailing in Nigeria.

32.3 Unless otherwise specified in the SCC, the Warranty shall remain valid for at least twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the Delivery Schedule in Part 2: Statement of Requirements in the Bidding Document.

32.4 The Procuring Entity shall give notice to the Contractor stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Procuring Entity shall afford all reasonable opportunity for the Contractor to inspect such defects.

32.5 Upon receipt of such notice, the Contractor shall, within the period specified in the SCC, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Procuring Entity.

32.6 If having been notified, the Contractor fails to remedy the defect within the period specified in the SCC; the Procuring Entity may proceed to take within a reasonable period such remedial action as may be necessary, at the Contractor's risk and expense and without prejudice to any other rights which the Procuring Entity may have against the Contractor under the Contract.

Extensions of Time

33.1 If at any time during performance of the Contract, the Contractor or its subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC Clause 22, the Contractor shall promptly notify the Procuring Entity in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Contractor's notice, the Procuring Entity shall evaluate the situation and may at its discretion extend the Contractor's time for performance, in which case the extension shall be ratified by the Parties by amendment of the Contract.

33.2 Except in the case of Force Majeure, as provided under GCC Clause 37, a delay by the Contractor in the performance of its Delivery and Completion obligations shall render the Contractor liable to the imposition of liquidated damages pursuant to GCC Clause 34, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 33.1.

Liquidated Damages

34.1 Except as provided under GCC Clause 37, if the Contractor fails to deliver any or all of the Goods or perform the Related Services within the period specified in the Contract, the

Procuring Entity may, without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the SCC of the Contract Price of the delayed Goods and/or Related Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those SCC. Once the maximum is reached, the Procuring Entity may terminate the Contract pursuant to GCC Clause 38.

Limitation of Liability

35.1 Except in cases of criminal negligence or willful misconduct,

- (a) the Contractor shall not be liable to the Procuring Entity, whether in Contract, Tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Procuring Entity, and
- (b) the aggregate liability of the Contractor to the Procuring Entity, whether under the Contract, in Tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the CONTRACTOR to indemnify the Procuring Entity with respect to patent infringement.

Change in Laws and Regulations

36.1 Unless otherwise specified in the Contract, if after twenty eight (28) days before the submission of Bids for the Contract, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed Yobe State (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC Clause 23.

Force Majeure

37.1 The Contractor shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

37.2 For purposes of this Clause, “Force Majeure” means an event or situation beyond the control of the Contractor that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Contractor. Such events may include, but not be

limited to, acts of the Procuring Entity in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

37.3 If a Force Majeure situation arises, the Contractor shall promptly notify the Procuring Entity in writing of such condition and the cause thereof. Unless otherwise directed by the Procuring Entity in writing, the Contractor shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

Termination

Termination for Default

38.1 (a) The Procuring Entity, without prejudice to any other remedy for breach of Contract, by giving twenty-eight (28) days written notice of default, may terminate the Contract in whole or in part:

(i) if the Contractor fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Procuring Entity pursuant to GCC Clause 33; or

(ii) if the Contractor fails to perform any other obligation under the Contract.

(b) In the event the Procuring Entity terminates the Contract in whole or in part, pursuant to GCC Sub-Clause 38.1(a), the Procuring Entity may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Contractor shall be liable to the Procuring Entity for any additional costs for such similar Goods or Related Services. However, the Contractor shall continue performance of the Contract to the extent not terminated.

(c) If the Contractor, in the judgment of the Procuring Entity has engaged in corrupt, fraudulent, collusive or coercive practices, as defined in GCC Clause 3, in competing for or in executing the Contract.

Termination for Insolvency

38.2(a) The Procuring Entity and the Contractor may at any time terminate the Contract by giving notice to the other party if either of the party becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to any party, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the other party.

Termination for Convenience

38.3(a) The Procuring Entity, by notice sent to the Contractor, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Procuring Entity's convenience, the extent to which

performance of the Contractor under the Contract is terminated, and the date upon which such termination becomes effective.

- (b) The Goods that are complete and ready for shipment within twenty-eight (28) days after the Contractor's receipt of notice of termination shall be accepted by the Procuring Entity at the Contract terms and prices. For the remaining Goods, the Procuring Entity may elect:
 - (i) to have any portion completed and delivered at the Contract terms and prices; and/or
 - (ii) to cancel the remainder and pay to the Contractor an agreed amount for partially completed Goods and Related Services and for materials and parts proven to have been previously procured by the Contractor pursuant to the contract.

Settlement of Disputes

Amicable Settlement

39.1 (a) The Procuring Entity and the Contractor shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

Arbitration

39.2 (a) If the dispute, claim or controversy cannot be settled through negotiation within 21 days of arising, such dispute shall be referred to and be finally determined by arbitration in accordance with provisions of the Arbitration and Conciliation Act Cap A18 Laws of The Federation of Nigeria 2004 or any similar law in force.

39.3. The Arbitral Tribunal shall consist of three arbitrators, one each appointed by the procuring entity and Contractor and a third appointed by the first two, and failing agreement on a third arbitrator he or she shall be appointed by the Chairman for the time being of the Nigerian Chapter of the Chartered Institute of Arbitrators or the most senior presiding Judge at the High Court sitting at Damaturu, Yobe State in which case an application shall be made on Notice for the appointment of an arbitrator of the Courts choice and the court baring any exigencies shall appoint the third Arbitrator within two weeks or such other time as is convenient.

39.4 Reference of a dispute arising from this agreement to arbitration shall not affect or diminish due performance of obligations acquired by this contract.