VOLUME 2

SECTION 3
SPECIAL CONDITIONS

CONTENTS

These conditions amplify and supplement the general conditions governing the contract. Unless the special conditions provide otherwise, the general conditions remain fully applicable. The numbering of the articles of the special conditions is not consecutive but follows the numbering of the general conditions. Other special conditions should be indicated afterwards.

Article 2 Language of the contract

2.1 The language used shall be English.

Article 4 Communication

4.1 The addresses for receipt of communications are:

a) For the Contracting Authority:

Name:	Ministry of Transport and Infrastructure Directorate General for European Union Affairs and Foreign Relations Department of European Union Investments Attn: Ms. Tijen İğci, PhD Head of Department
Address:	Hakkı Turayliç Cad. No.5, B Blok Kat: 10 Emek 06490 Ankara, Türkiye **Telephone:** +90 312 203 2269 **Fax:** +90 312 203 1913
E-mail:	euid@uab.gov.tr

b) For the contractor (to be defined at the contracting stage):

Name:	
Address:	
E-mail:	

d) For the supervisor (to be defined at the contracting stage):

Name:	
Address:	
E-mail:	

Any written communication between the contracting authority and/or the supervisor, and the contractor, shall state the contract title and identification number and shall be sent by post, cable, telex, facsimile transmission, e-mail, personal delivery, or electronic exchange system (KEP) to the appropriate addresses designated by those parties for that purpose in the special conditions.

For the use of KEP, the Contractor will be required to register in and use the KEP system to allow for the e-management of the contract.

4.2 An electronic system will be used by the contracting authority and the contractor for all stages of implementation including, inter alia, management of the contract (amendments and administrative orders), reporting (including reporting on results) and payments. The contractor will be required to register in and use the appropriate electronic exchange system to allow for the e-management of the contract.

The electronic management of the contract through the aforementioned system may commence on the date on which implementation of the contract starts, as described in Article 33 of the general conditions to the contract, or at a later date. In the latter case, the contracting authority will inform the contractor in writing that he will be required to use the electronic system for all communications within a maximum period of 3 months.

Article 5 Supervisor and supervisor's representative

Add Article 5.2.1 to Article 5.2:

The name and address of the Supervisor and his Representative(s) will be provided to the Contractor after the award of the Contract.

Office accommodation for the Supervisor will be provided by the Works contractor. The details of office accommodation are provided in the V3 - Technical Specifications, Chapter 10 of this tender dossier.

At the end of Article 5.4 add following text:

The Supervisor shall obtain a written approval of the Contracting Authority prior taking any of the following actions specified in the following Articles of the General Conditions:

a) Extension of time determined under Article 35 of the General Conditions;

b) Suspension of works determined under Article 38 of the General Conditions;

c) Exceptional risks determined under Article 21.2.d of the General Conditions and relevant additional costs and/or an extension of the period of implementation of the tasks.

Administrative orders issued by the Contracting Authority/Supervisor shall be dated, numbered, and entered in a register. The Supervisor shall send them electronically (by email) to representatives of the Contractor, of the Beneficiary and of the Contracting Authority. Hard copies shall be delivered by hand to representatives of the Contractor and of the Beneficiary, and where appropriate, also to the representative of the Contracting Authority.

Article 9 Access to the site

9.1 The contractor is reminded that there is a head of delegation of the European Commission in the state of the contracting authority. The contractor is obliged to give the head of delegation free access to its sites, factories, workshops, etc., and generally assist the head of delegation, like the project Supervisor, in the performance of his duties. The same provisions also apply to the appointed representatives of the head of delegation.

Article 12 General obligations

At the end of Article 12 add following text:

12.9 The Contractor shall take all necessary measures to publicize the fact that the European Union has financed the Program.

In addition, the Contractor shall take the necessary measures to ensure the visibility of the European Union financing or co financing. These measures must comply with the rules laid down and published by the EU Delegation to Turkey on the visibility of external operations: https://www.avrupa.info.tr/en/communication-and-visibility-requirements-eu-external-actions-7431.

All communication and visibility activities should be carried out in close co-operation with the Contracting Authority. The Contracting Authority is the main authority in charge of reviewing and approving visibility-related materials and activities. Before initiating any information, communication or visibility material and activity, Contractors and implementing partners should seek the approval of the Contracting Authority in writing. All printed and audio-visual materials must be cleared by the Press and Information Section of the EU Delegation to Turkey before publication.

The EU-Turkey cooperation logo should be accompanied by the following text:

"This project is co-financed by the European Union and the Republic of Turkey."

Whether used in the form of the EU-Turkey cooperation logo for information materials or separately at events, the EU and Turkish flag have to Enjoy at least double prominence each, both in terms of size and placement in relation to other displayed logos and should appear on all materials and at all events as per the Communication and Visibility Manual for European Union External Actions. At visibility events, the Turkish and the EU flag have to be displayed prominently and separately from any logos.

Logos of the Beneficiary institution and the Contracting Authority should be clearly separated from the EU-Turkey partnership logo and be maximum half the size of each flag. The logos will not be accompanied by any text. The Contracting Authority and End Recipient of Assistance (ERA) logo will be on the lower left-hand corner and lower right-hand corner respectively. The Contractor logo with the same size will be in the middle of the Contracting Authority and Beneficiary logo. If the Contractor is a consortium, only the logo of the consortium leader will be displayed.

Any publication by the Contractor, in whatever form and by whatever medium, including the Internet, shall carry the following or a similar warning: "This document has been produced with the financial assistance of the European Union". In addition, the back cover of any such publications by the Contractor should also contain the following disclaimer: "The contents of this publication are the sole responsibility of <name of the author/partner> and do not necessarily reflect the views of the European Union".

The contractor shall place permanent visibility plaques (signboards) or similar along the permanent works to be constructed under this contract.

Article 15 Performance guarantee

15.1 The amount of the performance guarantee will be 10% of the amount of the contract and any addenda thereto.

15.8 Within 60 days after the deliverance of the certificate of provisional acceptance according to Article 60.1 and the completion of any outstanding work or reservation, 10% of the amount of the performance guarantee may be released.

Add Article 15.8.1 to Article 15.8:

The performance guarantee shall be realised upon the receipt from the Contractor of a written discharge together with a letter of release issued by Ministry of Labour and Social Security confirming the Contractor has fulfilled all his statutory Social Security obligations arising out of or in connection with the performance of the Contract to the Contracting Authority.

Article 16 Liabilities and insurance

16.2 a) By derogation from Article 16.2(a) first paragraph of the General Conditions, at the latest 30 days from the countersignature of the contract, the contractor shall ensure that itself, its personnel, its subcontractors and any person for which the contractor is answerable, are adequately insured with insurance companies recognized on the international insurance market, unless the Contracting Authority has given its express written consent on a specific insurance company.

By derogation from Article 16.2(a) paragraph 2 of the General Conditions it is at the latest 15 days before commencement of the works that the contractor shall provide the Contracting Authority and the supervisor with all cover notes and/or insurance certificates showing that the contractor's obligations relating to insurance are fully respected.

Article 17 Programme of implementation of tasks

17.1 *At the end add following text:*

The contractor shall provide the supervisor with a programme of implementation of tasks, broken down by activity and by month within 15 days of the signature of the contract.

The contractor's work programme shall be submitted to the supervisor in the form of Gantt chart showing the contractor’s detailed timeline, including details of critical path and milestones, both in MS Project or similar software and in PDF formats.

Article 19 Contractor’s drawings and execution studies

19.1 *add to Article 19.1:*

(d) The Contractor shall prepare and keep up-to-date a complete set of As-Built records showing the precise locations, sizes and details of all the work executed. These drawings shall be kept on site. They shall be available to the Supervisor or Supervisor’s Representative at any time.

The Contractor shall prepare three (3) hard copies of as built-design documentation/ drawings and Operation and Maintenance Manuals in line with the Technical Specification included in Volume 3 of these tender dossiers. Two hard copies and digital format shall be supplied to the Supervisor or Supervisor’s Representative prior to the commencement of the Tests on Completion.

In addition, the Contractor shall supply to the Supervisor or Supervisor's Representative as-built design of the works, showing all works as executed, and submit them to the Supervisor or Supervisor's Representative for review. The contractor shall obtain the consent of the Supervisor or Supervisor's Representative as to their size, the referencing system, and other relevant details.

Prior to the issue of any Provisional Acceptance, the contractor shall supply to the Supervisor or Supervisor's Representative the specified numbers and types of copies of the relevant as-built design built-design documentation/ drawings and Operation and Maintenance Manuals as well as all warranties and/or guarantees and operation manuals for the installed plant and equipment, in accordance with the Technical Requirements. The works shall not be completed for the purposes of acceptance under Articles 57 to 62 of the General Conditions until the Supervisor or Supervisor's Representative has received these documents.

19.7 As built drawings, operation and maintenance manuals shall be submitted in English and Turkish language.

Article 24 Interference with traffic

24.1 *At the end add following text:*

Where special permits regarding temporary interference with traffic are required, it shall be the responsibility of the Contractor to obtain such permits in due time. All expenses in connection with permits, temporary traffic arrangements, preliminary works including fencing, signboards, traffic signals etc. and provision of interim works to secure uninterrupted access to buildings and properties affected by the construction activities shall be at the cost of the Contractor, who shall also indemnify and hold the Contracting Authority harmless against any claims and expenses resulting from the Contractor's disregard of by-laws and circulars or the Contractor's otherwise unnecessary/unauthorised interference with traffic.

24.2 *At the end add following text:*

The Contractor shall plan the execution of the Works with due regard to avoidance of inconveniences to the public, to the extent reasonably possible. Where unavoidable the Contractor shall in due time inform the Supervisor of the extent of interference with traffic and inconveniences.

Article 34 Period of implementation of tasks

34.1 The period of implementation of tasks is **twelve (12) months** from the commencement date mentioned in the administrative order issued in accordance with article 33.1 of the general conditions, followed by **twelve (12) months** of defects liability period, without prejudice of the extensions of the period which may be granted under Article 35.

Article 36 Delays in the implementation of tasks

36.1 The rate of liquidated damages for delays in the completion of works shall be 0.1% of the contract price for every day or part thereof which elapses between the end of the period of implementation of tasks and the actual date of completion, up to a maximum amount of 10 % of the contract price or, if the contract is subdivided into phases, 10 % of the price of the phase concerned.

Article 39 Work Register

39.1 *At the end add following text:*

Work register shall be kept in local language and in accordance with the local legislation in force.

39.2 *At the end add following text:*

The technical rules for drawing up the statements shall be proposed by the Supervisor and approved by the Contracting Authority during implementation.

Article 40 Origin and quality of works and materials

40.1 All goods purchased under the contract must originate in any eligible source country as defined in Multi-Annual Action Programme for Turkey on Transport (MAAP-T) 2014/031-877, Regulation (EU) No 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II) programme.

However, the goods to be purchased may originate in any country, whenever the total price of the estimated quantity of those goods, as reflected in a separate item of the Bill of quantities (Volume 4.3.2) is below EUR 100 000.

A category of similar goods to be purchased shall not be broken down over more than one item of the bill of quantities (Volume 4.3.2).

For these purposes, 'origin' means the place where the goods are mined, grown, produced, or manufactured and/or from which services are provided. The origin of the goods must be determined according to the EU Customs Code or the applicable international agreement.

When importing goods, any change in the specified origin must be pointed out to the project supervisor and approved by him.

40.3 Preliminary technical acceptance is necessary and shall be subject of a request sent by the contractor to the supervisor for approval. Prior to ordering, placement and/or instalment of materials and equipment the contractor shall provide catalogues, brochures, manufacturer's certificates, technical data/specifications, and samples (where appropriate) of material and equipment he proposed to build in, in the timely manner to the supervisor for the approval.

Article 41 Inspection and testing

41.2 The Supervisor will at regular interval inspect and test materials and completed work for compliance with the technical specification and applicable regulation in force. The testing frequencies and sample and lot sizes for testing shall be at the Supervisor discretion.

All sections of completed work shall be submitted to the Supervisor for inspection and testing, and the Contractor shall not cover up or construct any work on top of sections of completed work before being advised by the Supervisor of the outcome of his tests and inspection. The Contractor shall arrange the submission of work for testing in a manner as will afford the Supervisor reasonable opportunity for inspecting and testing.

Article 43 Ownership of plant and materials

43.2 All equipment, temporary works, plant and materials on site owned by the Contractor or by any company in which the Contractor has a controlling interest shall, for the duration of the execution of the works shall be vested in the Contracting Authority.

Article 44: General principles for payments

44.1 Payments shall be made in euro.

44.3 By derogation, pre-financing payment to the contractor for the lump-sum advance shall be made within 30 days. Other pre-financing payments to the contractor shall be made within 90 days. Interim payments to the contractor of the amounts due under each of the interim payment certificates approved by the supervisor shall be made within 90 days, and the final payment to the contractor of the amounts due after the final statement of account issued by the supervisor shall be made within 90 days.

Article 46 Pre-financing

46.1 Pre-financing is possible.

46.2 The total amount of the pre-financing must not exceed 10% of the original contract price.

46.3(c) When (i) the pre-financing requested is equal or below EUR 300 000 and (ii) the Contracting Authority does not require a financial guarantee following a risk assessment, by derogation from Article 46.3(c) of the general conditions no pre-financing guarantee is required.

46.8 Repayment of the pre-financing shall take the form of deductions based on monthly claims.

a) The flat-rate pre-financing (maximum of 10 %) shall be repaid by means of deductions from instalments and, if necessary, the balance due to the contractor. This repayment shall begin with the first instalment and be completed, at the very latest, by the time 80 % of the amount of the contract has been paid.

Repayment shall be made in the same currency as the pre-financing.

The amount to be deducted from each instalment shall be calculated using the following formula:

$$R = \frac{Va \times D}{Vt \times 0.8}$$

where:

R = the amount to be repaid
Va = the total amount of pre-financing
Vt = the initial contract amount
D = the amount of the instalment.
The result is rounded up to two decimal places.

b) The pre-financing for plant, machinery, and tools — and the pre-financing for other major prior outlays (20 % maximum) — shall be repaid by means of deductions from instalments and, if necessary, the balance due to the contractor. Repayment shall begin with the first instalment and end, at the very latest, by the time 90 % of the amount of the contract has been paid.

The amount to be deducted from each instalment shall be calculated using the following formula:

$$R = \frac{Va \times D}{Vt \times 0.9}$$

where:

R = the amount to be repaid
Va = the total amount of pre-financing
Vt = the initial contract amount
D = the amount of the instalment.

Article 47 Retention monies

47.1 The sum which shall be retained from each interim payment as a guarantee that the contractor will fulfil all his obligations during the Defects Liability Period shall be 10 % of each instalment.

Article 49 Measurement

49.1 This is a unit-price contract.

Article 50 Interim payments

50.1 Minimum amount of any Interim Payment Certificate shall be no less than 5% (five percent) of the contract price.

Article 51 Final statement of account

51.1 The contractor shall, submit to the supervisor a draft final statement of account when it applies for the final acceptance certificate. In order to enable the supervisor to prepare the final statement of account, the draft final statement of account is submitted with supporting documents showing in detail the value of the work done in accordance with the contract and all further sums which the contractor considers to be due to it under the contract.

51.2 Within 30 days from issuing the final acceptance certificate referred to in Article 62, the supervisor shall prepare and signed the final statement of account.

51.6 The End Recipient of Assistance shall also sign the final statement of account.

Article 60 Provisional acceptance

60.1 In complement to Article 60.1 of the general conditions:

No provisional acceptance will be preceded unless all Operating and Maintenance manuals, As-Built drawings, warranties, and certificates of mechanical, electrical and all other engineering components and equipment necessary to put works into the full operation, have been submitted by the Contractor and approved by the Supervisor.

Provisional acceptance certificate to be issued by the supervisor has to be co-signed for its validity by the Contracting Authority and End Recipient of Assistance.

Article 61 Defects liability

61.1 The defects liability period is defined as the period commencing on the date of provisional acceptance, during which the contractor is required to make good any defect in, or damage to, any part of the work which may appear or occur during this period as notify by the supervisor or the contracting authority. The rights and obligations of the parties with regard to this defect's liability period are laid down in Article 61 of the general conditions.

Article 68 Dispute settlement

68.4 Any dispute arising out of or relating to this contract which cannot be settled otherwise shall be referred to the exclusive jurisdiction of Courts in Ankara, Türkiye in accordance with the national legislation of the state of the Contracting Authority.

Article 72 Data protection

1. Processing of personal data related to the implementation of the contract by the contracting authority takes place in accordance with the national legislation of the state of the contracting authority and with the provisions of the respective financing agreement.

2. To the extent that the contract covers an action financed by the European Union, the Contracting Authority may share communications related to the implementation of the contract, with the European Commission. These exchanges shall be made to the Commission, solely for the purpose of allowing the latter to exercise its rights and obligations under the applicable legislative framework and under the financing agreement with the Partner country – contracting authority. The exchanges may involve transfers of personal data (such as names, contact details, signatures and CVs) of natural persons involved in the implementation of the contract (such as contractors, personnel, experts, trainees, subcontractors, insurers, guarantors, auditors and legal counsel). In cases where the contractor is processing personal data in the context of the implementation of the contract, he/she shall accordingly inform the data subjects of the possible transmission of their data to the Commission. When personal data is transmitted to the Commission, the latter processes them in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC[1] and as detailed in the specific privacy statement published at ePRAG.

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[1] OJ L 205 of 21.11.2018, p. 39