

How to complete these special conditions:

Where you see < ... >, enter the information relevant to the special conditions. The phrases in square brackets [] should only be included if relevant. The paragraphs shaded in grey should only be amended in exceptional cases, depending on the requirements of particular tender procedures.

Note that the special conditions provide for allowed deviations from the general conditions. The use of further deviations from the general conditions requires an exception to be granted by the relevant services of the European Commission.

Please remember to delete this paragraph and all pointed and square brackets in the final version of the special conditions.

SPECIAL CONDITIONS FOR EUROPEAN UNION EXTERNAL ACTIONS

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. Exceptionally, and with the approval of the competent European Commission departments, other clauses can be indicated to cover particular situations.

[Option 1: Fee-based contracts (technical assistance contracts)]

This contract is a fee-based contract. The maximum amount mentioned in the Main Conditions of the contract is based on the maximum fees, [lump sum], incidental expenditure and provision made for expenditure verification.]

[Option 2: Global price contracts (studies and other result-based contracts)]

This contract is a global price contract.]

Order of precedence of contract documents

The following documents shall be deemed to form and be read and construed as part of this contract, in the following order of precedence:

- the main conditions;
- the special conditions;
- the general conditions (Annex I);
- [Only for contracts financed by post 2021 instruments (NDICI, IPA III [only where the PRAG Procedural rules are chosen in the special conditions], etc.): applicable only if the contract is a transnational contract: the PRAG Procedural rules on conciliation and arbitration.];
- the terms of reference [including clarification before the deadline for submitting tenders and minutes of the information meeting/site visit] (Annex II);
- the organisation and methodology [including clarification from the tenderer provided during tender evaluation] (Annex III);
- [Key experts (Annex IV) For contracts requiring key experts];
- Budget [For fee-based contracts only: breakdown] (Annex V);
- specified forms and other relevant documents (Annex VI);

[For fee-based contracts only:

- Report of factual findings and terms of reference for an agreed upon procedures engagement for a service contract to issue a contractual expenditure verification (Annex VII)]

The various documents making up the contract shall be deemed to be mutually explanatory; in cases of ambiguity or divergence, they shall prevail in the order in which they appear above. Addenda shall have the order of precedence of the document they are amending.

Article 2 Communications

- 2.1 The language of the contract and of all written communications between the contractor and the contracting authority and/or the project manager shall be English.
- 2.2 Communication details
- 2.4 Communication via electronic exchange system (EES)

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. With regard to interim and final reports, if they are required according to Article 26 of the special conditions or to the terms of reference, the contractor will be expected to use the forms in the electronic system for encoding and submitting the reports.

[Option 1: If the *EU Funding & Tenders Portal* is activated fully from the start of the contract:

All communications (except for formal notifications) must be made by electronic means through the EU Funding & Tenders Portal (the Portal), in accordance with the Portal Terms and Conditions and using the forms and templates provided there (except if explicitly instructed otherwise by the contracting authority or if communication via the Portal is hindered by factors beyond the control of the parties). The Portal can be accessed via the following URL: <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/home>

Communications by contractors through the Portal must be made by persons authorised according to the Portal Terms and Conditions. For naming the authorised persons to use the Portal, each contractor must have designated — before the signature of this contract— a ‘legal entity appointed representative (LEAR)’. The role and tasks of the LEAR are stipulated in their appointment letter (see Portal Terms and Conditions).

If the communication via the Portal is hindered, instructions will be provided by the contracting authority by email and may also be published on the Portal.

During the course of the contract, the contracting authority reserves the right to activate the use of formal notifications through the Portal and/or the use of other electronic exchange systems, at no additional cost for the contracting authority.

In case of discrepancy between the clauses of the Portal Terms and Conditions or Terms and Conditions of other electronic exchange system and the clauses of this contract, the clauses of this contract (including its annexes) shall prevail.]

[Option 2: If the *EU Funding & Tenders Portal* is activated partially from the start of the contract:

At the time of entry into force of this contract, certain communications will be made by electronic means through the EU Funding & Tenders Portal (the Portal), in accordance with the Portal Terms and Conditions and using the forms and templates provided there (except if

explicitly instructed otherwise by the contracting authority or if communication via the Portal is hindered by factors beyond the control of the parties). The Portal can be accessed via the following URL: <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/home>

The following communications must be made via the Portal: [submission of deliverables, invoices and amendments.]

Communications by contractors through the Portal must be made by persons authorised according to the Portal Terms and Conditions. For naming the authorised persons to use the Portal, each contractor must have designated — before the signature of this contract — a ‘legal entity appointed representative (LEAR)’. The role and tasks of the LEAR are stipulated in their appointment letter (see Portal Terms and Conditions).

If the communication via the Portal is hindered, instructions will be provided by the contracting authority by email and may also be published on the Portal.

During the course of the contract, the contracting authority reserves the right to extend the coverage of the communications made through the Portal or to activate the use of other electronic exchange systems, at no additional cost for the contracting authority.

In case of discrepancy between the clauses of the Portal Terms and Conditions or Terms and Conditions of other electronic exchange system and the clauses of this contract, the clauses of this contract (including its annexes) shall prevail.]

[Option 3: If the EU Funding & Tenders Portal is not activated from the start of the contract

After the entry into force of this contract, at any time during its course the contracting authority may formally notify in writing the contractor that certain communications will be made by electronic means through the EU Funding & Tenders Portal (the Portal), in accordance with the Portal Terms and Conditions and using the forms and templates provided there. The Portal can be accessed via the following URL:

<https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/home> The notification shall indicate whether all or only certain communications under the contract will take place through the Portal. The notification shall have full legal effect from the date specified therein, which shall allow a reasonable period of time for the contractor to complete all necessary steps to have access to the Portal. The activation of the use of the Portal shall be at no additional cost for the contracting authority.

If the use of the Portal is activated, any communication covered by the activation notification related to the implementation of this contract shall be made through the Portal (except if explicitly instructed otherwise by the contracting authority or if communication via the Portal is hindered by factors beyond the control of the parties).

Communications by contractors through the Portal must be made by persons authorised according to the Portal Terms and Conditions. For naming the authorised persons to use the Portal, each contractor must designate before the date of effect of the activation notification a ‘legal entity appointed representative (LEAR)’. The role and tasks of the LEAR are stipulated in their appointment letter (see Portal Terms and Conditions).

If the communication via the Portal is hindered, instructions will be provided by the contracting authority by email and may also be published on the Portal.

During the course of the contract, the contracting authority reserve(s) the right to further extend the coverage of the communications made through the Portal (if its use has been already activated) or to activate the use of other electronic exchange systems, at no additional cost for the contracting authority.

In case of discrepancy between the clauses of the Portal Terms and Conditions or Terms and Conditions of other electronic exchange system and the clauses of this contract, the clauses of this contract (including its annexes) shall prevail.]

2.5 & 2.6 Mail or email communication

If communications through the Portal have not been activated or a certain type of communication is not yet supported by the Portal, communications will be sent via email, or, exceptionally, on paper, via mail services, to the following addresses, until communications via the Portal are activated.

For the purpose of this contract, mail or email communications must be sent to the following addresses:

Contracting authority:

[[in case of direct management: European Commission]

[Directorate-General [complete]]

[Directorate [complete]]

[Unit [complete]]

[Postcode and city]

Email: [insert functional mailbox]

Invoices and reports shall be sent in electronic format from an official corporate e-mail address of the contractor to: <e-mail: functional mailbox (finance unit/section)>

Copies of the reports, shall be sent in electronic format from an official corporate e-mail address of the contractor to: < e-mail: functional mailbox (management unit/section)>]

[in case of indirect management: Contracting Authority

[Full name]

[Full official address]

[Email: [complete]]]

Contractor (or leader in the case of a joint tender):

[Full name]

[Function]

[Company name]

[Full official address]

Email: [complete]

Article 4 Subcontracting

4.9 [EDF only:

In the selection of subcontractors and/or other independent contractors from an eligible country, preference shall be given to natural persons, companies and firms of ACP States capable of implementing the tasks required on similar terms.]

Article 7 General obligations

- 7.8 <Specify the specific activities to be put in place by the contractor to comply with its minimum obligation towards visibility and, if applicable, any additional communication activities agreed by the European Commission. These activities must comply with the latest Communication and Visibility Requirements for EU-funded external action, laid down and published by the European Commission.>

Article 12 - Liabilities

- 12.2 <Specify here the specific requirements of liability for damages to the contracting authority>

[For contracts of an amount above one million EUR: in some cases contractors may create damages of a value much higher than the contract value. This is especially the case when this service contract is linked to another contract and where the financial risk is high. This is a non-exhaustive list of cases: design or supervision of works, evaluation, audit, preparation of ToRs/TS, PEs. If you find it necessary to set a cap higher than that referred to in the general conditions, add the following clause:

‘By way of derogation from Article 12.2, paragraph 2, of the general conditions, compensation for damage resulting from the contractor’s liability in respect of the contracting authority is capped at an amount equal to <complete with an amount that can be a multiple of the contract value>.’]

[For contracts of amount below one million EUR: in some cases capping contractors liability to one million EUR may be disproportional compared to the content of this contract. This is especially the case where the financial risk is low, for instance for technical assistance or studies. If you find it necessary to set a cap lower than that referred to in the general conditions, add the following clause:

‘By way of derogation from Article 12.2, paragraph 2, of the general conditions, compensation for damage resulting from the contractor’s liability in respect of the contracting authority is capped at an amount equal to <complete with an amount between the contract value and one million EUR>.’]

Article 26 Interim and final reports

The contractor shall submit progress reports as specified in the terms of reference.

Article 27 Approval of reports and documents

- 27.5 [For contracts in indirect management under the general budget of the Union for which a financing agreement was signed before 01/01/2013 and for 10th EDF /11th EDF:

The contracting authority shall, within 45 days of receipt, notify the contractor of its decision concerning the documents or reports received by it, giving reasons should it reject the reports or documents, or request amendments. If the contracting authority does not give any comments on the documents or reports within the time limit, the contractor may request written acceptance of them. The documents or reports shall in any case be deemed to have been approved by the contracting authority if it does not expressly inform the contractor of any comments within 45 days of the receipt of the documents or reports.]

Article 28 Expenditure verification

- 28.2 [Fee-based contract The expenditure verification(s) referred to in the general conditions shall be carried out by < name, address, telephone and fax numbers>.]

[Simplified procedure only: If the verification of the incidental expenditure will be made by the contracting authority insert the following instead of 28.2 above: By derogation from article 28 the verification will be made by the contracting authority and all references to an expenditure verification report will not be applicable.]

Article 29 Payment and interest on late payment

29.1 Payments shall be made in accordance with the following the option:

[Option 1: Fee-based contract]

Month		[EUR] [<ISO code of national currency> for indirect management only]
1	Maximum pre-financing payment ¹	<Maximum amount> <X> % ²
6-monthly	Interim payments	<amount (balance of pre-financing payment and forecast balance)>
<Month number>	Forecast balance	10 % of the maximum contract value
	Total	<maximum contract value>

The first-prefinancing payment shall not be subject to the receipt of an invoice and no invoice is required. In case the use of the electronic exchange system under Article 2.4 of the special conditions is not activated, the contractor must send an invoice for the pre-financing payment. Otherwise the first-prefinancing payment shall not be subject to the receipt of an invoice and no invoice is required.

The actual amounts payable after the pre-financing payment will vary. They shall be based on the contractor's invoice accompanied by an interim progress report and an expenditure verification report and are subject to approval of the reports in accordance with Article 27 of the general conditions.

The interim invoices must be paid such that the sum of the payments does not exceed 90 % of the maximum contract value stated in Article (2) of the contract. Payment of the balance of the final value of the contract, subject to the maximum contract value stated in Article (2) of the contract, is made after deduction of the amounts already paid, within 90 days of the contracting authority receiving an invoice accompanied by the final progress report and a final expenditure verification report, the incidental expenditure and expenditure verification actually incurred during the period, subject to approval of those reports.]

¹ The contractor is not obliged to ask for pre-financing.

² Maximum of 20 % of the maximum contract value.

[Option 2: Global price contract]

Month		[EUR] [<ISO code of national currency> for indirect management only]
1	Maximum pre-financing payment ³	<Max. 40 % of the contract value>
<Month/ year number>	[If applicable: Interim payment]	<X % of the contract value>
<Month/ year number>	Balance	<Maximum 60 % of the contract value>
	Total	<Total contract value>

The first-prefinancing payment shall not be subject to the receipt of an invoice and no invoice is required. In case the use of the electronic exchange system under Article 2.4 of the special conditions is not activated, the contractor must send an invoice for the pre-financing payment. Otherwise the first-prefinancing payment shall not be subject to the receipt of an invoice and no invoice is required.]

[Contract in indirect management under the general budget of the Union only: By derogation, the payments to the contractor of the amounts due under interim and final payments shall be made within 90 days after receipt by the contracting authority of an invoice and of the reports, subject to approval of those reports in accordance with Article 27 of the general conditions.]

[Contract under 10th EDF only: By derogation, the pre-financing payment shall be made within 90 days from the date on which an admissible invoice is registered by the contracting authority. The interim and final payments to the contractor of the amounts due shall be made within 90 days following approval of the reports in accordance with Article 27 of the general conditions, after receipt by the contracting authority of an admissible invoice.]

[Contract in indirect management under 11th EDF only where the Commission executes payments: By derogation, the pre-financing payment shall be made within 60 days from the date on which an admissible invoice is registered by the contracting authority. The interim and final payments to the contractor of the amounts due shall be made within 90 days from the date on which an admissible invoice is registered by the contracting authority.]

[For simplified procedure only: If the verification of the incidental expenditure will be made by the contracting authority: By derogation from article 29 the verification will be made by the contracting authority and all references to an expenditure verification report will not be applicable.]

29.3 [For indirect management

By derogation from Article 29.3 of the general conditions, once the deadline set in Article 29.1 has expired, the contractor shall, upon demand, be entitled to late-payment interest at the rate and for the period mentioned in the general conditions. The demand must be submitted within two months of receiving late payment.]

³ The contractor is not obliged to ask for pre-financing.

29.5 Payments shall be made in [euro] [<national currency> for indirect management only] in accordance with Article 29.4 of the general conditions.

[Optional: In the case of indirect management with ex ante control and where invoices are presented to the contracting authority, the contractor must inform the European Commission at <enter address of the unit in charge if this option is used>, thereof by sending a copy of the correspondence.]

Article 30 Financial guarantee

30.1 For a contract amount above EUR 60 000 and when the pre-financing requested is below EUR 300 000 [By derogation from Article 30 of the general conditions no pre-financing guarantee is required⁴]

For a contract amount equal to or below EUR 60 000 [By derogation from article 30 of the general conditions, no pre-financing guarantee is required.]

Article 31 Recovery of debts from the contractor

31.3 [The contractor (including each member of the group in case of consortium) has an outstanding debt to the Union⁵: Any payment may be offset against outstanding debts of any consortium member.]

Article 40 Settlement of disputes

[For direct management:

40.4 Any disputes arising out of or relating to this contract which cannot be settled amicably shall be referred to the exclusive jurisdiction of the courts of Brussels, Belgium.]

[For indirect management:

[Only for contracts financed by post 2021 instruments (NDICI, IPA III, etc.):

[IPA III:

EITHER

Any dispute arising out of or relating to this contract which cannot be settled otherwise shall be referred to the exclusive jurisdiction of the courts of <specify the state of the contracting authority> in accordance with its national legislation.

OR

Any dispute arising out of or relating to this contract which cannot be settled otherwise shall be referred for arbitration to <specify the arbitration body of the state of the contracting authority> in accordance with its rules of arbitration.

OR

Any dispute arising out of or relating to this contract which cannot be settled otherwise shall be referred for arbitration in accordance with the rules of arbitration of [the International Chamber of Commerce] [the United Nations Commission on International Trade Law] [the PRAG procedural rules on conciliation and arbitration, annexed to this contract. <Please attach Annex A12b of the practical guide to the present contract>]]

[NDICI:

Any dispute arising out of or relating to this contract which cannot be settled otherwise shall

⁴ See internal provision in the Companion Chapter 9.

⁵ The declaration on honour or the [list of debtors](#) confirm the established debt to the Union.

- (a) in the case of a national contract, be settled in accordance with the national legislation of the state of the contracting authority; and
- (b) in the case of a transnational contract, be settled by arbitration in accordance with the PRAG procedural rules on conciliation and arbitration, annexed to this contract. Should such rules have been amended by the time the arbitration proceedings are initiated, the amended rules will apply.) <Please attach Annex A12b of the practical guide to the present contract>]

[For contracts with a value of less than EUR 5 000 000: The arbitral tribunal shall be composed of a sole arbitrator.]

At the request of the arbitral tribunal, the European Commission shall publish any arbitral award resulting from this contract, after anonymization, on the European Commission's external website.

The jurisdiction conferred under this clause is exclusive and any jurisdiction under a bilateral or multilateral investment treaty, or under the ICSID ([International Centre for Settlement of Investment Disputes](#)) rules is explicitly excluded.]]

[Only for contracts financed by pre-2021 instruments (EDF, DCI, etc.):

[General budget of the Union:

[40.4 Any disputes arising out of or relating to this contract which cannot be settled otherwise shall be referred to the exclusive jurisdiction of <specify> in accordance with the national legislation of the state of the contracting authority.]

OR

[40.4 Any disputes arising out of or relating to this contract which cannot be settled otherwise shall be referred for arbitration to <specify the arbitration body> in accordance with the rules of arbitration of [the International Chamber of Commerce] [the United Nations Commission on International Trade Law] [<other internationally recognised procedure to be specified>].]

[EDF:

40.4 Any dispute arising out of or relating to this contract which cannot be settled otherwise shall be settled

(a) if it is a national contract [in accordance with the national legislation of the state of the contracting authority]

(b) if it is a transnational contract [either:

- (i) if the parties to the contract so agree, in accordance with the national legislation of the state of the contracting authority or its established international practices; or
- (ii) by arbitration in accordance with the procedural rules on conciliation and arbitration of contracts financed by the European Development Fund, adopted by Decision 3/90 of the ACP-EEC Council of Ministers of 29 March 1990 (Official Journal No L 382, 31.12.1990, Annex A12 to the practical guide).] Please attach Annex A12 of the practical guide to the present contract.

The jurisdiction conferred under this clause is exclusive and any jurisdiction under a bilateral or multilateral investment treaty, or under the ICSID ([International Centre for Settlement of Investment Disputes](#)) rules is explicitly excluded.]]]

[Optional for contract awarded after negotiated procedure to an international organisation that cannot participate in competitive procedures according to its statute or act of establishment:

Article 40 Settlement of disputes and Article 41 Applicable law

Articles 40.3, 40.4 and 41.1 of the general conditions shall be replaced by the following:

In default of amicable settlement, the parties may refer the matter to arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States in force at the date of conclusion of this agreement. The appointing authority shall be the Secretary General of the Permanent Court of Arbitration following a written request submitted by either party. The Arbitrator's decision shall be binding on all parties and there shall be no appeal.]

Article 42 Data Protection

[For direct management insert the following

[For the purpose of Article 42 of the General Conditions,

- (a) [For DG INTPA the data controller is the head of legal affairs unit of DG International Partnerships]
[For DG NEAR the data controller is the head of contracts and finance unit R4 of DG Neighbourhood and Enlargement Negotiations]
[For any other DG the data controller is <please add the function of your controller >.]
- (b) the privacy statement is available at:
[https://wikis.ec.europa.eu/display/ExactExternalWiki/Annexes#Annexes-AnnexesA\(Ch.2\):General](https://wikis.ec.europa.eu/display/ExactExternalWiki/Annexes#Annexes-AnnexesA(Ch.2):General)

[For indirect management insert the following

[For the purpose of Article 42 of the general conditions, for the part of the data transferred by the contracting authority to the European Commission:

- (a) the controller for the processing of personal data carried out within the Commission is
[For DG INTPA the head of legal affairs unit of DG International Partnerships.]
[For DG NEAR the head of contracts and finance unit R4 of DG Neighbourhood and Enlargement Negotiations][For any other DG <please add the function of your controller >.]
- (b) the privacy statement is available at:
[https://wikis.ec.europa.eu/display/ExactExternalWiki/Annexes#Annexes-AnnexesA\(Ch.2\):General](https://wikis.ec.europa.eu/display/ExactExternalWiki/Annexes#Annexes-AnnexesA(Ch.2):General)

[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, staff, 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/EC⁶ and as detailed in the specific privacy statement published at ePRAG.]]

Article 43 Further additional clauses

<Add other clauses approved by the competent European Commission departments.>

[If necessary and after having obtained prior approval/derogation by the competent services:

The following conditions to the contract shall apply:

By derogation from Article ...]

* * *

⁶ OJ L 205 of 21.11.2018, p. 39