

Contract for Construction Works on measurement basis

The

**Deutsche Gesellschaft für
Internationale Zusammenarbeit
(GIZ) GmbH
Dag-Hammarskjöld-Weg 1 - 5
D-65760 Eschborn
Federal Republic of Germany**

- hereinafter referred to as the
- **"Employer"** -

and



- hereinafter referred to as the
- **"Contractor"** -

herewith enter into the following Contract

for the Project:

Country:

For correspondence (Please quote on all correspondence and invoices)

Contract No.:

Project Processing No.:

Date:

A18 Contract measurement

Deutsche Gesellschaft für
Internationale Zusammenarbeit (GIZ) GmbH

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Martin Jäger, State Secretary

Management Board
Tanja Gönner (Chair)
Dr Christoph Beier (Vice-Chair)

Commerzbank AG Frankfurt am Main
BIC (SWIFT): COBADEFFXXX
IBAN: DE45 5004 0000 0588 9555 00

1. PURPOSE OF THE CONTRACT - SCOPE OF WORKS

The Employer awards and the Contractor takes over the execution of the following construction works:

[REDACTED]

2. CONTRACT DOCUMENTS

The priority of documents forming the Contract shall be as follows:

2.1 This Contract for Construction Works

2.2 The Specifications

2.3 The Drawings enclosed to the Invitation to Tender, i.e.

No. [REDACTED] dated [REDACTED]
No. [REDACTED] dated [REDACTED]

No. [REDACTED].dated [REDACTED]

No. [REDACTED] dated [REDACTED]

and such drawings and details as may be issued by the Employer or his Authorized Representative for the clarification of the Works during execution.

2.4 The priced Bill of Quantities (including Daywork Rates), dated [REDACTED]

3. TERMS OF EXECUTION - COMMENCEMENT OF WORKS

3.1 The Employer or his Authorized Representative shall give at least x days notice, in writing, prior to the date of handing-over of the site. The Contractor shall commence the Works within x days of the date of the handing-over of site.

3.2 The Contractor agrees to execute and to complete the Works as described in the documents listed under Clause 2 with due care and diligence in accordance with generally accepted construction practices.

3.3 The Contractor shall be obliged to observe the Laws, Bye-Laws, Ordinances and Statutes and other legal provisions of the country in which the Works are executed, in particular labour laws, local standards, public rules and regulations.

3.4 The Contractor shall submit a work programme not later than [REDACTED] weeks after the signing of this Contract.

3.5 The Contractor shall supply all building materials, equipment, plant and tools necessary for the execution of the Works in due number and time.

3.6 The Contractor shall provide all qualified and experienced labour necessary in due number and time and shall supervise their activities with due care and diligence. The Employer shall be entitled to object to and require the Contractor to remove from the

Works any person employed by the Contractor who, in the opinion of the Employer, is incompetent, negligent, or guilty of misconduct.

- 3.7 No work shall be covered up or otherwise put out of view without prior approval in writing by the Employer or his Authorized Representative.
- 3.8 The Employer shall be entitled to make any variation of the form, quantity or quality of the Works or any part thereof that may, in his opinion, be necessary or desirable (cf. Clause 4.2). No such variation shall be made without an order in writing by the Employer or his Authorized Representative.
- 3.9 Building materials and Works may be subject to tests at any time at the request of the Employer. These tests shall be carried out as directed by the Employer or his Authorized Representative at the place of manufacture or fabrication or on site or in a testing institute. The Contractor shall provide such assistance, materials, plant, instruments and labour as required for such test. The costs of carrying out such tests shall be borne by the Contractor.
- 3.10 The Contractor shall keep the site free from all unnecessary obstructions at all times and shall remove all materials and plant which are no longer required. Upon completion of the Works he shall leave the site clean and orderly to the satisfaction of the Employer or his Authorized Representative.
- 3.11 The Contractor shall treat the details of this Contract as well as any aspects of its implementation as private and confidential, save in so far as may be necessary for the purpose thereof, and shall not publish or disclose any such information to third parties without the prior consent in writing of the Employer. If any dispute arises as to the necessity of any publication or disclosure for the purpose of the Contract the same shall be referred to the decision of the Employer whose award shall be final.

4. REMUNERATION - ADDITIONAL WORKS

4.1 The Employer shall pay the Contractor a Contract Price of up to

██████████ (Currency)

(in words ██████████)

in accordance with the prices stated in the Bill of Quantities and the Works actually executed and measured. The Contract Price shall be subject to such additions and deductions as may be made under the provisions of this Contract.

- 4.2 The rates and prices of the Bill of Quantities shall cover all services and works of the Contractor described in the Specifications and the Drawings. Additional works shall be remunerated only if they were ordered in writing by the Employer or his Authorized Representative and shall be valued at the prices set out in the Bill of Quantities.
- 4.3 If the Contract does not contain any rates or prices applicable to the extra or additional work, then suitable rates or prices shall be agreed upon between the Employer and the Contractor in advance. In the event of disagreement, the Employer

shall fix such rates or prices as shall, in his opinion, be reasonable and proper, taking into account all prevailing circumstances.

- 4.4 The Contractor shall invoice turnover tax if and as prescribed by law; the Employer will refund the amount in addition to the remuneration.

Amount of turnover tax *(if applicable)*:

5. TIME FOR COMPLETION - PENALTY FOR DELAY

- 5.1 The Contractor shall complete the Works as listed under Clause 1 and 2 within [redacted] days after the handing-over of site and shall request the issue of the Taking-Over Certificate at least x days prior to the date of completion.
- 5.2 If the Contractor should fail to achieve the completion of the Works within the period prescribed in Clause 5.1, the Contractor shall pay to the Employer a penalty of one per mille (1/1000) of the Contract Price stated under Clause 4.1 for every day of delay up to a limit of 5 % of the Contract Price.
- 5.3 The payment of such penalty shall not relieve the Contractor from his obligation to complete the Works or from any other obligation or liability under this Contract.

6. AUTHORIZED REPRESENTATIVE - SUPERVISION OF THE WORKS

The site supervision shall be carried out by an authorized firm or person assigned to act on behalf of the Employer and shall exercise the rights of the Employer under this Contract. The Employer herewith appoints as Authorized Representative for the execution of the Works:

[redacted]

7. PAYMENTS

- 7.1 All payments shall be made in [redacted] (Currency) to the following bank and account number of the Contractor:

[redacted]

- 7.2 The parties of this Contract agree to the following payment schedule:
 - 7.2.1 Against presentation of a bank guarantee by a bank accepted by the Employer in compliance with the specimen enclosed (see Annex A 5) the Contractor shall receive an advance payment of [redacted] % of the Contract Price = [redacted]

The advance payment shall be repaid by deduction of the corresponding percentage from each payment on account.

- 7.2.2 Payments on account shall be made in accordance with the progress of the Works measured on site each month, in keeping with the Bill of Quantities and after certification of each invoice by the Authorized Representative.
- 7.2.3 Each invoice shall be submitted in duplicate and bear the project and contract number indicated on the front page of this Contract.
- 7.2.4 An amount of 10% of the total of each payment on account shall be withheld by the Employer as Retention Money.
- 7.2.5 After the issue of the Taking-Over Certificate (in compliance with Annex A 8) and presentation of the final bill the remuneration due shall be paid reduced by x % of the total Contract Price, which shall be released after the defects liability period has expired, provided the Works are free of defects. This amount may be released against the provision of a Defects Liability Guarantee by a bank accepted by the Employer in compliance with the specimen enclosed (see Annex A 6).

8. TAKING-OVER CERTIFICATE - DEFECTS LIABILITY PERIOD

- 8.1 The Employer or his Authorized Representative shall issue the Taking-Over Certificate in compliance with the specimen enclosed (see Annex A 8) within 5 days of the date of delivery of the Contractor's request for its issue, provided that the whole of the Works have been completed in accordance with the Contract and to the satisfaction of the Authorized Representative.

If the Works have been completed except for minor faults or missing items, the Employer or his Authorized Representative shall include a statement in the Taking-Over Certificate, listing all faults and defects, missing items or outstanding works to be completed, including the date when all rectification and finishing works shall be completed.

- 8.2 The Defects Liability Period shall be xxx(x) months, starting with the date of issue of the Taking-Over Certificate.
- 8.3 Defects, faults or shrinkage due to the use of materials or workmanship not in accordance with the Contract and which arise during the defects liability period shall be made good by the Contractor immediately after notification. For these rectifications a new defects liability period shall start on their day of completion.
- 8.4 If the Contractor should fail to comply with his obligations under this Contract, the Employer shall be entitled to either make a deduction, claim damages or, giving four (5) days notice to the Contractor, employ another contractor to execute the works required for rectification and to deduct all expenses arising thereon or incidental thereto from the moneys retained according to Clause 7.2.4 or 7.2.5, or to recover these from the Contractor.

9. LIABILITY - INSURANCE

- 9.1 The Contractor shall be liable for all damages caused by himself, his agents or persons employed or in any way engaged by him for the execution of the Works.
- 9.2 Subletting of the Works under this Contract or of any part thereof shall require the express written consent of the Employer. This approval may be revoked at any time in case serious complaints arise. The Contractor shall be liable for all services performed by his subcontractors in the same manner as for his own services.
- 9.3 Without limiting his obligations and responsibilities under this Contract, the Contractor shall insure himself at his own expense against his liability for any material or physical damage, loss or injury which may occur to any person or property arising out of or in consequence of the performance of this Contract.
- 9.4 The insurance sum shall be as customary in the country where the works are to be executed.

10. TERMINATION OF THE CONTRACT

- 10.1 The Employer may terminate this Contract at any time either wholly or in part for individual parts of the Works.
- 10.2 Should the Employer terminate the Contract for a reason for which the Contractor is answerable, the Employer shall be entitled to claim compensation for damages. In this case the Employer shall remunerate only the Works already completed, provided the Employer can use them. The Employer may offset the claim for damages against the remuneration. Any other legal rights of the Employer shall remain unaffected.
- 10.3 Should the Employer terminate the Contract for a reason for which the Contractor is not answerable, the Contractor shall be entitled to payment for work already completed and to reimbursement of unavoidable expenses incurred prior to the date of termination.

11. ARBITRATION

All disputes arising in connection with the present Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules.

12. The International Labour Standards of the ILO (International Labour Organisation) shall constitute an integral component of this Contract. The contractor is obliged to obey these standards and hereby declares that he is familiar with them. (www.ilo.org for information)

13. FINAL PROVISION

This Contract shall be modified or supplemented only by written agreement.

.....
(Place, Date)

.....
(Place, Date)

.....
The Employer
Deutsche Gesellschaft für
Internationale Zusammenarbeit
(GIZ) GmbH

.....
The Contractor
(*seal, if available*)

Annexes :

- Specimen Advance Payment Guarantee (Annex A 5)
- Specimen Defects Liability Guarantee (Annex A 6)
- Specimen Taking-Over Certificate (Annex A 8)

<i>CERTIFICATE OF HANDING-OVER</i>

This is to certify that the following works for the project named below have been completed to the full satisfaction of the representatives listed in the Minutes of the Handing-Over and are being handed over to and accepted by the authorized representative of the counterpart authority in the recipient country as of

..... , 20...

Project No:

Project Title:

Works :
.....

Remaining defects and outstanding works affecting the warranty of the contractor(s) have/have not been determined as stated in the **Minutes of Handing-Over** enclosed.

Upon this handing-over of the works all rights and obligations concerning the works are transferred to the counterpart authority in the recipient country.

The Project Agreement between the Government of the Federal Republic of Germany and the Government of, dated, shall remain unaffected and the works shall be at the unlimited disposition of the experts delegated by the GIZ to the promoted project for the implementation and completion of their duties and tasks.

.....
Place

.....
Date

Handed over by

Accepted by

.....
Signature and name in printed letters of the authorized representative of the GIZ

.....
Signature and name in printed letters of the authorized representative of the counterpart authority

Encl.: Minutes of the Handing-Over

ENCLOSURE TO CERTIFICATE OF HANDING-OVER

MINUTES OF THE HANDING-OVER

The handing-over of the

Works :
 of
 Project No:
 with the
 Project Title:

as of, 20... has been accomplished by the following team of representatives present and authorized to sign for the :

	<i>name in printed letters</i>	<i>initial :</i>
GIZ
Counterpart Authority
Usufructuary / User
German Embassy (if applicable)

Following a joint inspection of the works it has been ascertained that they have been completed as approved and are ready for use. Defects, deficiencies and outstanding works, all covered by contractors liability, were established as follows :

- 1. Faults and Defects at**
- 1.1 Building / Installation

- 1.2. Exterior Facilities (if applicable)

- 2. Outstanding Works / Missing Items**
- 2.1 Building / Installation

- 2.2 Exterior Facilities (if applicable)

3. Remarks:

With this certificate the following documents are handed-over to the authorized representative of the counterpart authority :

- one (1) set of as-built drawings,
- one(1) copy of the Taking-Over Certificate as of, 20...,
- one (1) copy of the Acceptance Certificate of the electrical installations and equipment, incl. the record of inspection,
- complete set of operating instructions and maintenance manuals for electrical/mechanical equipment (if applicable)

.....
 For the GIZ
For the counterpart authority

Project No:

Project Title:

Contract No. : dated:
 incl. Supplement dated dated:

Contractor:

TAKING - OVER CERTIFICATE
 (In case of partial take-over precede title by "PARTIAL")

This is to certify that the Works of the subject contract incl. its supplement(s) have been completed to the satisfaction of the representatives named below and are being taken over as of

..... 20....

Following a joint inspection of the building(s)/installation(s) by the persons named below it has been ascertained that they have been carried out according to the Contract. Faults and defects and / or outstanding works have / have not been determined as listed on the attached sheet.

The following persons participated in the joint inspection as representative for

the Employer
the Engineer
the Contractor

(insert names in printed letters)

The faults and defects found and listed shall be eliminated and the outstanding Works/missing items (if any) shall be completed/installed without delay, definitely not later than

..... 20....

All rights on the part of the Employer concerning liability and maintenance shall remain unaffected. The Employer reserves the right to avail himself of the contract penalty clause insofar as this has been agreed.

The execution of the Works has been commenced as of
 With the building(s)/installation(s) completed and taken-over at the date stated above the **Defects Liability Period** commences at that same date and ends at

This Certificate shall be drawn up in three identical copies with one copy each for the three representatives signing below

.....

 Employer's Representative Supervising Engineer Contractor's Representative
 Encl.: List of defects and/or outstanding works

ENCLOSURE TO TAKING-OVER CERTIFICATE

Project No:

Project Title:

Contract No. : dated:
incl. Supplement dated dated :

Contractor:

LIST OF DEFECTS AND/OR OUTSTANDING WORKS

1. The following faults and defects have been found and established during the joint inspection at the date of taking-over stated on the front page :

2. The following outstanding Works / missing items have been found and established during the joint inspection at the date of taking-over as above :

3. This **Partial Taking-Over Certificate** does not apply to the whole of the Contract stated above, but to the following parts/portions of work only :

.....
Employer's Representative

.....
Supervising Engineer

.....
Contractor's
Representative

Defects Liability Guarantee

Annex A 6

Employer/Beneficiary: Deutsche Gesellschaft für Internationale Zusammenarbeit
(GIZ) GmbH, Dag-Hammarskjöld-Weg 1-5,
D-65760 Eschborn, Germany

Consultant:

.....

Contract Date:

Contract No.:

Project No.:

Object of services/performance/
works*:

.....

.....

Contract price: (Currency)

We hereby undertake to grant the Employer an independent guarantee for the warranty claims to which he is entitled vis-à-vis the Consultant pursuant to the afore-mentioned contract, including any incidental claims, up to the amount of

(Currency)
(in words:)

Explicitly waiving all objections and defences, we undertake to render said payment upon receipt of the Beneficiary's first written demand, provided that the latter states that the Consultant* has failed to observe all or part of his contractual obligations.

This guarantee shall become effective upon the date of issue of the Taking-Over Certificate and shall expire upon the end of the Defects Liability Period.

The Employer shall return this guarantee to us as soon as its validity expires.

This guarantee shall be governed by the law of the Federal Republic of Germany. The place of jurisdiction for all disputes arising from this guarantee shall be Frankfurt/Main, Germany.

.....,

.....
(Signature of the guarantor)

* delete what is inapplicable

Advance Payment Guarantee

Client/Beneficiary:

Deutsche Gesellschaft für Internationale
Zusammenarbeit
(GIZ) GmbH,
46, Paschimi Marg,
Vasant Vihar,
New Delhi, INDIA

Supplier:

Contract date:

Contract no.:

Project no.:

Object of supply/performance:

Advance payment pursuant to the contract: @ INR

We hereby undertake vis-à-vis the beneficiary to guarantee repayment of the advance payment stipulated above, including any subsidiary claims, up to the amount of

@ INR

(in words: @)

Explicitly waiving all objections and defences, we undertake to render said payment upon receipt of the beneficiary's first written demand, provided that the latter states that the supplier has failed to observe all or part of its contractual obligations.

This guarantee shall take effect as of

It shall expire on return of the guarantee document after final payment.

This guarantee shall be governed by the law of the Republic of India. The place of jurisdiction for all disputes arising from this guarantee shall be New Delhi, Republic of India.

.....

.....

(Signature of the guarantor)