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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

relating to the General Conditions for public services contracts
financed by the EDF

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Article 22 of Protocol No 2 to the Lomé Convention which relates to the application of financial and technical cooperation, provides that

"The general provisions and conditions applicable to the placing and performance of public works contracts* financed by the Fund shall be the subject of common rules adopted, on a proposal by the Commission, by a decision of the Council of Ministers at its second meeting following the date of entry into force of the Convention."

Furthermore Article 26 of this same Protocol No 2 provides that the technical cooperation contracts are prepared, negotiated and concluded ... "within the framework of the common rules provided for by Article 22."

The general terms and conditions which apply to the placing and performance of technical cooperation contracts or the General Conditions for public services contracts (GCC) are therefore an integral part of the common rules envisaged by Article 22 of Protocol No 2.

Now that the Commission has completed the draft of GCC/Services it wishes to present it to the Council so that an offer can be made to the ACP States and finally lead to a decision of the EEC/ACP Council of Ministers, to be reached in principle during its second session.

This communication follows an earlier one from the Commission to the Council which relates to the General Conditions of public works financed by the EDF (document COM(76)715 Final-Brussels, 3 January 1977).

*See note on Page 1

Under the scope of the Lomé Convention, technical cooperation contracts are prepared, negotiated and concluded by the competent authorities of each ACP State (Article 26 of Protocol No 2). The objective of the General Conditions for services contracts is to maintain a certain uniformity in the field of these contracts by providing the administrations of the ACP States with some standard model General Conditions.

It is appropriate, first of all, to give some indications of the structure of the document and afterwards to study the general legal guidelines.

I. THE STRUCTURE

The draft contains four parts:

- (i) Title I: Regulations,
- (ii) Title II: Contractual clauses relating to study contracts,
- (iii) Title III: Contractual clauses relating to technical assistance contracts,
- (iv) Title IV: Contractual clauses relating to contracts for the supervision of works.

Title I is the part dealing with the Regulations. It provides the common basis for the three other contractual parts and contains certain provisions from which it is not possible to derogate. Therefore it has a binding character at the same time both on the contracting authority and on the consultant. The first part, therefore, lays down the fundamental contractual rules as well as the procedures for the placing and award of contracts.

Titles II, III and IV which apply to studies, technical assistance and supervision of works respectively, contain the specialized contractual provisions relating to each of the three types of contract. It is possible to derogate from these provisions to meet the specific needs of each contract.

The breakdown into studies, technical assistance and supervision of works and the necessity of drawing up a particular contract for each of the three types of service corresponds with the practice of the EDF from its beginnings. This does not mean, however, that the different phases of a project eg study and supervision of works or alternatively studies and technical assistance, should not be granted to the same consultant. It simply implies the placing of separate contracts.

There are three arguments for maintaining this distinction:

- (a) at the foundation of Community operations, there is the desire to give to the ACP States the responsibility for the performance of the projects. It is therefore only in the case where an administration lacks the necessary ability and makes a specific request, that studies and/or technical assistance or supervision of works can be entrusted to a consultant. However, this lack of ability, if it exists for the studies phase, does not necessarily exist for the execution or supervision of works phases. Alternatively, if a lack of ability exists at the moment when the study contract is signed, this does not prevent the administration from appointing what qualified personnel it wishes when the project reaches the performance phase.
- (b) the Community does not only finance large projects. Many projects are of a more modest character and if these are beyond the study capacity of the ACP administration they may however fall within their managerial capabilities, both regarding the execution and the supervision of works.
- (c) as experience has shown that the studies phase precedes the implementation phase, sometimes by long periods, it is inappropriate to have a single contract for all phases, as this would commit the EDF for the whole period, bearing in mind that there is usually no continuity in the provision of services.

II. THE LEGAL GUIDELINES

1. Rules of procedure for the placing and award of contracts

Articles 24 and 25 of Protocol No 2 to the Lomé Convention lays down the basic rules in the area of procedures. The usual method is that of mutual agreement, the exception being the invitation to tender. The draft of the GCC Services keeps this basic distinction (Article 10) in regulating and formalizing the procedures for the placing of contracts.

- (a) Under the scheme for the selection of candidates, several phases are provided for:
 - (i) The phase of establishing restricted lists of candidates (Article 11 of the draft) where two sets of factors are relevant for the establishment of a provisional list and a definitive list.

- (ii) The phase of applying criteria for assessing tenders in the invitation to tender procedure (Article 45 of the draft).
- (iii) The phase of selection of the contractor (Articles 21 and 47 of the draft).

(b) Under the scheme of invitations to tender, the general procedure is defined as are certain special cases where the invitation to tender procedure is employed:

- (i) the procedure which is clearly stated in Article 25(2) to Protocol No 2 is not an open system but a restricted one. There is no preselection procedure producing a list of selected candidates. It is therefore a restricted procedure without publication of a notice of invitation to tender (Article 28 of the draft).
- (ii) Article 29 of the draft envisages different cases of an invitation to tender:
 - for services
 - for services and prices.

2. The respective functions of the contracting authority and the consultants - management of work and delegations

Care has been taken to clarify as completely as possible the function of the administration and that of the consultant.

The basic definition of the contracting authority given in Article 4 of the draft is applicable to the three types of contract, namely: study, technical assistance and supervision of works. (This is the authority of the contracting party).

The basic definition of supervisor given in Article 4 is supplemented by the function of that party in the studies (Article 55), in the technical assistance (Article 101), and in the supervision of works (Article 149). It is necessary to note that in the field of technical assistance and supervision of works, the function of the supervisor is different from that applying to the studies and accordingly cannot be completely estimated within the strict framework of the contract for services, but rather by reference to the project which has as its object a measure of technical assistance or the supervision of works. This is the reason for Article 101 specifying that the supervisor

shall be the director of the project which is the subject of the technical assistance contract; Article 149 stipulates that it shall be the director of the works.

The consultant, for his part, carries out the services which have been assigned to him with the authority of the supervisor (Article 53 for studies, Article 114 for technical assistance and Article 162 for the supervision of works).

In some exceptional cases, certain items of the management of the work can be delegated to the consultant. This delegation must, however, be expressly referred to in the Special Conditions (Article 114 for technical assistance and Article 162 for supervision of works). The delegation by the Administration to the consultant is not necessarily incapable of being sub-divided; there are degrees of delegation, the contract of the supervisor being only one example within the system of delegation. It is therefore this idea which is reflected in the project by a combination of the performance of the management of works and the performance of his work by the consultant (Article 114 and 122 for contracts of technical assistance and Articles 162 and 170 for contracts of supervision of works).

Where the consultant is obliged to provide services, these fall specifically into the ambit of the Special Conditions (Article 66 for study contracts, Article 115 for the technical assistance contracts and Article 163 for the supervision of works contracts). This does not exclude the presence of standard headings, in particular for technical assistance and supervision of works.

One last point must be made. The definition of services to be rendered by the consultant ought to be facilitated by the necessity for the contracting authority to clearly define its requirements. This is important above all for the studies and the technical assistance. It is in this respect that the draft emphasizes the working out of a programme by the contracting authority (Articles 22 and 32 of the draft).

3. The liability of the consultant

The consultants are aware that this is an important problem. There are several ways of approaching it. The IGRA clauses worked out by the professional body (FIDIC) retain the principle of the liability of the consulting engineer for "gross negligence".

If a stricter approach was applied, it would have been possible to enact

some clauses with absolute liability. These are technically possible in the case of study contracts:

- (i) for the prices (estimate of the cost of the investment and sanctions imposed in cases where the estimate is exceeded),
- (ii) for the quantities (estimates of different quantities - presumed quantities - to be remunerated by the price schedule with a margin of tolerance and sanctions for the consultants when in the course of execution of the works this margin of tolerance is exceeded).

This conception of maximum obligation has not been retained, because, after reflection and research, it has not proved realistic. In fact, the uncertainty in the estimates in the 46 ACP countries is still a problem and the difficulty of drawing up very accurate quantities remains apart from extending the technical studies insofar as cost does not become prohibitive.

The draft has kept in the end to a middle course where the consultant is above all responsible for "professional negligence" (Article 72.1 for the study contracts, Article 120.1 for the technical assistance contracts and Article 168.1 for the supervision of works contracts). This is the normal contractual liability where the expert, the professional, is liable for his ordinary negligence.

Within the framework of technical assistance contracts and supervision of works contracts, the consultant is not solely liable for the competence of his agents (Article 120.2 and 168.2). His liability is adjusted according to the extent of his obligations. For example, in the case of a consultant for a supervision of works contract, has the contractor also made the study? Has he received certain delegations from the contracting authority? Is he, in the last analysis, responsible for the management of the work?

On the other hand, the consultant in a study contract is liable, after performance of the works, to abide by the national law of the ACP country (10 year liability of the authors of the project under the law of France and Belgium, liability for an "Act of Negligence" in the common law system - Article 72.4 of the study contracts). In the contracts for technical assistance and supervision of works, this post-contractual liability is only subsidiary and is the result of the provisions of Article 121.1 (technical assistance) and 169.1 (supervision of works) if negligence is imputable to the consultant.

Finally liability as against third parties is affirmed generally

(Article 73 for study contracts, Article 121 for the technical assistance contracts and Article 169 for supervision of works contracts).

4. Collaboration with national consultants

The basis for this collaboration is to be found in Article 27 of Protocol No 2:

"The Commission shall, as far as possible, encourage cooperation between consultants and experts of Member States and ACP States, temporary partnerships, sub-contracting and the use of national experts in the teams belonging to consultants from Member States".

This objective is provided for in the draft:

- (i) by a provision concerning consortia of consultants (Article 15).
Group tenders may be submitted by a consortium of consultants from the Member States and the ACP States. Their liability is joint and several and they must appoint one of their number to represent the consortium vis-à-vis the contracting authority.
- (ii) by a provision relating to sub-contracts (Article 56 for the study contracts, Article 104 for the technical assistance contracts and Article 152 for the supervision of works contracts).
- (iii) by a provision relating to cooperation with third parties (Article 76 for study contracts, Article 126 for the technical assistance contracts and Article 174 for the supervision of works). This relates to a flexible formula whose procedures for cooperation between consultants of the Member States and consultants of the ACP States are laid down in the Special Conditions.

The liability is not necessarily joint and several as in the preceding provisions for consortia of consultants, for it may be joint liability only.
- (iv) by a provision concerning the education of trainees (only for technical assistance and supervision of works - Article 118 and 166 of the draft).

III. CONCLUSION

The setting up of precise procedures for the placing of contracts for services as well as the unification of General Conditions for the performance of these contracts gives a valuable framework to the Administration of the ACP States who are called upon to conclude technical cooperation contracts and to be responsible for their performance. This effort at standardization at the same time simplifies the work of the Delegates of the Commission as well as its services who have the tasks of advising and controlling the proper execution, both technical and financial, of the projects.

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FOR PUBLIC SERVICES CONTRACTS

FINANCED BY THE EDF

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TITLE I

Regulations

CHAPTER I

PRINCIPLES AND DEFINITIONS

Article I

Conditions

Services contracts financed by the European Development Fund shall be governed by:

1. These General Conditions;
2. The Special Conditions.

Article 2

General conditions

These General Conditions comprise:

1. Regulations laying down the principles and conditions for the preparation and award of contracts; no derogation may be made from these provisions.
2. General administrative and technical contractual provisions relating to each type of contract as defined in Article 4. These provisions shall apply to all contracts; reference shall be made to them in the Special Conditions.

Article 3

Special Conditions

The Special Conditions comprise:

1. The special contractual provisions applicable to each contract.
2. Those contractual provisions of the General Conditions which are not applicable, in view of the particular requirements of the contract concerned.

Article 4

Definitions

For the purpose of implementing these General Conditions, the following definitions shall apply:

1. Contract: any contract for valuable consideration, concluded between a contracting authority and a consultancy or advisory bureau or group, a consulting engineer or an expert, the object of which is the execution of technical cooperation projects in the form of studies, technical assistance or supervision of works.
2. Member States: the Member States of the European Economic Community.
3. ACP States: the African, Caribbean and Pacific States which are recipients of aid from the European Development Fund.
4. Contracting authority: the State, regional or local authority, body or any legal person governed by public law which concludes the contract or on behalf of which the contract is concluded.
5. Supervisor: the administrative department or the natural or legal person designated by the contracting authority as having responsibility for the performance of the contract.
6. Consultant: the natural or legal person with whom the contract is concluded.
7. National currency: the currency of the recipient ACP State.

Article 5

Nationality

Without prejudice to Article 56(3) of the Lomé Convention Concerning third

countries, any natural or legal person having the nationality of a Member State or an ACP State shall be eligible to participate in contracts financed by the European Development Fund.

Article 6

Determination of contract prices

1. The contract prices shall be composite, based in part on overall prices and/or based in part on unit prices, and in part on the repayment principle.

(a) in Part A based on overall prices and/or based in part on unit prices:

- for the part based on overall prices, fixed agreed prices cover all the relevant services.
- for the part based on unit prices, the services are itemized separately and the unit price for each item stated.

Unit prices are fixed and agreed between the parties.

The price for part of the contract which is based on unit prices shall be determined by applying the unit prices to the quantities of services provided for.

(b) Based in part on the repayment principle

Where part is based on the repayment principle, the services provided shall be reimbursed on submission of the appropriate supporting documents.

2. The estimated contract price shall be determined on the basis of the sum of the overall prices and/or the product of the unit prices multiplied by the estimated quantities, and the estimated amount of services

to be reimbursed on submission of the supporting documents.

Article 7

Payment for services rendered

1. Contracts may not provide for instalments on account, only where a service has been rendered and accepted. In accordance with these General Conditions, as supplemented by the Special Conditions, instalments on account shall be allowed hereunder as and when the services are rendered by the consultant.
2. Nevertheless, advances may be granted in accordance with the conditions and procedures laid down in these General Conditions.
3. The payment of advances or instalments on account does not have the character of final payment; the recipient shall be liable to the payer for the full amount of the advance or instalment until final settlement of the contract.

Article 8

Amendment of the contract

The contracting authority may amend the contract in the course of its performance provided that the contracting authority does not change the purpose of the contract and provided that it gives fair compensation where appropriate.

Article 9

Computation of time limits

The time limits referred to in these General Conditions, the Special Conditions and the contract documents shall begin to run from the beginning of the day following the date of the act or deed which serves as a point of commencement for this time limit.

Where the time limit is fixed in days, it shall expire at the end of the last day of the period laid down.

Where the time limit is fixed in months, it shall end on the day having the same number as the day on which it began. In the event of the last month of a time limit fixed in months not having a day with the same number as the date on which it began, the time limit shall end on the last day of that month. If the last day of the time limit falls on a Sunday or a public holiday established by law, the time limit shall be extended until the end of the next working day.

Chapter II - Procedure for the preparation
and award of contracts

Article 10

Method of award

Contracts shall be placed by mutual agreement. However, certain contracts may be awarded following an invitation to tender, particularly in the case of major studies of an especially complex and technical nature, where recourse to such procedure is justified on technical, economic or financial grounds.

I - Provisions common to mutual agreement contracts and contracts
awarded following an invitation to tender

(1) Qualifying criteria for participation

Article 11

Criteria for the selection of candidates

Irrespective of the method of awarding a contract, a restricted list of candidates shall be drawn up.

1. A provisional list shall be drawn up, taking into consideration in particular the qualifications and experience of candidates in the area covered by the contract and operations carried out by them in developing countries.

2. A definitive list shall then be drawn up, taking into account in addition their legal and financial situation as indicated by the requirements of Articles 13 and 14, the availability of their specialized staff for the project in question and, where appropriate their independence.

Article 12

Barriers to participation in contracts

The following natural or legal persons shall not be entitled to participate in contracts:

- (a) any who are bankrupt ;
- (b) any who are in a situation of suspension of payments established by judgment of a court other than bankruptcy, and resulting, in accordance with their national laws, in a total or partial loss of the right to administer and dispose of their property ;
- (c) any against whom legal proceedings have been instituted involving a declaration of suspension of payments and which may result, in accordance with their national laws, in a declaration of bankruptcy or in any other situation entailing the total or partial loss of the right to administer and dispose of their property ;
- (d) any who have been convicted, under a final judgment, of any offence involving their professional conduct ;
- (e) any who are guilty of serious misrepresentation with regard to information required for participation in a technical cooperation project ;
- (f) any whom it has been decided to exclude pursuant to Article 98.

Article 13

Proof of standing and ability

In order to provide proof of his standing and ability, a candidate may be required to supply the following :

1. Any document dated less than three months previously, drawn up in accordance with the candidate's national law or practice :

- certifying that he meets the conditions set out in Article 5 ;
- certifying by any appropriate means, and in particular by a declaration on his honour that none of the situations referred to in Article 12 (a), (b), (c) and (d) applies to him ;

2. References certifying to his financial position;
3. In the case of a company or firm, a copy of its memorandum and articles of association or any other document relating to its constitution, together with the credentials of the person authorized to enter into commitments on its behalf;
4. A statement describing his staff and material resources and his technical resources, with a description of technical cooperation projects which he has carried out or in which he has participated. He shall attach to this statement any certificates relating to and assessing his activities and, where applicable, certificates issued by a qualifying and classifying body approved by the authorities of the Member State or ACP State of which he is a national or in which he has a permanent branch (indicating, where appropriate, external resources which would be available to him).

(2) Rules in the technical field

Article 14

Technical specifications and standards

1. The technical specifications and the description of testing, checking, acceptance and calculation methods which appear in the documents supplied by the contracting authority may be defined by reference to national or international standards.

Where, with the agreement of the contracting authority, the consultant uses other methods or refers to other standards, he shall enable the contracting authority, at its request, to check such methods or standards, either by producing in the official language of the ACP State the official tests regulating such methods or standards or by supplying a certificate from an approved body or by any other means accepted by the contracting authority.

2. Unless such specifications are justified by the subject of the contract, the documents drawn up by the consultant shall not introduce technical specifications referring to particular processes which would

entail discrimination at the execution stage of the project, both as regards tenderers and the origin and source of imported equipment, materials and supplies.

Where it proves useful to refer to a specific type in an invitation to tender dossier, it must be stipulated that the characteristics referred to are given by way of guidance and that any equipment or supplies that are functionally equivalent, similar or superior may be proposed.

(3) Procedure for drawing up tenders and contracts

Article 15

Consortia

Group tenders may be submitted by consultancy or advisory bureaux or groups, consulting engineers or experts. Such tenders shall be signed by each member of the consortium who shall, unless otherwise specified in the Special Conditions, accept joint and several liability and appoint one of their number to represent the consortium vis-à-vis the contracting authority.

All members of the consortium must, each for itself, provide the proof required under Article 13, as though they were themselves the candidate or tenderer.

Article 16

Taxation

1. The fees proposed by the candidate or tenderer shall include all taxes payable in the State of which he is a national or of which he has his registered place of business.

2. The tax and customs arrangements applicable in the ACP States to contracts financed by the European Development Fund shall be those laid down in EEC/ACP Council of Ministers Decision No

Article 17

Currency of the tender

1. Where they relate to study contracts, tenders shall be expressed in the national currency of the Member State or the ACP State of which the candidate or tenderer is a national or in which he has his registered place of business, or in European Units of Account (EUA).
2. Where they concern technical assistance contracts or contracts for the supervision of works, tenders shall be expressed in national currency.

Article 18

Currency of payment

1. The currency of payment shall in principle be the same as the currency of the tender.
2. However:
 - (a) where the currency of the tender is not the national currency, the candidate or tenderer shall estimate the portion of the services corresponding to expenditure in the national currency. That portion shall necessarily be paid in such currency on the basis of the exchange rates laid down in paragraph 4 and where the tender is expressed in foreign currency on the basis of the exchange rates in force on the day preceding the date of payment in the case of a tender expressed in EUA.
 - (b) Where the currency of the tender is the national currency, the candidate or tenderer may, when negotiating the contract or in his tender, request that a specified percentage, for which reasons shall be given, of the nominal amount of his tender be paid in the currency of the Member State or ACP State of which he is a national or in which he has his registered place of business, on the basis of the exchange rates laid down in paragraph 4. He may also express the said percentage in EUA on the basis of the exchange rates laid down in paragraph 4; in such case, payments in respect of this percentage shall be made, where appropriate, in the currency of the Member State or ACP State specified in the contract, on the basis of the equivalent value of the EUA on the day preceding the date of payment.

These different procedures must be clearly indicated in the contract.

3. The day preceding the date of payment referred to in paragraph 2(a) and (b) means the day preceding the date on which the order for payment is drawn up.

4. The rates of exchange referred to in paragraph 2 shall be those recognized by the parties as being in force at the time of negotiation of the contract or when the tenders were drawn up as defined in Article 44; they shall be specified in the contract.

(4) Obligations of the State

Article 19

Temporary residence permit

For the purpose of carrying out investigations in preparation for the drawing up of tenders, the ACP State shall grant a temporary residence permit to any person participating in a technical cooperation project, or his agent. This permit shall expire at the end of a period of one month following publication in accordance with customary practices in the ACP State of the contracting authority's decision to award the contract to the successful candidate or tenderer.

Article 20

Right of transfer

Subject to observance of the beneficiary ACP State's exchange regulations, the consultant shall be entitled to transfer sums due to him directly or indirectly in connection with performance of the contract.

The timing and amount of the transfer request or requests shall be at the consultant's discretion.

Transfers shall be made in the currency of the Member State or ACP State of which the consultant is a national or in which he has his registered place of business, at the rate of exchange in force in the beneficiary ACP State on the day the transfer is made.

II - Mutual agreement contracts

Article 21

Nature of private contracts

A contract shall be termed a mutual agreement contract where the contracting authority selects the candidate who, in his opinion, is best qualified from a list drawn up for this purpose.

Article 22

Programme

The candidates selected from a restricted list shall receive the programme containing in particular:

I. In the case of a study contract or a contract for technical assistance, the following:

(a) factual details, namely:

(1) data in the possession of the contracting authority (eg topographical plans, aerial photographs, surveys of the soil and sub-soil, statistics, feasibility studies, previous economic studies, etc.);

(2) requirements with which the contracting authority must itself comply (observance of certain technical or other rules);

(b) obligations laid down by the contracting authority which have already been studied in depth by the department concerned:

(1) operational requirements clearly expressed in terms of surfaces, connections, quantities, quality, etc.;

(2) requirements, ie restrictive conditions of a technical nature (type of façade, surfacing) or financial nature (price limit), or other.

2. In the case of a contract for the supervision of works, preliminary draft studies or implementation schemes and the draft works contract or the works contract if such are available.

Article 23

Negotiation of the contract

1. The services which are the subject of the contract shall be defined by common agreement between the contracting authority and the candidate. The definition of the services and their technical specifications and, where necessary, the staff to be employed shall be laid down in the Special Conditions on the basis of the programme referred to in Article 22.

2. (a) The fees shall be calculated in particular on the basis of the general terms and conditions of remuneration drawn up by common agreement between the ACP States and the Community.

(b) The financial procedures shall be determined in accordance with

Article 24

Signature and number of copies

On completion of the negotiations, the contracting authority shall draw up the text of the contract ; it shall forward the original marked "original" and two copies marked "copies" for signature to the candidate within one month, by registered letter with acknowledgement of receipt.

Within 15 days of the signature of the acknowledgement of receipt, the candidate shall forward to the contracting authority, by registered letter with acknowledgement of receipt, the original and the two copies duly signed.

Article 25

Period during which tenders are binding

The candidate shall be bound by his tender for a period of two months from the date of signature by the contracting authority of the acknowledgement of receipt referred to in Article 24.

Article 26

Notification of acceptance of contract

1. (a) The contract shall be deemed to be concluded when the candidate is notified that the signed draft has been approved. Notification must be given at the latest within the period of two months laid down in Article 25 ;

(b) Notification shall be given by registered letter with acknowledgement of receipt. It shall be deemed to have been given on the date of signature of the acknowledgement of receipt by the candidate ;

(c) The registered letter must identify the candidate and set out his address.
2. Upon expiry of the period laid down in paragraph 1.(a), if notification of acceptance of the contract has not been given, the candidate selected shall be free to withdraw his contract by registered letter with acknowledgement of receipt.

Should the date of belated notification of acceptance of the contract be the same as that of the selected candidate's withdrawal, the withdrawal shall be deemed to precede the notification.

3. If the candidate has not availed himself of the option to withdraw provided for in paragraph 2 before notification of acceptance of the contract has been given, he shall be bound by such notification. However, if such notification is given more than two months after the expiry of the period laid down in paragraph 1, the candidate shall be bound only if he records his agreement by registered letter within a period of 15 days from the date of notification of acceptance of the contract.

Article 27

Order of precedence of the documents relating to the contract

The Special Conditions shall specify the order of precedence of the documents relating to the contracts.

III - Contracts awarded by invitation to tender

Article 28

Nature of invitation to tender

Invitations to tender shall be restricted. They shall be open only to those candidates whom the contracting authority contacts by means of a letter of invitation.

Article 29

Subject matter of invitation to tender

Depending on the circumstances, an invitation to tender may concern :

1. either the formulation of a cooperation project, services to be rendered and/or the staff to be employed exclusive of any financial aspect, the prices to be paid being negotiated subsequently, or

2. both the formulation of the cooperation project and the prices.

1 - Rules governing participation

Article 30

Participation in the tendering procedure

The contracting authority shall send a letter of invitation to participate in the tendering procedure to candidates selected from the provisional restricted list referred to in Article 11(1).

The letter shall state in particular :

1. The subject of the contract ;
2. - either the data necessary for candidates to submit adequate proposals in cases where the invitation to tender concerns :
 - (a) the formulation only of the technical cooperation project ;
 - (b) both the formulation of the technical cooperation project and the prices.- or the nature and extent of the services to be provided and an indication of the staff to be employed where the invitation to tender relates only to prices.
3. The location of the project, the source of financing and, where appropriate, the period of performance of the contract.
4. The contracting authority and its address for correspondence.
5. The final date for the receipt of applications to participate accompanied, if necessary, by the supporting documents referred to in Article 13, the address to which they must be sent and the language in which they must be drawn up.

Article 31

Invitation to tender

Once the definitive list has been drawn up on the basis of the criteria laid down in Article 11 (2), candidates shall receive a letter of invitation to tender containing in particular :

1. a reference to the letter of invitation to participate ;
2. the final dates for the receipt of tenders, the address to which they must be sent, the number of copies required and the language in which they must be drawn up ;
3. the date, place and time of the opening of the tenders ;
4. the period, reckoned from the final date for the receipt of tenders, during which tenderers shall remain bound by their tenders ; except in special cases, this period shall be three months ;
5. the tender dossier.

Article 32

Time limit for the submission of tenders

The period between the date of dispatch of the letter of invitation to tender and the final date fixed for the receipt of tenders shall be determined on a case-by-case basis according to the subject and magnitude of the contract.

Save in exceptional circumstances, it shall not be less than six weeks.

2 - Invitation to tender dossier

Article 33

Contents of the tender dossier

For the two types of consultation provided for in Article 29, the tender dossier should include the following :

- (a) the programme as described in Article 22,
- (b) the Special Conditions and the annexes thereto,
- (c) the address of the department concerned from which tenderers may obtain any additional information.

3 - Special rules for the drawing up of tenders

Article 34

Language

The tender shall be drawn up in the language stipulated in the letter of invitation to tender.

Article 35

Signature and number of copies

The tender shall be signed by the tenderer or his agent. It shall be drawn up in a single original bearing the word "original". The requisite number of copies specified in the letter of invitation to tender shall be signed in the same way as the original and shall bear the word "copy".

Article 36

Agents

Tenders submitted by agents must state the name or names of the principal or principals on whose behalf they are acting. No agent may represent more than one tenderer. Agents shall attach to the tender the notarial act or deed which empowers them to act on behalf of tenderers.

Article 37

Alterations and amendments

Any erasures, interlineations, additions or amendments, whether in the tender or in its annexes, which could influence the basic terms of the contract, shall be subject to alterations approved and signed by the tenderer or his agent.

Article 38

Accuracy of prices

Unit prices or overall prices and flat-rate prices shall be determined in such a way as to correspond to the relative value of each item in relation to the total amount of the tender. They must not in particular be of a nature such as to distort the comparison of tenders or to result in the payment of instalments on account which are disproportionate to the normal value of the services rendered.

4 - Submission and opening of tenders

Article 39

Submission of tenders

- 1.(a) The tender and the annexes thereto shall be placed in a sealed envelope bearing the address indicated in the letter of invitation to tender, the reference to the letter of invitation to tender in reply to which the tender is being submitted and the following words :
"Not to be opened before the meeting for the opening of tenders"

(b) Where a tender covers both the formulation of the study, the services and the prices, the documents relating to the prices shall be placed in a separate envelope, sealed and bearing the words "not to be opened before examination of the contents of the first envelope". The latter, bearing the particulars set out in subparagraph (a) shall contain the portion of the tender which relates to the formulation of the studies and services.

2. Envelopes containing tenders must be sent by post or submitted by any other means. The tenderer may request an acknowledgement of receipt.

3. On receipt, the envelopes, which must not bear any reference to the tenderer, shall be entered in a special register in the order in which they arrive. The registration number and the date and time of arrival shall be recorded on the envelope. Envelopes must remain sealed until they are opened under the conditions set out in Article 42.

Article 40

Withdrawal, additions and amendments

Any tender may be withdrawn, supplemented or amended prior to the final date fixed for the receipt of tenders.

Withdrawals, additions or amendments shall be made in writing and signed by the tenderer or his agent.

On pain of rendering the tender null and void, amendments and additions must indicate precisely the purpose and the extent of the desired change.

Withdrawal must be unconditional.

The provisions of Articles 37 to 39 relating to tenders shall apply to withdrawals, additions or amendments.

If a tenderer who has withdrawn his tender submits a fresh one in the proper manner, he may refer therein to the documents attached to the first tender which he intends to use in support of the second.

Article 41

Period during which tenders are binding

Tenderers shall be bound by their tenders during the period laid down in the letter of invitation to tender.

If, during this period, the contracting authority considers that it is not in a position to make a choice, it may propose by registered letter that the period be extended. The agreement of the tenderers must be conveyed to the contracting authority by registered letter.

Article 42

Opening of tenders

1. The envelopes containing the tenders, withdrawals, amendments or additions shall be opened in private at the place, on the date and at the time fixed in the letter of invitation to tender, by a committee whose composition shall be determined by the ACP State.

Only candidates who have received a letter of invitation to tender shall be eligible

Only those envelopes which have been received in accordance with conditions specified in Articles 39 and 40 not later than the final date fixed for the receipt of tenders, can be taken into consideration, without prejudice to paragraph 2 below.

Minutes of the meeting at which the envelopes are opened shall be drawn up, and shall contain :

- the number and condition of the envelopes received,
- the identity of the tenderers,
- the documents contained in the envelopes,
- where applicable, the amount of the tenders,
- any amendments to or withdrawals of tenders.

The minutes shall be signed by the Chairman who shall also endorse the documents contained in the envelopes.

The Chairman of the committee shall then read aloud the names of the tenderers and, where applicable, amendments and withdrawals.

After this announcement the committee shall continue its work in camera.

2. Envelopes arriving after the final date fixed for the receipt of tenders shall be taken into consideration only if :

- (a) they were posted by registered mail not later than ten days before the final date fixed for the receipt of tenders, and
- (b) they reach the Chairman of the committee responsible for the examination of tenders before he declares the meeting open.

Where possible, envelopes which arrive late shall be entered in the register by the committee in accordance with Article 39.

Article 43

Invalidity of tenders

Without prejudice to the invalidity of any tender the provisions of which conflict with the essential requirements of the General Conditions, and in particular those set out in Article 37, the committee may consider any tenders which do not conform with Articles 12 and 13, and 34 to 40, or the substance of which clearly does not correspond to reality, to be irregular and, hence, null and void.

Article 44

Comparison of tenders

Where tenders received are expressed in different currencies, they shall be converted, for the purposes of comparison, into the national currency on the basis of the parities of the different currencies against the EUA in force on the first working day of the month preceding the month in which the date fixed for the opening of tenders occurs.

5 - Selection of contractor - Drawing up of the contract

Article 45

Criteria for assessing tenders

1. Where an invitation to tender concerns the formulation of a cooperation project, the following criteria shall be used for assessing tenders :

- the organization and methods proposed for providing the services ;
- the firm's experience of similar projects ;
- the qualifications, experience and aptitude of the staff assigned to the project ;
- knowledge of the national language or languages and familiarity of expatriate staff with the ACP State in question ;
- material and technical resources available to the head office of the firm, including any assistance from other firms ;
- ability to perform the contract within the desired time limit.

2. Where the invitation to tender concerns both formulation and prices, the criterion of prices shall be added to those referred to in paragraph 1.

Article 46

Annulment of the tendering procedure

1. Before awarding the contract, the contracting authority may, notwithstanding the completion of a procedure prior to the conclusion of the contract, either decide not to award the contract, or order that the procedure be recommenced or decide to award the contract by mutual agreement.

2. The annulment of the tendering procedure provided for in paragraph 1 may take place only in the following cases :

- if no tender is received which meets the conditions set out in the tender dossier ;
- if the economic or technical data of the project have been fundamentally altered ;

- if exceptional circumstances render normal performance of the contract impossible;
- if the tenders received contain substantial irregularities preventing in particular the normal play of market forces.

3. In the event of annulment of the tendering procedure, tenderers who are still bound by their tenders shall be informed thereof by the contracting authority. Tenderers shall not be entitled to compensation of any kind.

Article 47

Selection of contractor

1. The committee responsible for the examination of tenders shall, on the basis of the criteria referred to in Article 45, draw up a list classifying the tenders; acting on the basis of this proposal, the most advantageous tender is selected in accordance with Article 25 of Protocol No 2 of the Lomé Convention.

2. (a) The deliberations of the committee shall be recorded in the minutes which may not be made public or communicated to any tenderer. These minutes shall be endorsed by the members of the committee.

(b) The contracting authority shall notify the tenderer whom it has selected of its choice by registered letter with acknowledgement of receipt, to be posted before expiry of the period laid down in Article 41. Where the invitation to tender concerns only services, the contracting authority shall specify in its letter to the consultant that the price of the contract is to be determined by mutual agreement. To this end it shall lay down a date for negotiations and shall specify any details thereof.

(c) The tenderer selected shall remain bound by his tender for a further period of two months following the date of signature of the acknowledgement of receipt. This period may be extended to three months, however, where the prices are to be negotiated subsequently by mutual agreement.

(d) The contracting authority shall also notify the other tenderers by registered letter that their tenders have been unsuccessful and of the final order of priority of the first three tenderers.

(e) The contracting authority shall not be obliged to state the reasons for its choice.

(f) The name of the tenderer selected and, where applicable, the total amount of his tender shall be published by the contracting authority.

3. The contracting authority shall not enter into any discussion with tenderers, save to request them to specify or supplement the content of their tenders.

Article 48

Notification of acceptance of contract

1. (a) The contract shall be concluded when the tenderer is notified that his tender has been accepted. Notification must be given at the latest within the period laid down in Article 47(2)(c).

(b) The notification shall be given by registered letter with acknowledgement of receipt. It shall be deemed to have been given on the date of signature of the acknowledgement of receipt by the tenderer.

2. Upon expiry of the period laid down in paragraph 1.(a), if notification of acceptance of the contract has not been made, the tenderer selected shall be free to withdraw from the contract by means of a registered letter with acknowledgement of receipt.

Should the date of belated notification of acceptance of the contract be the same as that of the selected candidate's withdrawal, the withdrawal shall be deemed to precede the notification.

3. If the tenderer has not availed himself of the option of withdrawal provided for in paragraph 2 before notification of acceptance of the contract has been given, he shall be bound by such notification. However, if such notification is given more than two months after the expiry of the period laid down in paragraph 1, the tenderer shall be bound only if he records his agreement by registered letter within a period of 15 days from the date of notification of acceptance of the contract.

4. In the event of withdrawal by the tenderer selected, the other tenderers may be approached according to the order in which their tenders are classified or recourse may be had to a mutual agreement procedure.

Article 49

Instrument of contract

The instrument of the contract shall be the registered letter with acknowledgement of receipt referred to in Article 48(1)(b). This letter shall constitute the letter of contract.

Article 50

Contents of the letter of contract

The letter of contract shall include in particular :

- A list of the documents relating to the contract, together with their references and in particular the General Conditions, the Special Conditions and its annexes, the tender and the documents relating to the prices of the contract ;
- The order of priority of these different documents ;
- Any derogations from these documents by the contract ;
- The contractual period of performance ;
- Where applicable, the name of the supervisor and his address ;
- All particulars necessary for determining the obligations arising from the contract other than those appearing in the documents referred to in the first indent.

Chapter III

Settlement of disputes

Article 51

Amicable settlement of disputes

No dispute arising between the contracting authority and a candidate or tenderer, in connection with the procedure for the award of a contract, or between the contracting authority and the consultant, resulting from the interpretation or performance of a contract, shall be referred to arbitration unless an attempt has first been made to settle the dispute amicably.

Where the complainant is a candidate, tenderer or the consultant, the attempt to reach an amicable settlement shall be initiated by notification of the complaint to the supervisor in the case of a dispute concerning the interpretation or performance of a contract, or to the contracting authority in the case of a dispute concerning the procedure for the award of a contract.

Where the complainant is the contracting authority, the attempts to reach an amicable settlement shall in all cases entail a procedure whereby complaints are notified to the opposing party (the candidate, tenderer or the consultant).

The amicable settlement stage shall be deemed to be at an end if no final decision has been taken within four months from the date of the application for a review or notification of the complaint.

Article 52

Arbitration

If the procedure laid down in Article 51 has been exhausted and the attempt to reach an amicable settlement has failed, the dispute shall be settled by arbitration in accordance with the rules of arbitration adopted by the ACP/EEC Council of Ministers.

The rules of arbitration provided for in the preceding paragraph shall fix the period within which the request for settlement of a dispute must be submitted to the arbitrating authority, on pain of being time-barred.

The parties to a dispute arising in connection with the award or performance of a contract concluded prior to the entry into force of these General Conditions may also agree to submit such dispute to the arbitration procedure referred to in paragraphs 1 and 2 above.

Title II: Contractual provisions relating to
Study Contracts

I - Preliminary provisions

Article 53

The supervisor

The supervisor shall be appointed by the contracting authority. He is the authority responsible for keeping progress of the study under review and constitutes the means of direct communication so far as the consultant is concerned.

The supervisor shall be made known to the consultant in the letter notifying him of award of the contract in accordance with Articles 26 and 50.

Article 54

Administrative orders

The consultant shall comply with the administrative orders notified to him by the contracting authority or the supervisor.

Where the contractor considers that the requirements of an administrative order exceed the obligations under the contract, he must, on pain of being time-barred, submit written notice thereof, by registered letter, to the contracting authority or the supervisor within 15 days. Execution of the administrative order shall not be suspended on account of the objection unless so ordered by the contracting authority or the supervisor.

Article 55

Address for service of the consultant

Where all or part of the study is to be carried out in an ACP State, the consultant shall notify the contracting authority of the address for service of his representative where all administrative orders may be sent.

Article 56

Assignments, sub-contracts and sub-orders

1. An assignment shall be an agreement by which the consultant transfers his contract to a third party.

A sub-contract shall be an agreement by which the consultant entrusts performance of part of his contract to a third party.

A sub-order shall be an order made to a third party by the consultant or by that third party to another third party, for the performance of certain intermediate operations affecting the provision of the consultant of a service entrusted to him under the contract.

2. The consultant may not assign or sub-contract the contract without the express authorization of the contracting authority.

Save in exceptional circumstances justified on the ground of the special technical nature of the study, assignees or sub-contractors must meet the conditions set out in Article 5.

3. Sub-orders may be placed freely.
4. In all cases of sub-contracts or sub-orders, the contracting authority acknowledges no legal connection with the sub-contractors and persons with whom sub-orders are placed. The latter cannot claim from the contracting authority payment for services which they have provided, save as otherwise provided in the Special Conditions.
5. If, without authorization so to do, the consultant has assigned his contract or awarded a sub-contract, the contracting authority may, without giving formal notice thereof, declare that the contract is forthwith rescinded.

Article 57

Commencement of the contract and period of performance

1. Save as otherwise provided in the Special Conditions, the contract shall commence as from the date of its notification.
2. The period or periods of performance shall be laid down in the Special Conditions; where the contract is performed in stages, the period of performance shall be fixed taking into consideration the provisions of Article 70.

II - General obligations

Article 58

Conduct of studies

The consultant shall carry out the studies and provide the services entrusted to him, in accordance with the best professional practices and in compliance with these General Conditions and the instructions of the contracting authority.

The consultant shall carry out the studies with a view to attaining the best technical and economic solutions that are most suitable for the requirements which are to be met.

While the study is being carried out, the consultant shall maintain permanent contact with the supervisor and shall be at his disposal to provide him with any necessary explanations.

Article 59

Compliance with laws and regulations

The consultant shall comply with the laws and regulations in force in the ACP State.

Article 60

Code of conduct

The consultant shall at all times act loyally and impartially in accordance with the rules of the code of conduct of his profession.

For the duration of the contract, the consultant and his staff shall refrain from involvement in any political or religious matter in the ACP State.

During performance of the contract, the consultant undertakes not to recruit staff employed in the public service of the ACP State or, in the case of any staff who have resigned, not to recruit them without the prior approval of the contracting authority.

Article 61

Professional secrecy

The consultant and his staff shall be obliged to maintain professional secrecy, for the entire duration of the contract and after completion thereof, as regards information and documents obtained or brought to their attention during the performance of the contract. They may not, without the prior authorization of the contracting authority, communicate to third parties the content of such information and documents. Furthermore, they shall not make any use prejudicial to the contracting authority, of information supplied to them and of the results of studies, tests and research carried out for the purpose of accomplishing their task.

Article 62

Obligation of independence

1. The contractor shall maintain complete independence of action as regards all natural or legal persons, the nature of whose activities render them liable to participate, as the case may be, in carrying out works or providing supplies that are to be laid down or prepared by the studies and services provided for in the contract.

Any candidate who is associated with the natural or legal persons described above or who maintains with them special relations liable to compromise his independence shall be obliged to inform the contracting authority thereof before concluding the contract.

If, notwithstanding such information, a contract is concluded with such candidate, the contracting authority shall reserve the right to exclude any natural or legal persons thus identified from participating in works or providing supplies that are to be laid down or prepared by the studies and services provided for in the contract.

If, after the contract has been concluded, it emerges that the consultant is associated with any natural or legal persons as defined in the first sub-paragraph, or maintains with them special relations liable to compromise his independence and has failed to inform the contracting authority thereof, the latter may, without prejudice to compensation for any damage which he may have suffered on this account, declare that the contract is forthwith rescinded, without giving formal notice thereof.

The contracting authority shall be entitled to proceed against the consultant in any appropriate manner to obtain compensation for any damage incurred where such a situation comes to light after the contract had been completed.

2. The consultant shall accept no commission, discount, indirect payment or other payment connected with the contract.

Save where expressly authorized by the contracting authority, the consultant shall not receive directly or indirectly any payment, gratuity or commission on any article or process used when performing the contract.

Article 63

Insurance

The contractor shall take out insurance covering his liability with regard to sickness or accident at work of staff involved in performance of the contract.

He shall be obliged to furnish proof of regular payment of premiums each time he is required so to do.

Article 64

Ownership of studies

The results of the study covered by the contract shall belong to the contracting authority who may dispose of them at will.

However, the consultant shall assign free of charge to the contracting authority an exclusive right of user enabling the latter to reproduce, distribute and publish reports and documents, provided that the author is expressly mentioned.

The consultant may dispose of the results of the study for his own requirements subject to the approval of the contracting authority which may not unreasonably withhold ; the consultant may publish articles relating to the study which he has carried out.

When carrying out studies on behalf of third parties, he may refer to this study but shall not, without the consent of the contracting authority, divulge information obtained from such authority.

Article 65

Patents and licences

The consultant shall bear all the costs arising from the use for the purposes of the study of any patent or licence, whether it is the holder thereof or not.

The consultant shall retain the right to patent inventions arising from the study. However, the right to use such a patent in the ACP State and to meet the needs of the contracting authority shall remain with the latter as of right and free of charge.

III - Nature of studies and services

Article 66

Definition of services

The Special Conditions shall determine the object of the contract and, on the basis of the programme referred to in Article 22, the tasks entrusted to the consultant and any means by which he shall carry them out.

In this respect the Special Conditions shall determine the nature and extent of the services and shall indicate the degree of accuracy to be attained and the different stages or parts of the study.

They shall indicate the type and content of reports, statements, plans, calculations, measurements, specifications, estimates and any other document that the consultant is to draw up on completion of each stage or part of the study and on completion of the study itself.

Article 67

The tender dossier

1. The Special Conditions may confer upon the consultant, if necessary, the task of preparing a tender dossier. This shall contain all the documents necessary for consulting suitable contractors, manufacturers and suppliers and for preparing tenders with a view to carrying out the works or providing the supplies covered by the invitation to tender.

For this purpose it shall contain the following :

- the notice of invitation to tender,
- a model tender,
- a specimen application for temporary admission,
- the Special Conditions,
 - . special administrative conditions
 - . technical conditions and annexes containing all the documents and plans specified in the Special Conditions,
- the General Conditions or a reference thereto,
- an outline price schedule (for unit price contracts),
- an outline breakdown of the overall price (for overall price contracts),
- a note of general information (for a works contract),
- a note on the approved local transport procedures and tariffs (for supplies contracts, if necessary).

2. Where a consultant is responsible for preparing the tender dossier, he shall also be responsible for reproducing it, and where he has his registered place of business in a Member State, for selling it in Europe. The Special Conditions may make provision for the sale of the tender dossier by the consultant in the ACP States.

The Special Conditions :

- shall specify the number of copies of the invitation to tender dossier which are to be reproduced;

- lay down, where applicable, the unit price of the tender dossier exclusive of dispatch costs.

The sale price, post-free, to be shown in the notice of invitation to tender shall be notified in sufficient time to the consultant by the contracting authority.

3. The supervisor shall provide the consultant with all the information necessary for drawing up the administrative part of the tender dossier.

Article 68

Technical assistance for the supervisor

1. The Special Conditions may provide that the tasks of the consultant be prolonged after completion of the study for the purpose of affording assistance to the works supervisor in the form of advice during execution of the works. Such advice may be given in the following fields in particular:

- discussions with the authorities supervising the works at the technical level and at the level of organization of the work site;
- adaptation of the project to new circumstances arising during execution of the works;
- advice to the contractor on the choice of materials and supplies and their use,
- formulation, in general, of technical decisions to be taken by the works supervisor when assessing tenders and choosing contractors and suppliers, and when works are being executed, accepted, and, where applicable, brought into service.

2. The Special Conditions shall lay down practical rules governing such assistance. The consultant shall be required to reply to requests for opinions and advice submitted by the supervisor. He shall also be entitled to forward to the supervisor opinions which should be expressed in order that the works may be properly carried out under the best conditions.

Article 69

Staff and equipment

1. The consultant shall assign to the studies for which he is responsible the staff and equipment necessary for their execution under the best conditions.

In specific cases the Special Conditions may specify the type of specialization and the minimum level of training and qualifications of staff to be assigned by the consultant to the task of carrying out the studies.

Where part of the contract is to be executed in an ACP State other than that in which the registered place of business of the consultant is situated, the latter shall keep the supervisor informed of the name and capacity of its agents who have been instructed to carry out the studies, and of the uniformity of the equipment used.

2. To this end the consultant shall:

- (a) forward to the supervisor, within 15 days of notification of the contract, the references of its agents and the timetable proposed for their contributions. This communication shall specify the duties of each agent and in particular shall nominate the one who is to be responsible for representing the consultant in the ACP States;
- (b) inform the supervisor forthwith, during performance of the contract, of any change in the membership of the team and of any alteration to the original timetable;
- (c) inform the supervisor in sufficient time of the dates of arrival and departure of each agent;
- (d) forward to the supervisor, within 15 days of notification of the contract, a list of the equipment which he intends to use when carrying out the studies;
- (e) keep the supervisor informed, during performance of the contract, of the equipment actually used.

These various communications and notices shall be made in writing.

Article 70

Submission and approval of reports

Where a contract is proformed in stages, the execution of each stage shall be subject to the approval by the contracting authority of the preceding stage. Save as otherwise provided in the Special Conditions, each stage or part of the study shall give rise to the preparation of a report by the consultant.

The Special Conditions shall indicate the persons for whom the reports and documents referred to in Article 66 are intended.

It shall also lay down the time limits within which the consultant shall forward simultaneously to the different persons for whom they are intended the reports and documents which it has drawn up.

Such time limits shall take account of delivery periods. In the case of aggregate periods starting on the same date, account should also be taken of the periods specified in the Special Conditions set aside by the supervisor for examining and approving or rejecting reports and documents which have been sent to him.

Article 71

Approval of reports and documents by the contracting authority

The approval by the contracting authority of reports and documents drawn up and forwarded by the consultant shall certify that they comply with the terms of the contract.

The contracting authority shall notify the consultant, within the time limits laid down in the Special Conditions, of the approval with or without a request for amendments, or the rejection of the reports and documents which have been forwarded to it.

Should the contracting authority delay in making such notification, the consultant shall be entitled :

- to an extension of time equal to the duration of the delay, where the periods prescribed are aggregate periods which all start on the same date;
- on the basis of a reasoned request, to compensation for the damage that such delay has entailed for him.

Where a report or document is approved by the contracting authority subject to amendments to be made by the consultant, the contracting authority shall lay down a suitable period for making the amendments requested.

The report or document thus finalized shall be deemed to be definitively approved if, within fifteen days of its submission to the contracting authority, the latter has not forwarded additional remarks or observations to the consultant.

IV - Responsibility of the consultant

Article 72

Responsibility of the consultant towards the contracting authority

1. The consultant shall be responsible for his professional errors and in particular errors or omissions in the choice of documentation, the formulation or the preparation of documents and plans, and in the accuracy of measurements and calculations on the basis of which such documents and plans have been drawn up.
2. The approval given by the contracting authority of the various stages of the study as regards the compliance of the services provided with the terms of the contract, shall not be a bar to his invoking the responsibility of the consultant who remains liable for his professional errors.

3. In the event of professional error, the consultant shall bear the cost of amendments or corrections to be made to the documents and plans drawn up under his authority, without prejudice to compensation for the contracting authority based on the damage suffered.

However, and without prejudice to Article 94 the consultant shall not be responsible for errors or omissions contained in data supplied by the contracting authority or received with the agreement of the latter, save if he could reasonably have detected them or if the Special Conditions expressly instructed him to check them.

4. After the works have been accepted, the consultant shall be responsible for defects which render it unsuitable for its intended purpose, to the extent that he is liable for them, and in accordance with the national law.

Article 73

Responsibility of the consultant towards third parties

The consultant shall be responsible under civil law for any damage caused to third parties as a result of any wrongful act attributable to his staff when performing the contract. In this respect he shall be obliged to take out insurance.

He shall undertake to bear all the pecuniary consequences of any penalties imposed on the contracting authority which may result.

The contracting authority may call on the consultant to indemnify him in any circumstances where its responsibility is at issue under the conditions referred to in paragraph 1.

V - Assistance of the contracting authority and cooperation with third parties

Article 74

Information to be supplied by the contracting authority

The contracting authority shall supply the consultant with all the information at its disposal and any documentation in its possession which

may be available concerning the subject of the contract.

Article 75

Cooperation by the contracting authority

The contracting authority shall provide the consultant, as far as possible, with any assistance that the latter may reasonably request in order to perform the contract.

It shall facilitate the entry and installation of the staff and equipment of the consultant and shall issue the latter with all the prior authorizations necessary for the entry and installation of its staff during the entire period that the studies are carried out in the ACP State, and the entry of all equipment, materials and machinery necessary for performing the contract. Similarly, it shall facilitate the departure of the staff and equipment of the consultant.

It shall accredit the staff of the consultant to all third parties and issue them with any authorization necessary for performing the contract, in particular as regards access to and movement within private property.

Article 76

Cooperation with third parties

The contracting authority may propose to the consultant the assistance of consultancy or advisory bureaux and firms, consulting engineers or national experts selected by mutual agreement and referred to in an annex to the Special Conditions.

The consultant shall undertake to cooperate with such third parties.

The procedure for such cooperation and in particular the responsibilities arising from it shall also be laid down in the Special Conditions.

VI - Payments

Article 77

General provisions

The Special Conditions shall determine the conditions to which payments are subject.

Article 78

Advances

The consultant may, if the Special Conditions so provide, be granted :

- an initial advance;
- other advances.

Where the Special Conditions make provision for the granting of advances, express application shall be made therefor by the consultant :

- in the case of the initial advance, on notification of the contract and without justification by the consultant;
- in the case of other advances, under the conditions laid down in the Special Conditions.

The amount of the initial advance may not exceed 20 % of the estimated contract price.

The total amount of the other advances similarly may not exceed 20 % of the estimated contract price.

Article 79

Security for advances

1. No advance shall be made before the consultant has furnished proof of the commitment of a directly liable guarantor for the recovery of the advance.

2. Any advance granted must be fully guaranteed by the commitment of a directly liable guarantor approved in accordance with paragraph 3.
3. The directly liable guarantor shall be any body under public or private law, established in a Member State or an ACP State, or where appropriate, in a third country in the cases provided for in Article 56(3) of the Lomé Convention, which is able to provide such a guarantee or is empowered so to do by the authorities under whose control it operates.

Article 80

Reimbursement of advances

1. Advances shall be reimbursed by way of deduction from instalments owing to the consultant.
2. Reimbursement of the initial advance shall begin when the amount of sums due under the contract has reached 20 % of the estimated contract price. It must be completed when 80 % of this amount has been reached.
3. The procedure for the reimbursement of other advances shall be laid down in the Special Conditions. Such reimbursement must be completed when the amount of sums due under the contract has reached 80 % of the estimated contract price.
4. The directly liable guarantors shall be released as and when the advances are reimbursed.

Article 81

Payment of instalments and the final balance

The services provided when carrying out the various stages or parts of the study shall entitle the consultant to payment of instalment or to payment of the final balance as and when the services are provided.

For that part of the contract which is based on overall and fixed prices or on unit prices, provision may be made for the payment of instalments only in respect of services rendered, and in the case of the part of a contract based on the repayment of costs, on submission of the appropriate supporting documents.

Payment of an instalment shall not exceed 80% of the value, under the terms of the contract of the services to which it relates; the 20% thus retained on each instalment shall be paid as a final balance.

Payment of the final balance shall be subject to performance by the consultant of all his obligations relating to the execution of all stages or parts of the study and to the approval by the contracting authority of the final stage or part of the study.

Article 82

Travel and transport

1. Travel expenses of agents of the consultant and transport costs of their luggage, which are to be reimbursed on submission of supporting documents, shall be borne by the contracting authority within the limit of the cost of the most direct journey between the registered place of business of the contractor and the place where the contract is to be performed, and vice-versa. The same shall apply, where applicable, to transport costs of documentation, equipment and materials.
2. Air travel shall be by economy class. Journeys necessitating travel by sea, rail or river shall be made first class.
3. The Special Conditions shall determine the conditions in which transport costs of documentation, equipment and materials may be borne by the contracting authority.

Article 83

Other payments

1. Payment of the remuneration owing to the consultant for the reproduction and sale of the tender dossier referred to in Article 67 shall be made in a single instalment.

The amount of such remuneration shall be determined by multiplying the unit price laid down pursuant to Article 67 by the number of copies of the dossier actually reproduced.

This amount shall be reduced by the amount of the proceeds received by the consultant from the sale of the dossier to purchasers. It shall be increased, on submission of the appropriate supporting documents, by the amount of the expenses incurred by the consultant in forwarding dossiers sold to purchasers, or forwarding dossiers which remain unsold to the contracting authority.

Where, for lack of adequate information the unit price of the invitation to tender dossier cannot be fixed when the contract is being drawn up, the consultant shall be reimbursed on submission of proof of the cost of preparation of the dossier. In such a case, the third sub-paragraph above shall apply.

2. The Special Conditions shall lay down the conditions to which payments relating to all other services entrusted to the consultant shall be subject.

Article 84

Revision of prices

1. The Special Conditions shall state whether the contract is at fixed prices which may not be revised or whether the prices may be revised.

2. Where the contract prices may be revised, the part of the contract based on the repayment of costs shall not be subject to revision.

3. Where the contract prices may be revised revision shall take place either at the request of the consultant or on the initiative of the contracting authority, in accordance with the detailed rules for revision laid down in the Special Conditions. Such detailed rules may take into account a variation in the prices of important factors affecting the establishment of the tender prices.

4. Prices contained in the consultant's tender shall be deemed to have been established on the basis of the conditions in force on the reference date. Unless otherwise specified in the Special Conditions, this date shall be that adopted by the parties as being the date of negotiation of the contract in the case of mutual agreement contracts or the first working day of the month preceding that in which the final date for the receipt of tenders occurs in the case of contracts based on invitation to tender.

5. Where there is a delay in the provision of services which is attributable to the consultant, during the period intervening between the contractual date for the completion of the contract and the actual date of completion, any price revision shall operate on a restricted basis and namely on the basis of the official indices or prices in force during the final month of the contractual period, subject to the reservation that later indices or official prices may be applied if they are advantageous to the contracting authority.

Article 85

Price revision and reimbursement of advances

Where advances have been granted and where, pursuant to Article 80, they are reimbursed by deduction from sums due by way of instalments or from the final balance, the Special Conditions shall state whether the price revision clause applies to the instalment or the final balance in respect of services rendered, or to the difference between the initial amount of such instalment or balance and the amount of the advance to be deducted.

Article 86

Payment procedure

For the purpose of each payment, the consultant shall send the contracting authority four copies of a written statement together with the appropriate supporting documents.

The supervisor shall check this statement.

Payment of the sums owing to the consultant shall be made within 60 days of the date of receipt of each statement by the contracting authority, save where the Special Conditions provide for a shorter period.

Article 87

Payment in the event of attachment

In the event of a judgment ordering attachment against the consultant, and without prejudice to the period laid down in Article 86, the contracting authority shall be granted 15 calendar days, from the day when it receives notification that the obstacle to payment has been lifted, to resume payments to the consultant.

Article 88

Interest for delay in payment

If the period laid down for payment has expired, although the contract has not given rise to a dispute, the consultant shall qualify automatically and without formal notice for interest calculated pro rata on the basis of the number of calendar day's delay at the rediscount rate of the issuing institute of the ACP State, increased by one per cent per annum.

This supplement to the rate shall be increased to 4.5 % per year as from the seventy-first day of delay.

However, payment of the interest on delay shall be subject to the submission by the consultant, not later than the sixtieth calendar following the day for payment of the final balance of the contract, of a written request having the effect of a statement of account.

A remission of the liquidated damages for delay occurring after payment of the final balance may not be regarded as constituting the payment of a new balance and shall not reopen the period provided for in the preceding paragraph.

Article 89

Payment for the benefit of third parties

All orders for payment to third parties may be carried out only after an assignment of credit or of a collateral security.

The assignment of credit must be notified by registered letter with acknowledgement of receipt to the official responsible for authorising disbursements. The rules applicable to the assignment of credit shall be those of the State in which the assignment is effected.

The assignment of collateral security must be notified by registered letter with acknowledgement of receipt to the official responsible for payments.

The rules applicable to the assignment shall be those of the ACP State in which the contract is performed.

VII - Developments affecting performance of the contract

Article 90

Cessation or postponement of performance of contract

1. Where the contracting authority unilaterally orders the cessation of performance of the contract, the latter shall be rescinded forthwith. The consultant shall be entitled to an indemnity for any injury which he may have suffered as a result of any rescission for which he is not responsible.
2. Where the contracting authority orders the postponement of the contract for reasons not specified in the Special Conditions, for more than six months before or after commencement of performance, the consultant shall be entitled to rescind the contract and shall be entitled to an indemnity for any injury which he may have suffered.

The same shall apply in the case of successive postponements, the total duration of which exceeds six months, even if performance of the contract has been resumed in the meantime.

The rescission shall be valid only if it is communicated by the consultant by registered letter within two months of the date of notification of the administrative order leading to postponement of performance of the contract for more than six months, or within two months following the end of the sixth month of postponement, if such order has not fixed the duration of postponement.

If the consultant limits his action to a request for an indemnity, such request must be submitted by registered letter not later than 60 days after the definitive approval of the study.

3. Where the contracting authority orders the postponement of performance of the contract for less than six months, the consultant shall be entitled to an indemnity for any injury suffered. He must submit his request by registered letter not later than 60 days after the definitive approval of the study.

Article 91

Death

1. Where the contract is awarded to a natural person, it shall be automatically rescinded if that person dies.

However, the contracting authority shall examine any proposal made by the heirs if they have notified it of their intention to continue the contract. The decision of the contracting authority shall be notified to those concerned within one month of receipt of such proposal.

2. Where the contract is awarded to several natural persons and one or more of them die, a report shall be agreed between the parties regarding the services provided and the contracting authority shall decide whether to rescind or continue the contract in accordance with the undertaking of the survivors and of the heirs, as the case may be.

3. In the cases provided for in paragraphs 1 and 2, persons offering to continue to perform the contract shall notify the contracting authority thereof by registered letter within ten days of the date of death.

The nature of their liability shall be determined in accordance with the first paragraph of Article 15, supplemented, where appropriate, by the Special Conditions.

Continuation of the contract shall be subject to the rules relating to the commitment of a guarantor who shall be directly liable for the advance in accordance with Article 79.

Article 92

Specific grounds for rescission

1. Without prejudice to the measures provided for in Article 98, the contracting authority may rescind the contract in the following cases :

- bankruptcy of the consultant;
- any situation involving suspension of payment, other than bankruptcy, established by judgment of a court and resulting, in accordance with his national law, in the total or partial loss of the consultant's right to administer and dispose of his property;
- any final judgment of a court or tribunal of the ACP State justifying the rescission of public contracts, in accordance with national law;
- any other legal disability hindering performance of the contract;
- any organizational modification that must be notified to the contracting authority and involving a change in the legal personality of the consultant, unless such modification is recorded in a rider to the contract.

2. The contracting authority may, without waiting for the definitive settlement of accounts, and if it is so requested, pay the consultant up to 80 % of the credit balance shown by the provisional settlement. Alternatively, if the provisional settlement shows a credit balance in favour of the contracting authority, the latter may require the consultant to return 80 % of the amount of such balance.

Article 93

Settlement of the contract

In the event of rescission, the contract accounts shall be settled only on the basis of services rendered and accepted.

In all cases of rescission of the contract, irrespective of cause, the consultant must forthwith reimburse the balance of advances remaining to be settled.

VIII - Claims and exceptional risks

Article 94

Claims by the consultant and exceptional risks

1. The consultant may avail himself of facts alleged against his contracting partner and which would involve him in delay and/or loss in order to obtain, where appropriate, an extension of the periods of performance, revision or rescission of the contract and/or an indemnity based on the injury suffered.
2. The consultant shall not normally be entitled to make any amendments to the contractual conditions as a result of circumstances in which his contracting partner had no part.

However, a derogation from this principle shall be justified by circumstances which the consultant could not reasonably foresee when the contract was negotiated, the tender submitted or the contract concluded, on which he could not reasonably avoid and the consequences of which he was unable to avert even though he had taken all necessary steps to that end.

Where such circumstances make it impossible to perform the contract, the consultant shall be entitled to rescind the contract.

Where such circumstances do not make it impossible to perform the contract, the consultant shall be entitled to an extension of the period of performance and/or an indemnity based on the injury suffered, or to revision of the contract.

The consultant may invoke the default of a sub-contractor or supplier only insofar as the latter invokes circumstances which the consultant could have invoked in a similar situation.

3. The consultant shall be required to notify the contracting authority or the supervisor, by registered letter, of the facts and circumstances referred to in paragraphs 1 and 2 as soon as he should normally have had knowledge thereof and not later than 30 days after their occurrence.

4. Claims by the contractor must, under penalty of being time-barred, be made by registered letter within the following periods:

- (a) before expiry of the contractual time limits, in order to obtain an extension of the periods of performance or rescission of the contract;
- (b) in order to obtain a variation of the contract or an indemnity, not later than 60 days after the definitive approval of all the services.

5. No claim may be submitted after signature of the final settlement of the contract accounts, save in the case of error, omission, false or duplicated entry or where Article 95(2) applies.

Article 95

Remission of damages for delay

1. The consultant shall be entitled to obtain remission of the damages for delay referred to in Article 98:

- (a) in whole or in part, if he proves that the delay is due wholly or in part to acts by the contracting partner or to the circumstances referred to in Article 94(1) and (2);
- (b) partially, if the contracting authority considers that the amount of the damages is disproportionate to the minimal importance of the services thus delayed, provided, however, that the services provided are such as may be used normally and that the consultant has made every effort to provide his services in the shortest possible time.

2. The consultant must, under penalty of being time-barred, submit any request for the remission of damages by registered letter within 60 days from the payment of the final balance.

IX - Non-performance of contract and sanctions

Article 96

Non-performance of contract by the consultant

Non-performance of the contract by the consultant occurs:

1. Where the services are not provided in accordance with the terms of the contract;
2. Where the consultant or his agents do not comply with the written instructions of the contracting authority or the supervisor.

Article 97

Establishment of non-performance

Non-performance of the contract shall be established in an administrative order notified to the consultant.

Such notification shall constitute formal notice to put an end to the failure to perform the contract.

Within 15 days of the date of such notification, the consultant shall be obliged to submit the grounds of his defence to the contracting authority by registered letter. Silence on his part shall be deemed to constitute admission of the facts established.

The contracting authority shall, without delay, give a ruling on the defence submitted by the consultant and shall inform him of its decision by registered letter.

Article 98

Breach of contract

If no reasons for breach of contract are accepted or furnished within the period laid down in Article 97, the consultant may be subject to one or more of the measures laid down in and governed by the following paragraphs:

1. Sanctions

- (a) Special damages as defined, in the Special Conditions for the breaches of contract specified in Article 96;
- (b) Liquidated damages for delay for any breach consisting in failure to provide the services and documents provided for within the periods laid down in the Special Conditions. Notwithstanding Article 97; the said liquidated damages, for which the detailed procedure shall be laid down in the Special Conditions, shall be due without formal notice.

2. Measures to be taken as of right

These measures are the following:

- (a) outright rescission of the contract without compensation payable by the consultant;
- (b) rescission of the contract, decided against the consultant, with compensation payable by the consultant;
- (c) temporary or permanent exclusion from the award of contracts.

3. Rules for the application of measures taken as of right

Any decision relating to the application of measures taken as of right shall be taken by the contracting authority and notified to the consultant by registered letter.

Article 99

Rules governing concurrence of sanctions for non-performance of the contract

For the application of the measures laid down in Article 98(1) and (2), the following rules shall be applied:

1. Special damages may be combined with liquidated damages for delay.
2. Rescission of the contract may be combined with sanctions and with exclusion. It may also be combined with liquidated damages for delay in respect of the period prior to the date of rescission.

Article 100

Recovery of damages

Recovery of damages, disbursements or expenses resulting from the application of the measures provided for in Article 98(2) shall be made by deduction from the sums due to the consultant or by payment by the consultant to a named account.

Title II - Contractual provisions relating to
Technical Assistance Contracts

I - Preliminary provisions

Article 101

The supervisor

1. The supervisor shall be appointed by the contracting authority. He shall be the director of the project which is the subject of the technical assistance scheme.

2. On a decision of the contracting authority, certain supervisory functions or, in exceptional circumstances, supervision of the project may be delegated to the consultant. Such functions shall be laid down in the Special Conditions in accordance with Article 114.

3. The supervisor shall be made known to the consultant in the letter notifying him of the award of the contract in accordance with Articles 26 and 50.

Article 102

Administrative orders

The consultant and his agents shall comply with the administrative orders notified to them by the contracting authority or the supervisor.

Where the contractor or his agents consider that the requirements of an administrative order exceed the obligations under the contract, they must, on pain of being time-barred, submit written notice thereof, by registered letter, to the contracting authority or the supervisor within 15 days. Execution of the administrative order shall not be suspended on account of the objection unless so ordered by the contracting authority or the supervisor.

Article 103

Address for services of the consultant

As soon as his agents are installed, the consultant shall notify the contracting authority of the address for service of his representative where all administrative orders may be sent.

Article 104

Assignments and sub-contracts

1. An assignment shall be an agreement by which the consultant transfers his contract to a third party.

A sub-contract shall be an agreement by which the consultant entrusts performance of part of his contract to a third party.

2. The consultant may not assign or sub-contract the contract without the express authorization of the contracting authority.

Save in exceptional circumstances justified on the ground of the special technical nature of the technical assistance project, assignees or sub-contractors must meet the conditions set out in Article 5.

3. In all cases of sub-contracts the contracting authority acknowledges no legal connection with the sub-contractors. The latter cannot claim from the contracting authority payment for services which they have provided, save as otherwise provided in the Special Conditions.

4. If, without authorization so to do, the consultant has assigned his contract or awarded a sub-contract, the contracting authority may, without giving formal notice thereof, declare that the contract is forthwith rescinded.

Article 105

Commencement and duration of the contract

1. Commencement of the contract

The contract shall commence on the date on which the first agent of the consultant is established in the ACP State.

Such establishment may not precede the date of the order to commence the services, save as otherwise provided in the Special Conditions.

Where provision is made for services to be provided outside the ACP State prior to the establishment of the agents of the consultant in the ACP State, the contract shall commence, insofar as such services are concerned, on the actual date of their performance, which shall not precede the date fixed by the Special Conditions or, failing that, the date fixed by administrative order of the contracting authority.

2. Duration of the contract

The Special Conditions shall lay down the duration of the contract.

In the case of technical cooperation projects covering a number of years, the Special Conditions may make provision for several contractual periods and shall specify their duration.

In such case:

- the parties shall be bound only for the first contractual period;
- save where one of the parties wishes to terminate the contract on the expiry of the contractual period, the contract shall be renewed by means of successive riders to the contract specifying the measures to be taken by and the remuneration of the consultant for the new contractual period;
- pending approval and notification of the riders provided for in the previous subparagraph, the consultant shall continue to be remunerated on the basis of the conditions laid down for the previous contractual period. Upon notification of such rider, the necessary adjustments shall be made;
- an intention not to renew the contract for a further contractual period must be notified to the other party not later than three months prior to the expiry of the current contractual period by the party who takes the initiative not to renew.

II - General obligations

Article 106

Conduct of the operation

The consultant shall carry out the tasks entrusted to him in accordance with the best professional practices and in compliance with the provisions of these General Conditions and the instructions of the contracting authority and the supervisor. He shall pay the most serious attention to the technical, economic human and management aspects involved in pursuing the objectives which have been set for him.

Article 107

Compliance with laws and regulations

The consultant shall comply with the laws and regulations in force in the ACP State.

Article 108

Code of conduct

The consultant shall at all times act loyally and impartially in accordance with the rules of the code of conduct of his profession.

For the duration of the contract, the consultant and his agents shall refrain from involvement in any political or religious matter in the ACP State.

During performance of the contract, the consultant undertakes not to recruit staff employed in the public service of the ACP State, or, in the case of any staff who have resigned, not to recruit them without the prior approval of the contracting authority.

Article 109

Professional secrecy

The consultant and his staff shall be obliged to maintain professional secrecy for the entire duration of the contract and after completion thereof, as regards information and documents obtained or brought to their attention during the performance of the contract. They may not, without the prior authorization of the contracting authority, communicate to third parties the content of such information and documents.

Article 110

Obligation of independence

1. The consultant shall maintain complete independence of action as regards contractors for works, supplies or services to be provided in the context of execution of the project forming part of the technical assistance project entrusted to him in connexion with such execution.

He shall accept from such contractors no benefit whatsoever and shall refrain from any relations with them which would be such as to compromise his independence or that of his agents.

2. The consultant shall accept no commission, discount, indirect payment or other payment connected with the contract.

Save where expressly authorized by the contracting authority, the consultant shall not receive directly or indirectly any payment, gratuity or commission on an article or process used when performing the contract.

Article 111

Insurance

Within 15 days following notification of the award of the contract, the consultant shall be obliged to take out insurance, to take effect from the actual commencement of the services at the place of work and to remain in force throughout the period of performance of the contract, covering his liability with regard to sickness or accidents at work of his agents.

He shall be obliged to furnish proof of regular payment of premiums each time he is required so to do.

The consultant shall, if necessary, take out in favour of staff who perform the contract at the place of work insurance covering force majeure involving, in particular, the loss of equipment or personal effects.

Article 112

Work timetable

The days and hours of work shall be fixed on the basis of the laws, regulations and customs of the ACP State and the requirements of the service.

Article 113

Leave entitlement

1. Expatriate agents of the consultant shall be entitled to leave calculated on the basis of six days per month of service in the ACP State. The dates of departure on leave shall be determined by the contracting authority or the supervisor in relation to the requirements of the service and shall entail periods of service of not less than six consecutive months in the ACP State for an expatriate agent.

2. Staff recruited locally shall be entitled to leave determined on the basis of the national law of the ACP State.

III - Nature of services

Article 114

Performance of his tasks by the consultant

1. Save in the exceptional event of the supervision of the work being delegated to the consultant and without prejudice to special types of delegation specified in the Special Conditions, the consultant shall carry out the duties entrusted to him under the authority of the supervisor.

Proposals made by the consultant within the framework of his tasks must be submitted to the supervisor who shall be vested with a decision-making power.

2. In order to carry out his tasks, the consultant :

- shall provide the necessary staff and equipment in accordance with Article 116;

- shall provide his agents, for the entire duration of the contract, with technical assistance. In particular, he shall obtain for them at his own expense any general and technical documents which they may need for performing the contract.

3. The consultant shall report on the progress of his tasks to the contracting authority or the supervisor by forwarding the different reports and documents referred to in Article 119.

Article 115

Definition of services

The Special Conditions shall determine on the basis of the programme referred to in Article 22 the tasks and the nature of the services entrusted to the consultant.

The consultant shall provide the services specified in the Special Conditions in accordance with the following outline provisions :

- (a) he shall carry out the tasks involving formulation and administration of the programme of projects to be implemented;
- (b) he shall provide all information or particulars concerning the implementation of the project, or directly related to such implementation, save where recourse to the author of the studies or programme is essential;
- (c) he shall make any corrections, improvements or adjustments to studies and implementation programmes - irrespective of whether he is author - which, without altering the content or nature of the project, prove necessary for its implementation.

Article 116

Staff and equipment

1. The consultant shall seek the approval of the contracting authority as to the choice of agents to be placed at its disposal. The level of training and the qualifications required shall be set out in the Special Conditions.

A written application together with the references and curriculum vitae of each agent shall be forwarded within the period of time that is most compatible with the proper provision of the services provided for in the contract. It shall specify which agent shall be responsible for representing the consultant in the ACP State during the performance of the contract. The contracting authority shall notify its approval or refusal within a period of not more than one month.

Agents approved by the contracting authority shall be installed on the date or within the period of time laid down in the Special Conditions or, failing this, on the date or within the periods notified to the consultant by the contracting authority.

The consultant shall inform the contracting authority of the dates of arrival of his agents.

Save as otherwise provided in the Special Conditions, the agents of the consultant shall reside close to their place of work.

2. The consultant shall adopt all measures necessary to provide and continue to provide his agents with the plant and equipment required to enable them to carry out their tasks in the most effective circumstances possible.

Vehicles may not bear any external reference showing the name of the consultant.

Article 117

Replacement of agents placed at the disposal of the contracting authority

1. If, for personal reasons, the consultant wishes to replace one of his agents placed at the disposal of the contracting authority, he may do so only with the prior agreement of the contracting authority.
2. If, on account of sickness or accident, an agent placed at the disposal of the contracting authority is unable to continue to services, the consultant must replace him.
3. In the two cases referred to in paragraphs 1 and 2 above and in the case referred to in Article 120(2), the replacement expenses shall be borne by the consultant. They shall include the cost of the return journey of the replacing agent and his family and, if necessary, the expenses arising from the need to maintain simultaneously at the place of work the agent to be replaced and his replacement.
4. In all cases of replacement, the approval and installation of the new agent shall occur under the conditions laid down in Article 116.

Article 118

Trainees

At the request of the contracting authority, the agent of the consultant shall give an undertaking to provide training for the duration of the contract for trainees possessing a basic level of training compatible with effective participation in the tasks provided for in the contract.

The number of trainees may not exceed the number of agents placed at the disposal of the contracting authority by the consultant.

The training of such trainees by the agents of the consultant shall not confer on them the status of agents of the consultant.

Remuneration for trainees, their travel expenses, the cost of accommodation and all other expenses incurred by them shall be borne by the contracting authority.

The consultant may not invoke such tasks in order to request additional remuneration on any grounds whatsoever.

The representative of the consultant shall report at quarterly intervals to the contracting authority on the conditions in which trainees are being trained. At the end of the contract he shall draw up a report on the results of the training of trainees and an assessment of the qualifications obtained by them with a view to their future employment.

The procedure for presenting such reports shall be laid down in the Special Conditions.

Article 119

Information for the contracting authority

The representative of the consultant in the ACP State shall report to the contracting authority on the activities of the consultant and the progress of the project in periodic reports submitted at intervals laid down in the Special Conditions and in special reports on implementation difficulties or technical lacunae.

On termination of the services he shall draw up a confidential general report and a financial analysis of the project.

The final report shall also contain a critical study of the major problems arising during the implementation of the project.

The Special Conditions shall determine the number of copies of the above-mentioned report to be submitted to the contracting authority.

The final report provided for above shall be forwarded to the contracting authority not later than two months after the end of the provision of services by the consultant.

IV - Responsibility of the consultant

Article 120

Responsibility of the consultant towards the contracting authority

1. The consultant shall be responsible for professional errors and in particular errors in his tasks of conception and administration, always within the limits of the obligations contained in the Special Conditions, having regard especially to the tasks delegated to him by the contracting authority and/or the supervisor.
2. The consultant shall be responsible for the competence of agents whom he places at the disposal of the contracting authority. He must accordingly replace, in these circumstances which are laid down in Article 117, any agent who proves unqualified to take up the tasks entrusted to him.
3. The consultant shall bear the cost of amendments or corrections to be made to documents prepared under his authority, without prejudice to indemnification of the contracting authority bases on the damage suffered.

However, and without prejudice to Article 142, the consultant shall not be responsible for errors or omissions contained in data supplied by the contracting authority or received with the agreement of the latter, save if he could reasonably have detected them or if the Special Conditions expressly instructed him to check them.

Article 121

Responsibility of the consultant towards third parties

1. The consultant shall be responsible under civil law for any damage caused to third parties as a result of any wrongful act attributable to his agents when reforming the contract. In this respect he shall be obliged to take out insurance.
2. He shall undertake to bear all the pecuniary consequences of any penalties imposed on the contracting authority which may result therefrom.
3. The contracting authority may call on the consultant to indemnify him in

circumstances where its responsibility is at issue under the conditions referred to in paragraph 1.

V - Obligations and assistance of the contracting authority,
cooperation with third parties

Article 122

Supervision of works

Save in the exceptional event where the supervision of the work is delegated to the consultant, it shall be the responsibility of the director of the project, the supervisor, to issue to the consultant and his agents, after consultation with them, general and special directives covering the tasks entrusted to them.

Where such directives must be drawn up formally, they shall be issued by administrative order.

Article 123

Information to be supplied by the contracting authority

The contracting authority shall supply the consultant with all the information at its disposal and any documentation in its possession which may be available on the subject of the contract.

Article 124

Cooperation by the contracting authority

The contracting authority shall provide the consultant, as far as possible, with any assistance that the latter may reasonably request in order to perform the contract.

It shall facilitate the entry and installation of agents and their family and the equipment of the consultant and shall issue the latter with all the prior authorizations necessary for the entry of his agents and their installation for the entire duration of the contract in the ACP State, and the entry of all equipment, materials and machinery necessary for performing the contract. Similarly, it shall facilitate the departure of the agents and equipment of the consultant.

It shall accredit the agents of the consultant to all third parties and issue them with any authorization necessary for performing the contract, in particular as regards access to and movement within private property.

Article 125

Liability for travel expenses

The conditions governing the liability of the contracting authority for the travel expenses and baggage transport costs of agents shall be laid down in an annex to these General Conditions.

Article 126

Cooperation with third parties

The contracting authority may propose to the consultant the assistance of consultancy or advisory bureaux and firms, consulting engineers or national experts selected by mutual agreement and referred to in an annex to the Special Conditions.

The consultant shall undertake to cooperate with such third parties.

The procedure for such cooperation and in particular the responsibilities arising from it shall also be laid down in the Special Conditions.

VI - Payments

Article 127

General provisions

The Special Conditions shall determine the conditions to which payments are subject.

Article 128

Advances

The Special Conditions may provide for the granting of an advance, the amount of which may not exceed 20 % of the estimated contract price.

Advances must be expressly requested by the consultant.

Article 129

Security for advances

1. No advance may be paid before the consultant has furnished proof of the commitment of a directly liable guarantor for the recovery of the advance.
2. Any advance granted must be fully guaranteed by the commitment of a directly liable guarantor approved in accordance with paragraph 3.

3. The directly liable guarantor shall be any body under public law or private law, established in a Member State or an ACP State or, where appropriate, in a third country in the cases provided for in Article 56(3) of the Lomé Convention, which is able to provide such a guarantee or is empowered so to do by the authorities under whose control it operates.

Article 130

Reimbursement of advances

The advance shall be reimbursed by way of deduction from instalments owing to the consultant.

Reimbursement of advances shall begin when the amount of sums due under the contract has reached 20 % of the estimated contract price. It must be completed when 80 % of this amount has been reached.

The directly liable guarantor shall be released as and when the advance is reimbursed.

Article 131

Payment of instalments and the final balance

The services provided when performing the contract shall entitle the consultant to the payment of instalments or to the payment of the final balance as and when the services are provided.

Remuneration for parts of a month shall be based on a daily rate of one thirtieth of the appropriate monthly unit price.

Abatements for any incomplete provision of services shall be made on the basis of the prices laid down in the contract in respect of the part of the services which were not provided.

The payment of the final balance shall be subject to the submission of the final report provided for in Article 119.

Article 132

Revision of prices

1. The Special Conditions shall state whether the contract is at fixed prices which may not be revised or whether the prices may be revised.
2. Where the contract prices may be revised, revision shall take place either at the request of the consultant or on the initiative of the contracting authority, in accordance with the detailed rules for revision laid down in the Special Conditions. Such detailed rules may take into account a variation in the prices of important factors affecting the establishment of the tender prices.
4. Prices contained in the consultant's tender shall be deemed to have been established on the basis of the conditions in force on the reference date. Unless otherwise specified in the Special Conditions, this date shall be that adopted by the parties as being the date of negotiation of the contract in the case of mutual agreement contracts or the first working day of the month preceding that in which the final date for the receipt of tenders occurs, in the case of contracts based on an invitation to tender.
5. Where there is a delay in the provision of services which is attributable to the consultant, during the period intervening between the contractual date for the completion of the contract and the actual date of completion, any price revision shall operate on a restricted basis and namely on the basis of the official indices or prices in force during the final month of the contractual period, subject to the reservation that later indices or official prices may be applied if they are advantageous to the contracting authority.

Article 133

Price revision and reimbursement of advances

Where advances have been granted and where, pursuant to Article 130, they are reimbursed by way of deduction from sums due by way of instalments or from the final balance, the Special Conditions shall state whether the price revision clause applies to the instalment or the final balance in respect of services rendered, or to the difference between the initial amount of such instalment or balance and the amount of the advance to be deducted.

Article 134

Payment procedure

For the purpose of each payment, the consultant shall send the contracting authority four copies of a written statement together with the appropriate supporting documents.

The contracting authority shall check this statement.

Payment of the sums owing to the consultant shall be made within 60 days of the date of receipt of each statement by the contracting authority, save where the Special Conditions provide for a shorter period.

Article 135

Payment in the event of attachment

In the event of a judgment ordering attachment against the consultant, and without prejudice to the period laid down in Article 134, the contracting authority shall be granted 15 calendar days from the day when it receives notification that the obstacle to payment has been lifted, to resume payments to the consultant.

Article 136

Interest for delay in payments

If the period laid down for payment has expired, although the contract has not given rise to a dispute, the consultant shall qualify automatically and without formal notice for interest calculated pro rata on the basis of the number of calendar days' delay at the rediscount rate of the issuing institute of the ACP State, increased by one per cent per annum.

This supplement to the rate shall be increased to 4.5% per year as from the seventy-first day of delay.

However, payment of the interest on delay shall be subject to the submission by the consultant, not later than the sixtieth day following the day for payment of the final balance of the contract, of a written request having the effect of a statement of account. A remission of the liquidated damages for delay occurring after payment of the final balance may not be regarded as constituting the payment of a new balance and shall not reopen the period provided for in the preceding paragraph.

Article 137

Payment for the benefit of third parties

All orders for payment to third parties may be carried out only after an assignment of credit or of a colateral security.

The assignment of credit must be notified by registered letter with acknowledgement of receipt to the official responsible for authorizing disbursements. The rules applicable to the assignment of credit shall be those of the State in which the assignment is effected.

The assignment of colateral security must be notified by registered letter with acknowledgement of receipt to the official responsible for payments. The rules applicable to the assignment shall be those of the ACP State in which the contract is performed.

Article 138

Cessation or postponement of performance of contract

1. Where the contracting authority unilaterally orders the cessation of performance of the contract, the latter shall be rescinded forthwith. The consultant shall be entitled to an indemnity for any injury which he may have suffered as a result of such rescission for which he is not responsible.

2. Where the contracting authority orders the postponement of the contract for reasons not specified in the Special Conditions, for more than six months before or after commencement of performance, the consultant shall be entitled to rescind the contract and shall be entitled to an indemnity for any injury which he may have suffered.

The same shall apply in the case of successive postponements, the total duration of which exceeds six months, even if performance of the contract has been resumed in the meantime.

The rescission shall be valid only if it is communicated by the consultant by registered letter within two months of the date of notification of the administrative order leading to postponement of performance of the contract for more than six months, or within two months following the end of the sixth month of postponement, if such order has not fixed the duration of postponement.

If the consultant limits his action to a request for an indemnity, such request must be submitted by registered letter not later than 60 days after the end of the provision of services.

3. Where the contracting authority orders the postponement of performance of the contract for less than six months, the consultant shall be entitled to an indemnity for any injury suffered. He must submit his request by registered letter not later than 60 days after the termination of services.

Article 139

Death

1. Where the contract is awarded to a natural person, it shall be automatically rescinded if that person dies.

However, the contracting authority shall examine any proposal made by the heirs if they have notified it of their intention to continue the contract. The decision of the contracting authority shall be notified to those concerned within one month of receipt of such proposal.

2. Where the contract is awarded to several natural persons and one or more of them die, a report shall be agreed between the parties regarding the services provided and the contracting authority shall decide whether to rescind or continue the contract in accordance with the undertaking of the survivors and of the heirs, as the case may be.

3. In the cases provided for in paragraphs 1 and 2, persons offering to continue to perform the contract shall notify the contracting authority thereof by registered letter within ten days of the date of death.

Continuation of the contract shall be subject to the rules relating to the commitment of a guarantor who shall be directly liable for the advance in accordance with Article 129.

Article 140

Specific grounds for rescission

1. Without prejudice to the measures provided for in Article 146, the contracting authority may rescind the contract in the following cases:

- the bankruptcy of the consultant;
- any situation involving suspension of payment, other than bankruptcy, established by judgment of a court and resulting, in accordance with his national law,

- in the total or partial loss of the consultant's right to administer and dispose of his property;
- any final judgment of a court or tribunal of the ACP State justifying the rescission of public contracts, in accordance with national law;
- any other legal disability hindering performance of the contract;
- any organizational modification that must be notified to the contracting authority and involving a change in the legal personality of the consultant, unless such modification is recorded in a rider to the contract.

2. The contracting authority may, without waiting for the definitive settlement of account, and if it is so requested, pay the consultant up to 80% of the credit balance shown by the provisional settlement. Alternatively, if the provisional settlement shows a credit balance in favour of the contracting authority, the latter may require the consultant to return 80% of the amount of such balance.

Article 141

Settlement of the contract accounts

In the event of rescission, the contract accounts shall be settled only on the basis of the services rendered and accepted.

In all cases of rescission of the contract, irrespective of cause, the advances account shall be immediately settled.

VIII - Claims and exceptional circumstances

Article 142

Claims by the consultant and exceptional risks

1. The consultant may avail himself of facts alleged against his contracting partner and which would involve him in delay and/or loss in order to obtain, where appropriate, an extension of the periods of performance, revision or rescission of the contract and/or an indemnity based on injury suffered.

2. The consultant shall not normally be entitled to make any amendments to the contractual conditions as a result of circumstances in which his contracting partner had no part.

However, a derogation from this principle shall be justified by circumstances which the consultant could not reasonably foresee when the contract was negotiated, the tender submitted or the contract concluded, or which he could not reasonably avoid and the consequences of which he was unable to avert even though he had taken all necessary steps to that end.

Where such circumstances make it impossible to perform the contract, the consultant shall be entitled to rescind the contract.

Where such circumstances do not make it impossible to perform the contract, the consultant shall be entitled to an extension of the period of performance and/or an indemnity based on the injury suffered, or to revision of the contract.

The consultant may invoke the default of a sub-contractor or supplier only insofar as the latter invokes circumstances which the consultant could have invoked in a similar situation.

3. The consultant shall be required to notify the contracting authority or the supervisor, by registered letter, of the facts and circumstances referred to in paragraphs 1 and 2 as soon as he would normally have had knowledge thereof and not later than 30 days after their occurrence.

4. Claims by the consultant must, under penalty of being time-barred, be made by registered letter within the following periods:

(a) before expiry of the contractual time limits, in order to obtain an extension of the periods of performance or rescission of the contract;

(b) in order to obtain a variation of the contract or an indemnity, not later than 60 days after the approval of his final report.

5. No claim may be submitted after the final settlement of the contract accounts, save in the case of error, omission, false or duplicated entry.

Article 143

Remission of damages for delay

1. The consultant shall be entitled to obtain remission of the damages for delay referred to in Article 146:

(a) in whole or in part, if he proves that the delay is due wholly or in part to acts by the contracting partner or to the circumstances referred to in Article 142(1) and (2);

(b) partially, if the contracting authority considers that the amount of the damages is disproportionate to the minimal importance of the services thus delayed, provided, however, that the services provided are such as may be used normally and that the consultant has made every effort to provide his services in the shortest possible time.

2. The consultant must, under penalty of being time-barred, submit any request for the remission of damages by registered letter within sixty days from the payment of the final balance.

IX - Non-performance of contracts and sanctions

Article 144

Non-performance of contract by the consultant

Non-performance of the contract by the consultant occurs:

1. Where the services are not provided in accordance with the terms of the contract;
2. Where the consultant or his agents do not comply with the written instructions of the contracting authority or the supervisor.

Article 145

Establishment of non-performance

Non-performance of the contract shall be established in an administrative order notified to the consultant.

Such notification shall constitute formal notice to put an end to the failure to perform the contract.

Within 15 days of the date of such notification, the consultant shall be obliged to submit the grounds of his defence to the contracting authority by registered letter. Silence on his part shall be deemed to constitute admission to the facts established.

The contracting authority shall without delay give a ruling on the defence submitted by the consultant and shall inform him of its decision by registered letter.

Article 146

Breach of contract

If no reasons for breach of contract are accepted or furnished within the period laid down in Article 145, the consultant shall be subject to one or more of the measures laid down in and governed by the following paragraphs:

1. Sanctions

- (a) Special damages as defined in the Special Conditions for the breaches of contract referred to in Article 144.
- (b) Liquidated damages for delay for any breach consisting in failure to provide the services and documents specified within the periods laid down in the Special Conditions. Notwithstanding Article 145, the said liquidated damages, for which the detailed procedure shall be laid down in the Special Conditions, shall be due without formal notice.

2. Measures to be taken as of right

These measures are the following:

- (a) outright rescission of the contract without compensation payable by the consultant;
- (b) rescission of the contract, decided against the consultant, with compensation payable by the consultant;
- (c) temporary or permanent exclusion from the award of contracts.

3. Rules for the application of measures taken as of right

Any decision relating to the application of measures taken as of right shall be taken by the contracting authority and notified to the consultant by registered letter.

Article 147

Rules governing concurrence of sanctions for
non-performance of contract

For the application of the measures laid down in Article 146(1) and (2)

the following rules shall be applied:

1. Special damages may be combined with liquidated damages for delay.
2. Rescission of the contract may be combined with sanctions and with exclusion. It may also be combined with liquidated damages for delay in respect of the period prior to the date of rescission.

Article 148

Recovery of damages

Recovery of damages, disbursements or expenses resulting from the application of the measures provided for in Article 146(2) shall be made by deduction from the sums due to the consultant or by payment by the consultant to a named account.

TITLE IV - Contractual provisions relating to
Contracts for the Supervision of Works

I - Preliminary provisions

Article 149

The supervisor

1. The supervisor shall be appointed by the contracting authority. He shall be the director of the works.
2. On a decision of the contracting authority, certain supervisory functions or, in exceptional circumstances, supervision of the project may be delegated to the consultant. Such functions shall be laid down in the Special Conditions in accordance with Article 162.
3. The supervisor shall be made known to the consultant in the letter notifying him of the award of the contract in accordance with Articles 26 and 50.

Article 150

Administrative orders

The consultant and his agents shall comply with the administrative orders notified to them by the contracting authority or the supervisor.

Where the contractor or his agents consider that the requirements of an administrative order exceed the obligations under the contract, they must, on pain of being time-barred, submit written notice thereof, by registered letter, to the contracting authority or the supervisor within 15 days. Execution of the administrative order shall not be suspended on account of the objection unless so ordered by the contracting authority or the supervisor.

Article 151

Address for service of the consultant

As soon as his agents are installed, the consultant shall notify the contracting authority of the address for service of his representative where all administrative orders may be sent.

Article 152

Assignments and sub-contractors

1. An assignment shall be an agreement by which the consultant transfers his contract to a third party.

A sub-contract shall be an agreement by which the consultant entrusts performance of part of his contract to a third party.

2. The consultant may not assign or sub-contract the contract without the express authorization of the contracting authority.

Save in exceptional circumstances justified on the ground of the special technical nature of the supervision of the works, assignees or sub-contractors must meet the conditions set out in Article 5.

3. In all cases of sub-contracts the contracting authority acknowledges no legal connection with the sub-contractors. The latter cannot claim from the contracting authority payment for services which they have provided, save as otherwise provided in Special Conditions.

4. If, without authorization so to do, the consultant has assigned his contract or awarded a sub-contract, the contracting authority may, without giving formal notice thereof, declare that the contract is forthwith rescinded.

Article 153

Commencement and duration of the contract

1. Commencement of the contract

The contract shall commence on the date on which the first agent of the consultant is established in the ACP State.

Such establishment may not precede the date of the order to commence the works to be supervised, save as otherwise provided in the Special Conditions.

Where provision is made for services to be provided outside the ACP State prior to the establishment of the agents of the consultants in the ACP State, the contract shall take effect, insofar as the services are concerned, on the actual date of their performance, which shall not precede the date fixed by the Special Conditions or, failing that, by the date fixed by administrative order of the contracting authority.

2. Duration of the contract

Save as otherwise provided in the Special Conditions, the contract shall be concluded for the period of performance of the works to be supervised and shall terminate not later than one month after the date of the provisional acceptance of the works.

II - General obligations

Article 154

Conduct of the operation

The consultant shall carry out the tasks entrusted to him in accordance with the best professional practices and in compliance with the provisions of these General Conditions and the instructions of the contracting authority and the supervisor.

He shall ensure that the works are carried out in the best interests of the contracting authority and shall arrange all aspects of a technical, human or organizational nature so as to ensure that the works are properly completed. In particular he shall ensure that the work is carried out in conformity with the contractual terms applying to the contractor.

Article 155

Compliance with laws and regulations

The consultant shall comply with the laws and regulations in force in the ACP State.

Article 156

Code of conduct

The consultant shall at all times act loyally and impartially in accordance with the rules of the code of conduct of his profession.

For the duration of the contract, the consultant and his agents shall refrain from involvement in any political or religious matter in the ACP State.

During performance of the contract, the consultant undertakes not to recruit staff employed in the public service of the ACP State, or, in the case of any staff who have resigned, not to recruit them without prior approval of the contracting authority.

Article 157

Professional secrecy

The consultant and his staff shall be obliged to maintain professional secrecy for the entire duration of the contract and after completion thereof, as regards information and documents obtained or brought to their attention during the performance of the contract. They may not, without the prior authorization of the contracting authority, communicate to third parties the content of such information and documents.

Article 158

Obligation of independence

1. The consultant shall maintain complete independence of action as regards contractors for works which he shall supervise. He shall not accept from these contractors any benefit whatsoever and shall refrain from any relations with them which would be such as to compromise his independence or that of his agents.
2. The consultant shall accept no commission, discount, indirect payment or other payment connected with the contract.

Save where expressly authorized by the contracting authority, the consultant shall not receive directly or indirectly any payment, gratuity or commission on any article or process used in performing the contract.

Article 159

Insurance

Within 15 days following notification of the award of the contract, the consultant shall be obliged to take out insurance, to take effect from the actual commencement of the services at the place of work and to remain in force throughout the period of performance of the contract, covering his liability with regard to sickness or accidents at work of his agents.

He shall be obliged to furnish proof of regular payment of premiums each time he is required so to do.

The contractor shall, if necessary, take out in favour of staff who perform the contract at the place of work insurance covering force majeure involving, in particular, the loss of equipment or personal effects.

Article 160

Work timetable

The days and hours of work shall be fixed on the basis of the laws, regulations and customs of the ACP State and the requirements of the service.

Article 161

Leave entitlement

1. Expatriate agents of the consultant shall be entitled to leave calculated on the basis of six days per month of service in the ACP State. The dates of departure on leave shall be determined by the contracting authority or the supervisor in relation to the requirements of the service and shall entail periods of service of not less than six consecutive months in the ACP State for an expatriate agent.

2. Staff recruited locally shall be entitled to leave determined on the basis of the national law of the ACP State.

III - Nature of services

Article 162

Performance of his tasks by the consultant

1. Save in the exceptional event of the supervision of the work being delegated to the consultant and without prejudice to special types of delegation specified in the Special Conditions, the consultant shall carry out the duties entrusted to him under the authority of the supervisor.

Proposals made by the consultant within the framework of his tasks must be submitted to the supervisor who shall be vested with a decision-making power.

2. In order to carry out his tasks, the consultant shall provide staff and equipment as required by the supervisor.

The consultant shall provide his agents, for the entire duration of the contract, with technical assistance. In particular, he shall obtain for them at his own expense any general and technical documents which they may need for performing the contract.

3. The consultant shall report on the progress of his tasks to the contracting authority or the supervisor by forwarding the different reports and documents referred to in Article 167.

Article 163

Definition of services

The Special Conditions shall determine the tasks and the nature of the services entrusted to the consultant in accordance with the following outline provisions:

The consultant and his agents shall exercise the technical, administrative and financial powers vested in the engineer by virtue of works contracts insofar as these affect the contractor responsible for executing the works. He may in addition carry out all or part of the functions of the works supervisor as laid down in works contracts, insofar as these affect the contractor. The powers thus delegated shall be specified in the rules governing the performance of tasks, as provided for in Article 162.

Irrespective of the extent of his tasks, the consultant must in particular:

1. Ensure that the works are properly executed from the qualitative and quantitative points of view and that the provisions of the contract are complied with by the contractor.
2. (a) Where he is author of the project, supply, on his own initiative or at the request of the contracting authority or the supervisor, all information, particulars and clarifications concerning the execution of the project or directly related thereto.

(b) Where he is not author of the project, discuss with the author the technical aspects and the organization of the work site, provided that the Special Conditions stipulate the assistance of the author at the execution stage.
3. Order such emergency measures as may be necessary on the work site and inform the contracting authority or supervisor thereof.
4. Irrespective of whether he is the author of the project, make such alterations, improvements or adjustments to the works contract which, without altering the nature or content of the project, prove necessary for its execution. If he carried out these alterations on his own initiative without having been requested so to do by the contracting authority or the supervisor, he must inform the latter thereof as soon as possible.

5. Advise the contracting authority or the supervisor on more substantial alterations which he considers necessary for the works contract and which entail in particular changes in the technical formulation of the project or in the technical implementation procedures or which arise from technical hazards occurring in the course of execution and/or which have a significant financial effect.

6. Formulate technical decisions when the works are being executed and especially when they are being accepted and, where appropriate, put into service.

7. Examine disputes between the contracting authority or the works supervisor and the undertaking as to the interpretation or performance of the works contract, where the undertaking is the complainant, and propose amicable solutions.

Article 164

Staff and equipment

1. The consultant shall seek the approval of the contracting authority as to the choice of agents to be placed at its disposal. The level of training and the qualifications required shall be set out in the Special Conditions.

A written application together with the references and curriculum vitae of each agent shall be forwarded within the period of time which is most compatible with the proper provision of the services provided for in the contract. It shall specify which agent will be responsible for representing the consultant in the ACP State during the performance of the contract. The contracting authority shall notify its approval or refusal within a period of not more than one month.

Agents approved by the contracting authority shall be installed on the date or within the period of time laid down in the Special Conditions or, failing that, on the date or within the period notified to the consultant by the contracting authority.

The consultant shall inform the contracting authority of the dates of arrival of his agents.

Save as otherwise provided in the Special Conditions, the agents of the consultant shall reside close to their place of work.

2. The consultant shall adopt all the measures necessary to provide and continue to provide his agents with the plant and equipment required to enable them to carry out their tasks in the most effective circumstances possible.

The vehicles may not bear any external reference showing the name of the consultant.

Article 165

Replacement of agents placed at the disposal of the contracting authority

1. If, for personal reasons, the consultant wishes to replace one of his agents placed at the disposal of the contracting authority, he may do so only with the prior agreement of the contracting authority.
2. If, on account of sickness or accident, an agent placed at the disposal of the contracting authority is unable to continue to provide services, the consultant must replace him.
3. In the two cases referred to in paragraphs 1 and 2 above and in the case referred to in Article 168(2), the replacement expenses shall be borne by the consultant. They shall include the cost of the return journey of the replacing agent and his family and, if necessary, the expenses arising from the need to maintain simultaneously at the place of work the agent to be replaced and his replacement.
4. In all cases of replacement, the approval and installation of the new agent shall occur under the conditions laid down in Article 164.

Article 166

Trainees

At the request of the contracting authority, the agent of the contractor shall give an undertaking to provide training for the duration of the contract for trainees possessing a basic level of training compatible with effective participation in the tasks provided for in the contract.

The number of trainees may not exceed the number of agents placed at the disposal of the contracting authority by the consultant.

The training of such trainees by the agents of the consultant shall not confer on them the status of agents of the consultant.

Remuneration for trainees, their travel expenses, the cost of accommodation and all other expenses incurred by them shall be borne by the contracting authority.

The representative of the consultant shall report at quarterly intervals to the contracting authority on the conditions in which trainees are being trained. At the end of the contract, he shall draw up a report on the results of the training of trainees and an assessment of the qualifications obtained by them with a view to their future employment.

The procedure for presenting such reports shall be laid down in the Special Conditions.

Article 167

Information for the contracting authority

1. The representative of the consultant in the ACP State shall report to the contracting authority on the activities of the consultant and the progress of the work site in periodic reports submitted at intervals laid down in the Special Conditions.
2. He shall draw up, at the earliest opportunity, special reports on any implementation difficulties or technical hazards which may arise, each time the latter necessitate an alteration to the conditions of contract or entail expenses which have not been envisaged. Such reports shall propose solutions, with figures, aimed at resolving the problems notified.
3. On termination of the services, he shall draw up a confidential general report in which the following points in particular shall be developed :
 - (a) an analysis of the final cost of the works including an assessment of supplementary costs and their cause;
 - (b) an appraisal of any claims by works contractors;
 - (c) the state of works actually executed and the techniques employed;
 - (d) a critical study of major technical problems which arose during execution of the works;
 - (e) the Special Conditions shall lay down the number of copies of the above-mentioned reports to be forwarded to the contracting authority;
 - (f) the final report referred to above shall be forwarded to the contracting authority not later than one month after the date of provisional acceptance of the works supervised.

IV - Responsibility of the consultant

Article 168

Responsibility of the consultant towards the contracting authority

1. The consultant shall be responsible for his professional errors. The extent of his responsibility shall be determined on the basis of the following:

- whether he is author of the project;
- what powers have been delegated to him by the contracting authority or the supervisor.

2. The consultant shall be responsible for the competency of agents whom he places at the disposal of the contracting authority. He must accordingly replace, in those circumstances which are laid down in Article 165, any agent who proves unqualified to take up the tasks entrusted to him.

3. Where he is author of the project, the consultant shall bear any costs of alterations to be made as a result of the inadequacies of or lacunae in the study which are attributable to him, without prejudice to indemnification of the contracting authority based on the damage suffered.

4. The consultant shall not be responsible for disturbances arising during the execution of the works which are the result of a professional error of the contractor, save where the contracting authority invokes the consultant's responsibility by way of failure to exercise supervision.

Article 169

Responsibility of the consultant towards third parties

1. The consultant shall be responsible under civil law for any damage caused to third parties as a result of any wrongful act attributable to his agents when performing the contract. In this respect he shall be obliged to take out insurance.
2. The consultant shall undertake to bear all the pecuniary consequences of any penalties imposed on the contracting authority which may result therefrom.
3. The contracting authority may call on the consultant to indemnify him in any circumstances where its responsibility is at issue under the conditions referred to in paragraph 1.

V - Obligations and assistance of the contracting authority,
cooperation with third parties

Article 170

Supervision of works

Save in the exceptional circumstances where the supervision of the work is delegated to the consultant, it shall be the responsibility of the director of the works, the supervisor, to issue to the consultant and his agents, after consultation with them, general and special directives covering the tasks entrusted to them.

Where such directives must be drawn up formally, they shall be issued by administrative order.

Article 171

Information to be supplied by the contracting authority

The contracting authority shall supply the consultant with all the information at its disposal and any documentation in its possession which may be available on the subject of the contract.

Article 172

Cooperation by the contracting authority

The contracting authority shall provide the consultant as far as possible, with any assistance that the latter may reasonably request in order to perform the contract.

It shall facilitate the entry and installation of agents and their family and the equipment of the consultant and shall issue the latter with all prior authorizations necessary for the entry of his agents and their installation for the entire duration of the contract in the ACP State, and the entry of all equipment, materials and machinery necessary for performing the contract. Similarly, it shall facilitate the departure of the agents and equipment of the consultant.

It shall accredit the agents of the consultant to all third parties and issue them with any authorization necessary for performing the contract, in particular as regards access to and movement within private property.

Article 173

Liability for travel expenses

The conditions governing the liability of the contracting authority for the travel expenses and baggage transport costs of agents shall be laid down in an annex to the General Conditions.

Article 174

Cooperation with third parties

1. The contracting authority may propose to the consultant concerning the assistance of consultancy or advisory bureaux and firms, consulting engineers or national experts selected by mutual agreement and referred to in an annex to the Special Conditions.

The consultant shall undertake to cooperate with such third parties.

The procedure for such cooperation and in particular the responsibilities arising from it shall also be laid down in the Special Conditions.

2. The consultant shall undertake to cooperate with the author of the project where the assistance of the latter is envisaged at the stage of execution of the works.

VI - Payments

Article 175

General provisions

The Special Conditions shall determine the conditions to which payments are subject.

Article 176

Advances

The Special Conditions may provide for the grant of an advance, the amount of which may not exceed 20 % of the estimated contract price.

Advances must be expressly requested by the consultant.

Article 177

Security for advances

1. No advance may be paid before the consultant has furnished proof of the commitment of a directly liable guarantor for the recovery of the advance.
2. Any advance granted must be fully guaranteed by the commitment of a directly liable guarantor approved in accordance with paragraph 3.

3. The directly liable guarantor shall be any body under public law or private law established in a Member State, or an ACP State or, where appropriate, in a third country in the cases provided for in Article 56(3) of the Lomé Convention, which is able to provide such a guarantee or is empowered so to do by the authorities under whose control it operates.

Article 178

Reimbursement of advances

The advance shall be reimbursed by way of deduction from the instalments owing to the consultant.

Reimbursement of advances shall begin when the amount of the sums due under the contract has reached 20% of the estimates contract price. It must be completed when 80% of this amount has been reached.

The directly liable guarantor shall be released as and when the advance is reimbursed.

Article 179

Payment of instalments and the final balance

The services provided when performing the contract shall entitle the consultant to the payment of instalments or to the payment of the final balance as and when the services are provided.

Remuneration for parts of a month shall be based on a daily rate of one-thirtieth of the appropriate monthly unit price.

Abatements for any incomplete provision of services shall be made on the basis of the prices laid down in the contract in respect of the part of the services which were not provided.

The payment of the final balance shall be subject to the submission of the final report provided for in Article 167(3).

Article 180

Revision of prices

1. The Special Conditions shall state whether the contract is at fixed prices which may not be revised or whether the prices may be revised.
2. Where the contract prices may be revised, the part of the contract based on the repayment of costs shall not be subject to revision.
3. Where the contract prices may be revised, revision shall take place either at the request of the consultant or on the initiative of the contracting authority, in accordance with the detailed rules for revision laid down in the Special Conditions.

Such detailed rules may take into account a variation in the prices of important factors affecting the establishment of the tender prices.

4. Prices contained in the consultant's tender shall be deemed to have been established on the basis of the conditions in force on the reference date. Unless otherwise specified in the Special Conditions, this date shall be thus adopted by the parties as being the date of negotiation of the contract in the case of mutual agreement contract or the first working day of the month preceding that in which the final date for the receipt of tenders occurs in the case of contracts based on invitation to tender.
5. Where there is a delay in the provision of services which is attributable to the consultant, during the period intervening between the contractual date for the completion of the contract and the actual date of completion, any price revision shall operate on a restricted basis and namely on the basis of the official indices or prices in force in the final month of the contractual period, subject to the reservation that later indices or official prices may be applied if they are advantageous to the contracting authority.

Article 181

Price revision and reimbursement of advances

Where advances have been granted and where, pursuant to Article 178, they are reimbursed by deduction from sums due by way of instalments or from the final balance, the Special Conditions shall state whether the price revision clause applies to the instalment or the final balance in respect of services provided, or to the difference between the initial amount of such instalment or balance and the amount of the advance to be deducted.

Article 182

Payment procedure

For the purpose of each payment, the consultant shall send the contracting authority four copies of a written statement together with the appropriate supporting documents.

The contracting authority shall check this statement.

Payment of sums owing to the consultant shall be made within 60 days of the date of receipt of each statement by the contracting authority, save where the Special Conditions provide for a shorter period.

Article 183

Payment in the event of attachment

In the event of a judgment ordering attachment against the consultant, and without prejudice to the period laid down in Article 182, the contracting authority shall be granted 15 calendar days from the day when it receives notification that the obstacle to payment has been lifted, to resume payments to the consultant.

Article 184

Interest for delay in payment

If the period laid down for payment has expired, although the contract has not given rise to a dispute, the consultant shall qualify automatically and without formal notice for interest calculated pro rata on the basis of the number of calendar days' delay, at the rediscount rate of the issuing institute of the ACP State, increased by one per cent per annum.

This supplement to the rate shall be increased to 4.5% per year as from the seventy-first day of delay.

However, payment of the interest on delay shall be subject to the submission by the consultant, not later than the sixtieth day following the day for payment of the final balance of the contract, of a written request having the effect of a statement of account. A remission of the liquidated damages for delay occurring after payment of the final balance may not be regarded as constituting the payment of a new balance and shall not reopen the period provided for in the preceding paragraph.

Article 185

Payment for the benefit of third parties

All orders for payment to third parties may be carried out only after an assignment of credit or of a collateral security.

The assignment of credit must be notified by registered letter with acknowledgement of receipt to the official responsible for authorizing all disbursements. The rules applicable to the assignment of credit shall be those of the State in which the assignment is effected.

The assignment of collateral security must be notified by registered letter with acknowledgement of receipt to the official responsible for payment. The rules applicable to the assignment shall be those of the ACP State in which the contract is performed.

VII - Developments affecting performance of the contract

Article 186

Cessation or postponement of performance of contract

1. Where the contracting authority unilaterally orders the cessation of performance of the contract, the latter shall be rescinded forthwith. The consultant shall be entitled to an indemnity for any injury which he may have suffered as a result of such rescission for which he is not responsible.
2. Where the contracting authority orders the postponement of the contract for reasons not specified in the Special Conditions, for more than six months before or after commencement of performance, the consultant shall be entitled to rescind the contract and shall be entitled to an indemnity for any injury which he may have suffered.

The same shall apply in the case of successive postponement, the total duration of which exceeds six months, even if performance of the contract has been resumed in the meantime.

The rescission shall be valid only if it is communicated by the contractor by registered letter within two months of the date of notification of the administrative order leading to postponement of performance of the contract for more than six months, or, within two months following the end of the sixth month of postponement, if such order has not fixed the duration of postponement.

If the consultant limits his action to a request for an indemnity, such request must be submitted by registered letter not later than 60 days after the end of the provision of services.

3. Where the contracting authority orders the postponement of performance of the contract for less than six months, the consultant shall be entitled to an indemnity for any injury suffered. He must submit his request by registered letter not later than 60 days after the termination of services.

Article 187

Death

1. Where the contract is awarded to a natural person, it shall be automatically rescinded if that person dies.

However, the contracting authority shall examine any proposal made by the heirs if they have notified it of their intention to continue the contract. The decision of the contracting authority shall be notified to those concerned within one month of receipt of such proposal.

2. Where the contract is awarded to several natural persons and one or more of them dies, a report shall be agreed between the parties regarding the services provided and the contracting authority shall decide whether to rescind or continue the contract in accordance with the undertaking of the survivors and of the heirs, as the case may be.

3. In the cases provided for in paragraphs 1 and 2, persons offering to continue to perform the contract shall notify the contracting authority thereof by registered letter within ten days of the date of death.

Continuation of the contract shall be subject to the rules relating to the commitment of a guarantor who shall be directly liable for advances in accordance with Article 177.

Article 188

Specific grounds for rescission

1. Without prejudice to the measures provided for in Article 194, the contracting authority may rescind the contract in the following cases:

- the bankruptcy of the consultant;
- any situation involving suspension of payment, other than bankruptcy, established by judgment of a court and resulting in accordance with his national law, in the total or partial loss of the consultant's right to administer and dispose of his property;
- any final judgment of a court or tribunal of the ACP State justifying the rescission of public contracts in accordance with national law;
- any other legal disability hindering performance of the contract;
- any organizational modification that must be notified to the contracting authority and involving a change in the legal personality of the consultant, unless such modification is recorded in a rider to the contract.

2. The contracting authority may, without waiting for the definitive settlement of account, and, if it is so requested, pay the consultant up to 80% of the credit balance shown by the provisional settlement. Alternatively, if the provisional settlement shows a credit balance in favour of the contracting authority, the latter may require the consultant to return 80% of the amount of such balance.

Article 189

Settlement of the contract account

In the event of rescission, the contract account shall be settled only on the basis of the services rendered and accepted.

In all cases of rescission of the contract, irrespective of cause, the advances account shall be immediately settled.

VIII - Claims and exceptional circumstances

Article 190

Claims by the consultant and exceptional risks

1. The consultant may avail himself of facts alleged against his contracting partner which would involve him in delay and/or loss, in order to obtain, where appropriate, an extension of the periods of performance, revision or rescission of the contract and/or an indemnity based on the injury suffered.
2. The consultant shall not normally be entitled to make any amendments to the contractual conditions as a result of circumstances in which his contracting partner had no part.

However, a derogation from this principle shall be justified by circumstances which the consultant could not reasonably foresee when the contract was negotiated, the tender submitted or the contract concluded, or which he could not reasonably avoid and the consequences of which he was unable to avert even though he had taken all the necessary steps to that end.

Where such circumstances make it impossible to perform the contract, the consultant shall be entitled to an extension of the period of performance and/or an indemnity based on the injury suffered, or to revision of the contract.

The contractor may invoke the default of a sub-contractor or supplier only insofar as the latter invokes circumstances which the consultant could have invoked in a similar situation.

3. The consultant shall be required to notify the contracting authority or the supervisor, by registered letter, of the facts and circumstances referred to in paragraphs 1 and 2 as soon as he would normally have had knowledge thereof and not later than 30 days after their occurrence.

4. Claims by the consultant must, under penalty of being time-barred, be made by registered letter with in the following periods:

- (a) before expiry of the contractual time limits, in order to obtain an extension of the periods of performance or rescission of the contract;
- (b) in order to obtain a variation of the contract or an indemnity, not later than 60 days after the approval of his final report.

5. No claim may be submitted after the final settlement of the contract accounts, save in the case of error, omission, false or duplicated entry.

Article 191

Remission of damages for delay

1. The consultant shall be entitled to obtain remission of damages for delay referred to in Article 194:

- (a) in whole or in part, if he proves that the delay is due wholly or in part to acts by the contracting partner or to the circumstances referred to in Article 190(1) and (2);
- (b) partially, if the contracting authority considers that the amount of the damages is disproportionate to the minimal importance of the services thus delayed, provided however that the services provided are such as may be used normally and that the consultant has made every effort to provide his services in the shortest possible time.

2. The consultant must, under penalty of being time-barred, submit any request for the remission of damages by registered letter within 60 days from the payment of the final balance.

IX - Non-performance of contract and sanctions

Article 192

Non-performance of contract by the consultant

Non-performance of the contract by the consultant occurs :

- where the services are not provided in accordance with the terms of the contract;
- where the consultant or his agents do not comply with the written instructions of the contracting authority or the supervisor.

Article 193

Establishment of non-performance

Non-performance of the contract shall be established in an administrative order notified to the consultant.

Such notification should constitute formal notice to put an end to the failure to perform the contract.

Within 15 days of the date of such notification, the consultant shall be obliged to submit the grounds of his defence to the contracting authority by registered letter. Silence on his part shall be deemed to constitute admission to the facts established.

The contracting authority shall, without delay, give a ruling on the defence submitted by the consultant and shall inform him of its decision by registered letter.

Article 194

Breach of contract

If no reasons for breach of contract are accepted or furnished within the period laid down in Article 193, the consultant shall be subject to one or more of the measures laid down in and governed by the following paragraphs :

1. Sanctions.

(a) Special damages as defined in the Special Conditions for the breaches of contract referred to in Article 192.

(b) Liquidated damages for delay for any breach consisting in failure to provide the services and documents specified within the periods laid down in the Special Conditions. Notwithstanding Article 193, the said liquidated damages, for which the detailed procedure shall be laid down in the Special Conditions, shall be due without formal notice.

2. Measures to be taken as of right.

These measures are the following :

(a) outright rescission of the contract without compensation payable by the consultant;

(b) rescission of the contract decided against the consultant, with compensation payable by the consultant;

(c) temporary or permanent exclusion from the award of contracts.

3. Rules for the application of measures taken as of right.

Any decision relating to the application of measures taken as of right shall be taken by the contracting authority and notified to the consultant by registered letter.

Article 195

Rules governing concurrence of sanctions for non-performance
of contract

For the application of the measures laid down in Article 194(1) and (2),
the following rules shall be applied:

1. Special damages may be combined with liquidated damages for delay.
2. Rescission of the contract may be combined with the sanctions and with exclusion. It may also be combined with liquidated damages for delay in respect of the period prior to the date of rescission.

Article 196

Recovery of damages

Recovery of damages, disbursements or expenses resulting from the application of the measures provided for in Article 194(2) shall be made by deduction from the sums due to the consultant or by payment by the consultant to a named account.

Conditions governing liability of the contracting authority for travel expensesA. TRAVEL1. Travel of expatriate agents

The contracting authority shall bear the travel expenses of expatriate agents of the consultant and members of their family (spouse and dependent children as defined by the social law of the country in which the consultant has his registered place of business) between the usual place of residence and the place of employment, in the following circumstances:

- outward journey to the place of employment;
- leave;
- return journey to the usual place of business on termination of activities

2. Travel shall be effected by the most direct route in economy class flights or, where parts of a journey necessitate travel by sea, rail or river, by first class.

3. If the usual place of residence of an agent and his family is outside the territory of the Member States and the ACP States, it shall, for the purpose of the application of paragraphs 1 and 2, be regarded as being situated at the registered place of business of the consultant.

The same rules shall apply in respect of liability for expenses for the carriage of luggage.

B. CARRIAGE OF LUGGAGE OF EXPATRIATE AGENTS

1. The carriage costs of luggage from the usual place of residence to the place of employment of agents making the outward journey to the place of employment or returning from it definitively shall be borne by the contracting authority within the weight limits laid down below:

(a) Air transport - accompanied luggage

In addition to the free allowance granted by the air companies

20 kg of accompanied luggage for the agent

20 kg of accompanied luggage for his spouse

10 kg of accompanied luggage per dependent child.

(b) Travel by sea, rail, road or river

300 kg of luggage for the agent
160 kg of luggage for his spouse
100 kg of luggage per dependent child.

(c) Air travel - unaccompanied luggage

Authorization may be granted for the carriage by air of unaccompanied luggage (air freight) within the limit of 75 kg per agent travelling separately and 150 kg for his entire family.

In such a case, the amount of the expenditure that may be borne by the contracting authority for the carriage of luggage by sea, rail, road or river, shall be reduced by the amount of the air freight carriage costs.

2. Carriage of luggage of expatriate agents when on leave

For journeys effected when travelling to and from leave, the contracting authority shall bear the carriage costs of luggage over and above the free allowance granted by the air companies up to the costs of carriage by air of the following:

30 kg of accompanied luggage for the agent
20 kg " " " " his spouse
10 kg " " " per dependent child.

C. TRAVEL AND CARRIAGE OF LUGGAGE OF AGENTS RECRUITED LOCALLY

Entitlement to travel and the carriage of luggage of agents recruited locally and persons dependent on them as defined by the social law of the ACP State in which the contract is being performed shall be determined by the national law of such ACP State.

D. TASKS ENTRUSTED TO AN AGENT OF THE CONSULTANT

Where an agent of the consultant employed in the ACP State is instructed, by administrative order of the contracting authority or the supervisor, to carry out a task outside the ACP State, the expenses thereof incurred by the consultant shall be borne by the contracting authority as laid down in paragraph A2 above in relation to travel expenses between the

place of activity and the place in which the task is to be carried out - and vice-versa - and in accordance with the terms of the Special Conditions insofar as daily travel allowance are concerned.

The same shall apply to missions carried out in the ACP State provided the expenses arising therefrom are not already covered by remuneration provided for in the Special Conditions in respect of official travel.

Missions outside the ACP State shall, for the purposes of calculating remuneration, be regarded as time spent employed within the ACP State.

