



INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT (IFAD)

GENERAL TERMS AND CONDITIONS FOR THE PROCUREMENT OF SERVICES

The contract or purchase order shall be governed by the following General Terms and Conditions for the Procurement of Services, together with the incorporated attachments or annexes if any. Any departure from these General Terms and Conditions shall only be valid if mutually agreed to between the Parties in writing.

1. DEFINITIONS

In these General Terms and Conditions for the Procurement of Services (hereinafter referred to as "General Terms and Conditions") the following definitions shall apply for the interpretation of contracts and purchase orders:

"IFAD or "Organisation" means the International Fund for Agricultural Development, represented by the President or his duly authorised representative.

"Contractor" means the supplier of services named in the contract or purchase order, represented by a duly authorised officer to undertake contractual obligations on behalf of the supplier.

"Contract" means the contract relating to the procurement of services between IFAD and the Contractor and includes these General Terms and Conditions.

"Parties" means the Contractor and IFAD collectively, and "Party" means either one of them.

"Purchase Order" (hereinafter referred to as "Contract") means a contract in a standard format relating to the procurement of goods or services between IFAD and the Contractor and includes these General Terms and Conditions.

"Services" means any service provided, or to be provided, to IFAD by the Contractor (or any of the Contractor's sub-contractors) pursuant to or in connection with the Contract.

2. STATEMENT OF PRINCIPLE AND ENTRY INTO FORCE OF CONTRACTS

IFAD declares that it is entering into this Contract in pursuit of its public and institutional aims.

A Contract shall enter into force on the day after both Parties have signed it. The Contract shall be drawn up in English as the only authentic language, each Party receiving one original.

3. LEGAL STATUS

The Contractor shall be considered as having the legal status of an independent Contractor. The Contractor's personnel and sub-contractors shall not be considered in any respect as being employees or agents of IFAD.

4. SOURCE OF INSTRUCTIONS

The Contractor shall neither seek nor accept instructions from any authority external to IFAD in connection with the performance of its services under this Contract. The Contractor shall refrain from any action which may adversely affect IFAD and shall fulfil its commitments with the fullest regard to the interests of IFAD.

5. CONTRACTOR'S RESPONSIBILITY FOR EMPLOYEES, SUBCONTRACTORS

The Contractor shall be responsible for the professional and technical competence of its employees and/or subcontractors and will select, for work under the Contract, reliable individuals who will perform effectively in the implementation of this Contract, respect the local customs, and conform to a high standard of moral and ethical conduct.

6. DELIVERY

The Contractor shall deliver the services at the place of delivery specified in the Contract, and within the delivery period stipulated in the Contract.

7. PAYMENT

Unless expressly stipulated otherwise in the Contract, IFAD shall make payment usually by means of a bank remittance:

- (a) Within 30 days of receiving the invoice and any other documents specified in the Contract or within 30 days of the date on which performance of the Contract was satisfactorily completed, whichever is the latest dated one.
- (b) The price of the services shall be as stated in the Contract and may not be increased, except by the express and written agreement of IFAD.
- (c) IFAD shall not pay any charge for late payment unless this has been expressly agreed to in writing.
- (d) Payment shall not be made for services that have not been accepted as provided for in Article 22 of these General Terms and Conditions. Payment by IFAD shall not be deemed to be acceptance of services.
- (e) Payment shall be made in Euros unless otherwise stipulated in the Contract.
- (f) Advance payment shall only be made if expressly authorised by IFAD in the Contract and only

where normal commercial practice or the interests of IFAD require so.

8. PRIVILEGES AND IMMUNITIES

Nothing contained in the Contract or any course of dealing between the Parties shall be deemed a waiver, express or implied, of any privilege or immunity that IFAD, a Specialised Agency of the United Nations, may enjoy pursuant to: (i) the Agreement Between IFAD and the Italian Republic Regarding the Provisional Headquarters of IFAD ("Headquarters Agreement"); (ii) the Convention on the Privileges and Immunities of the Specialised Agencies of the United Nations (1947); (iii) the Agreement Establishing IFAD; or (iv) any other agreement to which IFAD is Party or arising under customary international law or other law. In addition, nothing contained in the Contract or relating thereto shall confer any privilege or immunity on the Contractor, nor on its employees or its sub-contractors.

9. TAX EXEMPTION

Section 9 of the Convention on the Privileges and Immunities of the Specialised Agencies of the United Nations provides, inter alia, that the specialised agencies such as IFAD are exempt from all direct taxes, custom duties and any other taxes or levies. In addition to the Privileges and Immunities Convention, the Headquarter Agreement between Italy and IFAD as ratified on May 23, 1980 also exempts IFAD from the payment of taxes. The Contractor's price shall reflect any duty or tax to which IFAD is entitled by reason of the privileges that it enjoys. If it is subsequently determined that any taxes and duties from which IFAD is exempted have been included in the price paid by IFAD, the amount of such taxes and duties shall be refunded by the Contractor. Alternatively, IFAD may deduct such amount from the Contract price and payment of such corrected amount shall constitute full payment by IFAD.

10. LIABILITY OF THE CONTRACTING PARTIES AND FORCE MAJEURE

- (a) IFAD shall not under any circumstances or for any reason whatsoever be held liable for loss, damage or injury sustained by the Contractor or by any person acting on behalf of the Contractor during the performance of the Contract. IFAD shall not accept any claim for compensation in respect of any such damage. The Contractor shall insure against all risks or loss, damage or injury caused by the Contractor or by any person acting on behalf of the Contractor during the performance of the Contract. The Contractor and any person acting on behalf of the Contractor shall, during the performance of the Contract, comply with these General Terms and Conditions.
- (b) Except in the case of force majeure, the Contractor shall be required to indemnify IFAD for any loss, damage or injury that it may sustain from any act performed by the Contractor.
- (c) The term force majeure, as used here, shall include, unforeseen events not within the control of either Party, such as laws or regulations, strikes, lock-outs or other industrial disturbances, acts of terrorism, wars, whether declared or not

declared, blockades, embargoes, insurrections, riots, civil disturbances, explosions, epidemics, landslides, earthquakes, storms, lightning, floods and washouts. Any other event could be recognised as force majeure in arbitration proceedings instituted in relation to a dispute as mentioned in Article 28 of these General Terms and Conditions.

- (d) If either Party considers that force majeure affecting the performance of its obligations has occurred, it shall promptly notify the other Party, giving full particulars in writing, including its probable duration and its effect on the Party's ability to perform. However, once the condition of force majeure has been agreed by the Parties, the Parties shall be relieved of liability for non-performance of their obligations until it ends.
- (e) The Contractor shall not be entitled to payment if it is prevented by force majeure from performing the tasks assigned to it. Part performance of any task shall result in a pro-rated payment.

11. TERMINATION OF CONTRACT

- (a) If the Contractor ceases to practise his profession or carry out his business wholly or for a large part; does not comply with any conditions of the Contract; applies for moratorium or applies to be declared insolvent; is granted a moratorium or declared insolvent; is declared bankrupt; offers a settlement in lieu of bankruptcy or if the property of the Contractor is attached; or if the Contractor is not a natural person and loses its status as a legal person, is wound up or in actual fact is liquidated, IFAD has the right to give notice of termination of Contract immediately without notice of default. The Contractor shall immediately inform IFAD of the occurrence of any of the above events.
- (b) Should IFAD's Headquarters be moved from Rome, the Contract shall be cancelled without indemnities or compensation to the Contractor as a result of IFAD's diplomatic privileges provided that notice is sent to the Contractor by registered mail at least three months in advance of such termination.
- (c) If any of the circumstances in paragraph (a) of this Article should arise, the Contractor shall be in breach of this Contract as a consequence.
- (d) The Contractor shall be bound to compensate IFAD for all damage, costs and loss of interest as a result of a situation as mentioned in paragraph (a) of this Article as a result of premature terminations on the Contract, even in the event that a moratorium is granted or the Contractor is declared insolvent. This damage shall include in any case all amounts due until the original agreed date of termination of the Contract, as well as all costs incurred by IFAD in legal and non-legal proceedings, including those for legal assistance with regard to any circumstances as referred to in paragraph (a) of this Article.
- (e) The conditions in paragraphs (a), (b), (c) and (d) of this Article do not exclude the right of IFAD to exercise other legal rights, including its right to impose liquidated damages, demand payment or compensation for damages or for cancellation of the Contract.

- (f) IFAD, at its own discretion, is legally and without intervention by the courts entitled to carry out itself or to have carried out any contractual obligation for which the Contractor is in default, at the expense and risk of the Contractor.
- (g) Each contracting Party may, of its own volition and without being required to pay compensation, terminate the Contract by serving formal written notice to the other Party of thirty days in advance, unless the Contract provides otherwise. Upon receipt of notice of termination by IFAD, the Contractor shall take immediate steps to bring the work or service to a close in a prompt and orderly manner. The Contractor shall reduce expenses to a minimum and shall not undertake any further commitments under the Contract from the date of receipt of such a notice. If the Contract is terminated by IFAD, the Contractor shall be entitled to pro-rata payment for any tasks performed prior to such termination. Additional costs incurred by IFAD, resulting either from termination by the Contractor or from the Contractor's failure to complete satisfactory performance, may be withheld from any amount otherwise due to the Contractor from IFAD under this or any other Contract. The initiation of arbitral proceedings in accordance with Article 27 below shall not be deemed a termination of Contract.
- (h) In case of a breach of this Contract by the Contractor, included but not limited to failure or refusal deliver the services within the time limit specified, IFAD may procure the services from other sources and may hold the Contractor liable for any excess cost occasioned thereby. Furthermore, IFAD may, by written notice, terminate the right of the Contractor to proceed with performance of the Contract or such part or parts thereof as to which there has been a default.

12. LIQUIDATED DAMAGES

Without prejudice to the provisions on force majeure in these General Terms and Conditions, if the Contractor fails to provide any or all of the services fully in accordance with the terms and conditions of the Contract including the time period specified, IFAD may, by notice given in writing, terminate the performance of such parts or part thereof as to which there has been default without incurring liability or termination charges of any kind. IFAD may at its discretion, accept deviations from the deadline specified in the Contract, without prejudice to any other rights and remedies, and deduct from the price stipulated in the Contract, as liquidated damages, a sum equivalent to 1% per day of the contractual price of the delayed services for each day of delay up to a maximum 15 days. In the event that this deadline is not respected, IFAD has an option to cancel the Contract without incurring any liability for termination charges or any other liability of any kind.

13. SUB-CONTRACTING, THIRD PARTIES

- (a) The Contractor shall not, without the prior and express written approval of IFAD, assign, transfer, pledge or make other disposition of this Contract or any part thereof, or any of the

Contractor's rights or obligations arising out of the Contract to third parties or sub-contract any part of the work required under this Contract to third parties.

- (b) In the event where IFAD authorises the Contractor to sub-contract part or all of the obligations under the Contract to third parties, the Contractor shall nonetheless remain bound by its obligations to IFAD under the Contract.
- (c) Except where IFAD expressly authorises an exception, the Contractor shall be required to include in any sub-contract provisions enabling IFAD to enjoy the same rights and guarantees in relation to sub-contractors as it enjoys in relation to the Contractor.
- (d) The terms of any sub-contract shall nonetheless be subject to the provisions of this Contract.

14. NON-WAIVER OF RIGHTS

Failure of, or delay by IFAD in the exercise of any rights or remedies provided by the Contract shall not be deemed a waiver of any rights of IFAD, and shall not release the Contractor from fulfilling its obligations.

15. CONFIDENTIALITY

- (a) The Contractor, its employees and its sub-contractors, shall not use any information acquired or developed in the course of this Contract for any purpose not authorised in writing by IFAD.
- (b) The Contractor is required to exercise the utmost discretion during the performance of the Contract. The Contractor may not communicate to any other person, government or authority external to IFAD any information known to it by reason of its contractual relationship with IFAD which has not previously been made public, except with the written authorisation of IFAD. Nor shall the Contractor at any time use such information to private advantage.
- (c) The Contractor shall be liable for any breach of confidentiality or any indirect disclosure that could vitiate the interests of IFAD. The extent of any such liability shall be directly proportional to the extent of the damage caused.
- (d) All maps, drawings, photographs, mosaics, plans, reports, recommendations, estimates, documents and all other data compiled by or received by the Contractor under this Contract shall be the property of IFAD, shall be treated as confidential and shall be delivered only to IFAD authorised officials in completion of work under this Contract.
- (e) The obligations under this Article do not lapse upon cessation of the Contract

16. WARRANTY

The Contractor warrants that the services are: (a) of the quality, quantity and description required by the Contract; and (b) free from any right or claim of a third party, including rights or claims based on copyright, patent or other industrial or intellectual property rights;

17. BANK GUARANTEE

If IFAD so requests in the Contract, the Contractor shall guarantee the due fulfilment of its obligations under the Contract by providing an unconditional and irrevocable bank guarantee from an established bank of good standing for the amount determined in the Contract.

18. INDEMNITY

The Contractor shall indemnify, hold and save harmless, and defend, at its own expense, IFAD, its officials, agents, servants and employees from and against all suits, claims, demands, and liability of any nature or kind, including their costs and expenses, arising out of acts or omissions of the Contractor, or the Contractor's employees, officers, agents or sub-contractors, in the performance of this Contract. This provision shall extend, inter alia, to claims and liability in the nature of workmen's compensation, products liability and liability arising out of the use of patented inventions or devises, copyrighted material or other intellectual property by the Contractor, its employees, officers, agents, servants or sub-contractors. The obligations under this Article do not lapse upon termination of this Contract.

19. INSURANCE AND LIABILITIES TO THIRD PARTIES

- (a) The Contractor shall provide and thereafter maintain insurance against all risks in respect of its property and any equipment used for the execution of this Contract.
- (b) The Contractor shall provide and thereafter maintain all appropriate workmen's compensation insurance, or its equivalent, with respect to its employees or sub-contractors to cover claims for personal injury or death in connection with this Contract.
- (c) The Contractor shall also provide and thereafter maintain liability insurance in an adequate amount to cover third party claims for death or bodily injury or loss of or damage to property, arising from or in connection with the provision of services under this Contract or the operation of vehicles, boats, aeroplanes or other equipment owned or leased by the Contractor or its agents, servants, employees or sub-contractors performing work or services in connection with this Contract.
- (d) The Contractor shall, upon IFAD's request, provide IFAD with satisfactory evidence of the insurance required under this Article.

20. TITLE TO EQUIPMENT SUPPLIED BY IFAD

Title to any equipment and supplies that may be furnished by IFAD shall rest with IFAD and any such equipment shall be returned to IFAD upon termination of this Contract or when no longer needed by the Contractor. Such equipment, when returned to IFAD shall be in the same condition as when delivered to the Contractor, subject to normal wear and tear. The Contractor shall be liable to compensate IFAD for equipment determined to be damaged or degraded beyond normal wear and tear.

21. COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS

IFAD shall be entitled to all intellectual property and other proprietary rights including but not limited to patents, copyrights, and trademarks, with regard to products or documents and other materials which bear a direct relation to or are produced or prepared or collected in consequence of or in the course of the execution of this Contract. At IFAD's request, the Contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring them to IFAD.

22. EXAMINATION AND ACCEPTANCE

- (a) IFAD shall have the right, before payment, to examine at its expenses the services provided under the Contract on the premises of IFAD, or elsewhere. The Contractor shall provide, when possible, all facilities for any such examination.
- (b) In case of rejection of the services provided, a new examination may be carried out by the representatives of both Parties if promptly requested by the Contractor and before IFAD exercises any legal remedies. The Contractor shall bear the expenses of such an examination.
- (c) The examinations shall be carried out in good faith.

23. TITLE

The Contractor guarantees that the services provided by it are unencumbered by any third party's proprietary rights. Title to any services shall pass to IFAD upon delivery.

24. ADVERTISING

Unless authorised in writing by IFAD, the Contractor shall not advertise or otherwise make public the fact it is supplying services to IFAD. The Contractor shall not use the name, emblem or official seal of IFAD or any abbreviation of the names of IFAD for advertising or for any other promotional purpose.

25. AMENDMENTS AND ADDITIONS TO THE CONTRACT

The provisions of the Contract and the annexes thereto may be amended or supplemented only by means of a supplementary written agreement signed by all of the Parties or their authorised representatives.

26. OFFICIALS NOT TO BENEFIT

- (a) IFAD warrants that no official or employee of the Contractor has been or shall be admitted by it to any direct or indirect benefit arising from this Contract or the award thereof. Failure to comply with the foregoing provision shall constitute a material breach of this Contract.
- (b) The Contractor warrants that no official or employee of IFAD has been or shall be admitted by it to any direct or indirect benefit arising from this Contract or the award thereof. The Contractor agrees that breach of this provision is a breach of an essential term of this Contract.

27. FRAUD AND CORRUPTION

Contractor (including its officers) shall adhere to the highest ethical standards, and report to IFAD all suspected acts of fraud or corruption of which they have knowledge or become aware, during the selection

process and throughout the negotiation or execution of a Contract. Fraud and corruption are prohibited. Fraud and corruption include, but are not limited to, acts of corrupt practice, fraudulent practice, collusive practice and coercive practice.

i) For the purposes of this paragraph, the following terms shall have the following meanings:

- (a) “corrupt practices”, which means offering, giving, receiving, or soliciting, directly or indirectly, anything of value to improperly influence the actions of another party;
- (b) “fraudulent practices”, which means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (c) “collusive practices”, which means an arrangement between two or more parties designed to achieve an improper purpose, including improperly influencing the actions of another party;
- (d) “coercive practices”, which means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or its property, to improperly influence the actions of that party.

ii) IFAD has established administrative procedures for reporting allegations of fraud and corruption within the procurement process or the execution of a contract financed by IFAD. To that effect any complaint shall be submitted through the established mechanisms for investigation. ¹Allegations may be presented confidentially or anonymously. If IFAD, in accordance with its administrative procedures, demonstrates that the Contractor (including the respective officers, employees and agents) engaged in an act of fraud and corruption in competing for, or in executing an IFAD-financed contract, IFAD may:

- (a) issue a reprimand in the form of a formal letter of censure of the entity or individual’s behaviour;
- (b) reject a proposal for award if it determines that the bidder or contractor recommended for award has, directly or through an agent, engaged in acts of fraud and corruption competing for the contract in question;
- (c) declare a firm or individual ineligible, either indefinitely or for a stated period of time, to participate in or be awarded an IFAD-financed contract; and/or
- (d) refer the matter to appropriate law enforcement authorities.

iii) The Contractor warrants:

- (a) to have read and understood IFAD’s prohibition against fraud and corruption;

- (b) it has not engaged in any violation of the policies on fraud and corruption described herein;
- (c) it has not misrepresented or concealed any material facts during the procurement or contract negotiation process or performance of the contract;
- (d) that neither they, nor any of their director, officers or principal shareholders have been declared ineligible to be awarded IFAD-financed contracts or have been convicted of a crime involving fraud or corruption;
- (e) that none of their directors, officers or principal shareholders have been a director, officer or principal shareholder of any other company or entity that has been declared ineligible to be awarded an IFAD-financed contract or has been convicted of a crime involving fraud or corruption;
- (f) that all commissions, agents’ fees, facilitating payments or revenue-sharing agreements related to the IFAD-financed contract or consulting agreement have been disclosed;
- (g) that they acknowledge that the breach of any of these warranties constitutes a basis for the imposition of any or a combination of the remedial measures described in this Article.

The imposition of any action to be taken by IFAD pursuant to the provisions referred to in this Article may be public or private, in accordance with the policies of IFAD.

28. CONFLICT OF INTEREST

The Contractor shall provide professional, objective and impartial advice and at all times hold IFAD’s interests paramount, act without any consideration for future work, and strictly avoid conflicts with other assignments or its own corporate interests. Contractors have an obligation to disclose any situation of actual, apparent or potential conflict that impacts their capacity to serve the best interest of IFAD, or that may reasonably be perceived as having this effect. Failure to disclose said situations will be considered a breach of this Contract and a violation of the prohibition against fraud and corruption described in the preceding Article and may lead to the disqualification of the Contractor, the termination of this Contract and/or other measures as provided herein.

29. RIGHT TO AUDIT

The Contractor agrees that IFAD’s auditors, investigators and other agents appointed by IFAD (whether internal or external), shall be allowed access to examine all or any records which the Contractor may hold relating to IFAD under this Contract. The Contractor shall:

- (a) maintain all documents and records related to this Contract for 3 years after completion of the work contemplated in the relevant Contract;

¹ For more information on the mechanisms available for reporting fraud and corruption, please see <http://www.ifad.org/governance/anticorruption>.

- (b) provide the delivery of any document necessary for the investigation of allegations of fraud or corruption; and
- (c) ensure the availability of employees or agents of the Contractor with knowledge of this Contract to respond to questions from IFAD staff or any properly designated auditor, investigator, agent or consultant acting on IFAD's behalf relating to the review or audit of the documents.

If the Contractor fails to comply with IFAD's request, or otherwise obstructs IFAD's review of the matter, IFAD, in its sole discretion, may take appropriate action against the Contractor.

30. APPLICABLE LAW

The Contract will be governed by (A) the Headquarters Agreement; (B) the UNCITRAL Model Law on Procurement of Goods and Construction; and (C) recognised principles of international trade law. The Contractor shall comply with all laws, ordinances, rules and regulations bearing upon the performance of its obligations under the terms of this Contract.

31. SETTLEMENT OF DISPUTES

- (a) Without prejudice to the privileges and immunities of IFAD and to these General Terms and Conditions, any disagreement or legal dispute relating to this Contract shall be settled amicably by negotiation and direct dealings.
- (b) Any dispute which cannot be settled by negotiation within 60 (sixty) days shall, without prejudice to the relevant privileges and immunities of IFAD, at the request of either Party, be submitted at the seat of IFAD to an Arbitration Board composed of (i) two arbitrators, one being appointed by each of the parties and (ii) a third as president chosen by the two arbitrators.
- (c) In the event of a disagreement as to the nomination of the President or a Party's failure to appoint an arbitrator, these appointments shall be made according to the UNCITRAL (United Nations Commission on International Trade Law). The Arbitration Board shall have its seat in Rome, Italy and shall establish its own procedure.
- (d) In the absence of contractual provisions, the arbitrators shall apply the UNCITRAL Arbitration Rules as in force on the day both Parties have signed the Contract
- (e) The parties agree to be bound by any arbitration award, in accordance with this Article 28, as the final adjudication of the dispute.
- (f) In the event that the dispute relates to an allegation that any party to this contract (including their respective officers, employees and agents) engaged in an act of fraud and corruption has herein defined in Article 27, the foregoing provisions of Article 31 will not apply. All allegations of fraud and corruption shall be immediately referred to the Office of Audit and Oversight of the Fund for investigation and resolution in accordance with the administrative policies and procedures established by IFAD.

29. CHILD LABOUR, MINES, TERRORISM

- (a) The Contractor represents and warrants that neither it nor any of its affiliates is engaged in any practice inconsistent with the rights set forth in the Convention of the Rights of the Child which, inter alia, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
- (b) The Contractor further warrants that neither it, nor any of its affiliates is engaged in the sale or manufacture of anti-personnel mines or of components used in the manufacture of such mines.
- (c) The Contractor further warrants that neither it, nor any of its affiliates is engaged either directly or indirectly in terrorism, or in the finance or support of terrorism or in the provision of goods or services to suppliers engaged in such activities.

Any breach of this Article 29 shall entitle IFAD to terminate this Contract and suspend payments that may be due, without liability for termination charges or any other liability of any kind of IFAD.