**Annex- 4**

**MAG GENERAL CONDITIONS OF CONTRACT FOR THE PROCUREMENT OF GOODS**

**The Supplier agrees to the following conditions**:

**1. SCOPE AND APPLICABILITY**

These General Conditions of Contract for Procurement of Goods apply to all deliveries of services made to MAG notwithstanding any conflicting, contrary or additional terms and conditions in any purchase order or other communication from the Supplier. No such conflicting, contrary or additional terms and conditions shall be deemed accepted by us unless and until we expressly confirm our acceptance in writing.

**2.SHIPMENT AND DELIVERY**

All goods shall be delivered to the agreed place of delivery as stated in the Contract, at the Supplier's risk of loss of or damage to the goods until delivery, unless otherwise provided for in the Contract.

**3.PACKING**

The Supplier warrants that the goods are packaged in a manner adequate to protect the goods while in transit.

**4. INSPECTION**

MAG has the right to inspect the goods at the point of delivery for conformity to specifications. Any inspection carried out by the MAG, or its representatives, or any waiver thereof shall not prejudice the implementation of other relevant provisions of this contract concerning obligations subscribed by the Supplier.

**5. TITLE TO GOODS**

All goods are delivered free of any third party's rights, and ownership of the goods passes to MAG upon actual delivery at the place of delivery.

**6. REJECTION**

In the case of goods purchased on the basis of specifications or samples or both, MAG shall have the right to reject the goods or any part thereof. if they do not conform with the specifications of the Contract in the opinion of the MAG or is not delivered in due time.

MAG shall have the right to reject the goods in the event that the packing is not in accordance with the terms of the Contract. When the goods or any part thereof have been rejected, MAG shall have the right, without prejudice to demand from the Supplier the immediate delivery of acceptable goods in replacement thereof in accordance with the contract or to purchase other similar goods elsewhere and to claim from the Supplier the amount of loss or damages sustained by reason of the default.

Goods or any part thereof in MAGs possession which have been rejected by MAG must be removed at the Supplier's expense within such period as MAG may specify in its notice of rejection. After such notice has been dispatched to the Supplier, the goods or any part thereof will be held at the latter's risk. Should the Supplier fail to remove the goods as required by the notice of rejection, MAG may dispose of them, without any liability to the Supplier whatsoever, in such manner as it deems fit.

**7. WARRANTY**

As per terms and conditions of the manufacturer/ Suppliers and agreed by MAG Iraq.

**8. PAYMENT**

The Supplier shall invoice MAG and the terms of payment shall be thirty (30) working days after presentation of an invoice and signed Waybills/ Packing List showing delivery has been made.

**9. DEFAULT**

In case the Supplier fails to comply with any term of the Contract, including but not limited to failure or refusal to make deliveries within the time limit specified, he shall be liable for all damages sustained by MAG, and MAG may procure the goods from other sources and hold the Supplier responsible for any excess cost occasioned thereby. MAG may collect damages from the Supplier in lieu of purchasing the goods from other sources. MAG may by written notice terminate the right of the Supplier to proceed with deliveries or such part or parts thereof as to which there has been default, or if any delivery is late, MAG may cancel such delivery or the entire Contract.

**10. WAIVER**

No waiver of any breach of the Contract shall be held to be a waiver of any other or subsequent breach. All remedies afforded in the Contract shall be taken and construed as cumulative, that is in addition to every other remedy provided herein or by law.

**11. CANCELLATION DUE TO EVENTS OF FORCE MAJEURE**

MAG shall have the right to cancel the Contract or any of the provisions thereof at any time in accordance with the provisions of Article16 below. In this event the Supplier may charge MAG reasonable costs of expenses incurred by him until the time of such cancellation which will only be paid upon production by the Supplier of supporting documents to the satisfaction of MAG.

Should delivery to MAG be prevented by prohibition of export or import, blockade, war, armed conflict, civil disturbance, industrial disturbance or other similar cause beyond the control of either party, the Contract or the then unfulfilled part thereof may be cancelled at the discretion of MAG.

**12. BANK GUARANTEE**

When specifically requested by MAG, a bank guarantee from a well reputed bank acceptable to MAG in the currency in which the Contract is payable and for an amount to be prescribed by MAG shall be obtained by the Supplier at his expense and deposited with MAG before conclusion of the Contract. In the event of any loss, damage and/or extra costs incurred by MAG by reason of the Supplier's default, negligence or failure to perform the terms and conditions of the Contract or any part thereof, that part of any such loss, damage and/or extra costs which is represented by the full or by any lesser amount of such guarantee shall be immediately and initially reimbursable to MAG from such guarantee without prejudice to its right to hold the Supplier liable for the full amount of such loss, damage and/or extra cost. The guarantee shall be valid for a period of not less than 30 days after the date of arrival at destination of the last specified delivery.

**13. ADVERTISING**

The Supplier shall not advertise or otherwise make public the fact that he is a Supplier to MAG without specific approval from MAG. Nor shall the Supplier in any manner whatsoever use the name of MAG, or any abbreviation thereof, in connection with his business or otherwise. Non-observance of these conditions shall entitle MAG to cancel the Contract, or any part thereof, and to hold the Supplier liable for any damages which MAG has sustained as a result thereof.

**14. ASSIGNMENT AND INSOLVENCY**

The Supplier shall not assign, transfer, pledge or make other disposition of this Contract, or any part thereof, or any of the Supplier's rights, claims or obligations under this Contract except with the prior written consent of MAG.

Should the Supplier become insolvent or should control of the Supplier change by virtue of insolvency, MAG may without prejudice to any other rights or remedies, terminate this Contract by giving the Supplier written notice of termination.

**15. AMENDMENTS**

No changes in or modifications to this Contract shall be valid unless confirmed in writing by both parties.

**16. FORCE MAJEURE**

Force Majeure, as used in this Article means acts of God, strikes, lockout or other industrial disturbances, acts of the public enemy, wars (whether declared or not), blockades, insurrection, riots, epidemics, landslides, earthquakes, storms, lightning, floods, washouts, civil disturbances, explosions and any other similar unforeseeable events which are beyond the parties' control and cannot be overcome by due diligence.

In the event of and as soon as possible and no later than one (1) week after the occurrence of any cause constituting Force Majeure, the Supplier shall give notice and full particulars in writing to MAG of such occurrence or change if the Supplier is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Contract. The Supplier shall also notify MAG of any other changes in conditions or the occurrence of any event that interferes or threatens to interfere with its performance of this Contract. On receipt of the notice required under this article, MAG shall take such action as, in its sole discretion, it considers to be appropriate or necessary in the circumstances, including the granting to the Supplier of a reasonable extension of time in which to perform its obligations under this Contract, or termination of the Contract if any delay will force an extension to the delivery schedule.

Notwithstanding anything to the contrary in this Contract, the Supplier recognizes that the work and services may be performed under harsh or hostile conditions caused by civil unrest. Consequently, delays or failure to perform caused by events arising out of, or in connection with, such civil unrest shall not, in itself, constitute Force Majeure under this contract.

**17. OFFICIALS NOT TO BENEFIT**

The Supplier warrants that no official of MAG has received or will be offered by the Supplier any direct or indirect benefit arising from this Contract or the award thereof. The Supplier will notify MAG immediately in case any official from MAG requests any unofficial, or additional payment, or gift to their personal account. The Supplier agrees that breach of this provision is a breach of an essential term of this Contract.

**18. CHECKS AND AUDIT**

The Supplier shall allow any external auditor authorized by MAG to verify, by examining the documents and to make copies thereof or by means of on-the-spot checks of original documents, the implementation of the contract and conduct a full audit, if necessary, on the basis of supporting documents for the accounts, accounting documents and any other document relevant

to the financing of the project. The Supplier shall ensure that on-the-spot access is available at all reasonable times. The Supplier shall ensure that the information is readily available at the moment of the audit and if so requested, that the data be handed over in an appropriate form. These inspections may take place up to 12 years after the final payment.

Furthermore, the Supplier shall allow any external auditor authorized by MAG carrying out verifications as required to carry out checks and verification on the spot in accordance with the procedures set out by the donor or in the European Union legislation for the protection of the financial interests of the European Union against fraud and other irregularities.

To this end, the Supplier undertakes to give appropriate access to any external auditor authorized by MAG carrying out verifications as required to the sites and locations at which the project is implemented, including its information systems, as well as all documents and databases concerning the technical and financial management of the action and to take all steps to facilitate their work. Access given to agents of any external auditor authorized by MAG carrying out verifications shall be on the basis of confidentiality with respect to third parties, without prejudice to the obligations of public law to which they are subject. Documents must be easily accessible and filed so as to facilitate their examination and the Supplier must inform MAG of their precise location.

The Supplier guarantees that the rights of any external auditor authorized by MAG carrying out verifications as required to carry out audits, checks and verification shall be equally applicable, under the same conditions and according to the same rules as those set out in this Article, to the Supplier's partners, and subcontractors. Where a partner or subcontractor is an international organization, any verification agreement concluded between such organization and the donor applies.

**19. RULE OF ORIGIN AND NATIONALITY**

If any rules of origin and nationality are applicable due to donor requirements, limiting the eligible countries for goods, legal and natural persons, the Supplier must adhere to these rules and be able to document and certify the origin of goods and nationality of legal and natural persons as required.

Failure to comply with this obligation shall lead, after formal notice, to termination of the contract, and MAG is entitled to recover any loss from the Supplier and is not obliged to make any further payments to the Supplier.

**20. DISQUALIFICATION CLAUSE**

The Contractor guarantees not to be in one of the situations listed below:

1. bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
2. to be convicted of an offence concerning professional conduct by a judgment which has the force of res judicata;
3. to be guilty of grave professional misconduct proven by any means which the Contractor can justify;
4. not to have fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which the Contractor is established or with those of the country of the Contractor or those of the country where the contract is to be performed;
5. to have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organization or any other illegal activity detrimental to the Communities' financial interests;
6. currently subject to an administrative penalty referred to in section 2.3.5 of the Practical Guide to contract procedures for European Commission external actions.

Contracts may not be awarded to candidates or tenderers which, during the procurement procedure:

1. are subject to a conflict of interests;
2. are guilty of misrepresentation in supplying the information required by the Contractor as a condition of participation in the contract procedure or fail to supply this information.

**21. APPLICABLE LAW**

All contracts entered into between the parties shall be governed by andconstrued in accordance with the laws of United Kingdom without giving effect toany choice of law or conflict of law provisions.

**22. SETTLEMENT OF DISPUTES**

The parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of or in connection with this Contract including any disputes regarding the existence, validity or termination. Where the parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules then obtaining, or according to such other procedure as may be agreed between the parties.

Unless, any such dispute, controversy or claim between the parties arising out of or relating to this Contract or the breach, existence, termination or invalidity thereof is settled amicably under the preceding paragraph of this article within sixty (60) days after receipt by one party of the other party's request for such amicable settlement, such dispute, controversy or claim shall be referred by either party to arbitration in accordance with the UNCITRAL Arbitration rules as at present in force, including its provision on applicable law. The place of arbitration shall be Manchester, United Kingdom and the language to be used in the proceedings shall be English. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in this Contract, the arbitral tribunal shall also have no authority to award interest. The parties shall be bound by any arbitration award rendered as a result of such arbitration and as being the final adjudication of any such dispute, controversy or claim.