

Section VIII: Particular Conditions of Contract

The following Particular Conditions of Contract shall supplement the GCC. Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

GCC reference	Particular Conditions of Contract
	General Provisions
1.1.2.2	The Purchaser is: RATBV S.A.
1.1.2.5	The Bank is: <i>European Bank for Reconstruction and Development (or EBRD)</i>
1.1.2.6	The Borrower is: RATBV S.A.
1.1.6.1	The Purchaser's Country is: <i>Romania</i>
1.1.6.5	The Project Site is: 49 Harmanului Str Brasov Romania
1.2.3 (a)	The version of Incoterms shall be the current edition of Incoterms, published by The International Chamber of Commerce, Paris.
1.4	The governing law is that of: <i>Romania</i> The language for communications is <i>Romanian</i> The ruling language is: <i>English and Romanian</i>
1.6	The Parties shall enter into a Contract Agreement within 28 days after the Supplier receives the Letter of Acceptance.
1.9	Confidential Details Add at the end of the paragraph the following text: The parts of the contract which are marked by the Supplier as confidential shall not be disclosed by the Purchaser to any person within the Purchaser organization that have no role in the tendering, approving, auditing, monitoring, verifying or implementation of this contract or to any third parties. This provision shall not apply to the state authorities that have the attributions in auditing and verifying the tendering process or the implementation of the contract, or to judicial authorities. The provision shall not apply to the Bank and or any of its representatives assign to approve, implement, audit, investigate and monitor the implementation of the Project and of the contract.
1.11	The individuals or firms in a joint venture, consortium or association shall be held jointly and severally liable.
5	Notices
5.1	For notices , the Purchaser's address shall be: Attention: _____ Purchasers Name _____

Street Address: _____

Floor/ Room number: _____

City: _____

Postal Code: _____

Country: _____

Telephone: _____

Facsimile number: _____

Email address: _____

6 Settlement of Disputes

6.2 The rules of procedure for arbitration shall be as follows:

- (a) In the case of a dispute between the Purchaser and a Supplier which is a national of the Purchaser's country, the dispute shall be referred to adjudication/arbitration in accordance with the laws of the Purchaser's country.
- (b) In the case of a dispute between the Purchaser and a foreign Supplier, the dispute shall be settled by arbitration in accordance with the provisions of the UNCITRAL Arbitration Rules.
- (c) The place of arbitration shall be **Bucharest, Romania**.
- (d) The arbitration proceedings shall be conducted in the language governing the Contract.

8 Delivery

8.1 The shipping and other documents to be furnished by the Supplier are:

- (i) copies of the Supplier's invoice showing the Goods' description, quantity, unit price and total amount;
- (ii) copies of packing list identifying contents of each package;
- (iii) Manufacturer's/Supplier's warranty certificates;
- (iv) All the documents, in original, needed for the registration of the vehicles in accordance with Romanian legislation in force at the date of delivery of the vehicles; and
- (v) Any other document specified within 03 Tender Data Sheet including but not limited to: technical book, maintenance manual, etc.

The above documents shall be received by the Purchaser together with the Goods. However, to facilitate the registration of the vehicles, the Purchaser has right to request and to receive from the Supplier the documents indicated at point iv) prior to the delivery of Goods.

Services:

- (i) copy of the Supplier's invoice, which should provide a full description of the Services performed

10 Contract price

10.1 Price adjustments *shall not* apply.

11 **Terms of payment**

11.1 The terms of payment shall be as follows:

- (i.) Advance payment: **Thirty (30)** percent of the Contract Price shall be paid within thirty (30) days of signing the Contract, and upon submission of an invoice and an unconditional bank guarantee in a form acceptable to the Purchaser (see *section IX Contract Forms –Advance Payment Security*) issued by a reputable bank, with the rating of minimum BBB- or equivalent by Fitch, Moodys or Standard and Poor , agreed between the Supplier and the Purchaser, for an equivalent amount valid until issuance of the Final Acceptance Certificate;
- (ii.) On delivery: **Sixty (60)** percent of the Contract Price for Goods received and preliminary accepted shall be paid within thirty (30) days of receipt of the Goods upon submission of an invoice supported by the Preliminary Acceptance Certificate issued by the Purchaser in accordance with the requirements in Supply Requirement, Technical Specification, paragraph 26.1 Test upon delivery– Testing and upon submission of documents specified in Clause 8;
- (iii.) On final acceptance: **Ten (10)** percent of the Contract Price of the Goods received shall be paid within thirty (30) days upon submission of an invoice supported by the Final Acceptance Certificate issued by the Purchaser following the successful completion of the final acceptance test as defined in the Supply Requirement, Technical Specification, paragraph 26.1 Test upon delivery;

Payment shall be done on tranche off goods delivered and accepted as stated at the points ii and iii.

(c) Payment for Services, including local transport, shall be made within thirty (30) days of receipt of an invoice supported by a certificate issued by the Purchaser declaring that the contracted Services have been performed. *The payments of planned/preventative maintenance services shall be done in quarterly instalments for the duration of the services upon submission of an invoice supported by a certificate issued by the Purchaser declaring that the contracted Services have been performed. The Supplier shall have the option to request the payment of this amount in advance upon submission of an invoice and an unconditional bank guarantee in a form acceptable to the Purchaser issued by a reputable bank, with the rating of minimum BBB- or equivalent by Fitch, Moodys or Standard and Poor s, for an equivalent amount valid until issuance of the Acceptance Certificate for the service provided.*

All payments shall be made in RON.

11.2 The Supplier shall nominate up to 3 (three) accounts and notify these to the Purchaser within 28 days after the Supplier receives the Letter of Acceptance. Payments shall be made by the Purchaser only to the account(s) nominated by the Supplier in accordance with this Clause.

11.4 The payment-delay period after which the Purchaser shall pay interest to the Supplier is *forty (40)* days beyond the term stipulated in art.11.2.

The interest rate that shall be applied is: *two percent (2,00%)* per annum.

13 **Performance Security**

13.1 A performance security *is* required.

If a performance security is required, the amount of performance security as a percentage of the Contract Price shall be: **to ten (10) percent of the Contract Price.**

- 13.3** If a performance security is required, the currency shall be: **Romanian Lei (RON)**
- The performance security shall be in the form of unconditional bank guarantee acceptable to the Purchaser (see section IX Contract Forms –Performance Security) issued by a reputable bank, , with the rating of minimum BBB- or equivalent by Fitch, Moodys or Standard and Poor s, agreed between the Supplier and the Purchaser..
- 13.4** Discharge of Performance Security shall take place:
- The performance security *shall be reduced by three (3) percent* of the Contract Price every year starting with the first year following the final acceptance of the Goods, until the end of warranty obligations for all vehicles as stated in PCC Clause 21.3. The reduction shall only apply if the Supplier has fulfilled all its contractual obligation and that no systemic defects have occurred prior to the date when the performance security is due to be reduced.
- The release and the gradual reduction of the performance security shall be made upon submission by the Supplier of a report approved by the Purchaser that shows absence of systemic defects and the fulfilment of the contractual obligations up to that point in time.
- 18** **Transportation**
- 18.1** Responsibility for arranging transportation of the Goods shall be in accordance with the specified Incoterms.
- 19** **Inspection and tests**
- 19.1** The inspections and tests shall be *done in accordance as requested the Section VI "Supply Requirements", paragraph 25 Tests and Inspections of Goods.*
- 19.2** The inspections and tests shall be conducted at the locations stated in *Section VI "Supply Requirements", paragraph 25 Tests and Inspections of Goods.*
- 20** **Liquidated Damages**
- 20.1** The maximum percentage of liquidated damages shall be: *twenty (20%) percent out of which:*
- *Ten (10%) percent shall be liquidated damages related to delay in delivery of Goods and related Services:*
 - The liquidated damages for delay in delivery of goods: *one half of a percent (0.5%) per week*, of the contract price for the quantity of goods whose delivery is unduly delayed. This shall also apply on agreed intermediary deliveries
 - The liquidated damages for delay in delivery of training services specified in the "Supply Requirements" will be *one percent (1%)* of the value of services per each day of delay.
 - *The liquidated damages for delay in delivery of setting up the service centre/workshop specified in the "Supply Requirements" shall be RON 5,000 per each day of delay*
 - The liquidated damages shall be imposed to the supplier if it fails to comply with the requirements set in chapter 22 "Remedy of faults throughout the warranty period, chapter 23 "Availability" and chapter 26 – " Systematic and hidden defects": *1,500 RON (exclusive VAT) daily per vehicle, for time spent out*

of exploitation and transfer due to technical defects under warranty period, if the fault is not remedied within 5 working days for simple faults or 10 working days for significant faults, after the Purchaser notified the Supplier about the defect.

- Liquidated damages of *ten percent (10%)* of the contract price shall be imposed on the Supplier if the buses offered fail to comply with the functional requirements set in the paragraph 25.4 Test after delivery- Acceptance Test of the Section VI "Supply Requirements".

The formula for calculation of liquidated damages for non compliance with the functional requirements will be calculated as follows:

$$LD = EvC_{\text{after delivery}} - EvC_{\text{as reflected at the tendering stage}}$$

where:

LD is the liquidated damages to be imposed to the Supplier

$EvC_{\text{after delivery}}$ = Environmental cost calculated based on the average SORT 1 test results conducted after delivery of buses following the same formula presented in the Annex III "The operational lifetime energy and environmental impacts cost" of the Tender Documents

$EvC_{\text{as reflected at the tendering stage}}$ = Environmental cost calculated based on the SORT 1 test results indicated in the Tender based on the same formula presented in the Annex III "The operational lifetime energy and environmental impacts cost" of the Tender Documents

21 Warranty

21.1 Replace the GCC21.1 with the following:

The Supplier warrants that all the Goods, including its component, and/or subassembly and/or parts, are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials. Recycled and/or reconditioned parts, components and/or or subassembly shall not be used for the manufacturing of the Goods delivered.

On all buses of the same type, the same components, subassembly and/or parts shall be made by the same manufacturer, be of the same model and be interchangeable between buses,

Consumables and the parts that are replaced during the warranty period, shall be the same brand name, type and quality than the original they replace. The Purchaser may agree the replacement of parts and consumables than the original if those are of better quality and interchangeable with the original products that they are replacing.

21.3 The period of validity of the warranty shall be as follows:

Description of warranty period, calculated from takeover of bus:	Required warranty
Warranty period for entire vehicle:	<i>minimum of 36 months or 180.000 km, whichever comes first</i>
Warranty period for chassis and car body (bending, cracking, tearing, etc.):	<i>minimum of 12 years</i>
Warranty period for chassis and car body (anticorrosion chassis and car body):	<i>minimum of 12 years;</i>
Warranty period for floor rug, including soldering:	<i>minimum of 10 years</i>
Warranty period for lateral external car body coating:	<i>minimum of 10 years</i>
Warranty period for paintwork	<i>minimum of 6 years</i>
Warranty period for tyres:	160.000 km
Warranty period for passenger information system:	<i>minimum of 5 years</i>
Warranty period for engine	500.000 km or 5 years
Warranty period for gearbox:	500.000 km or 5 years
Warranty period for front bridge:	500.000 km or 5 years
Warranty period for driving axle:	500.000 km or 5 years
Warranty period for steering system	250,000 km
Warranty period for the automatic passenger counting system	5 years
For assemblies and devices that are not listed,	warranty cannot be shorter than 3 years
Warranty for continued parts supply	minimum 12 years
Warranty for technical support of authorized service	at least 12 years from the delivery of buses

Without prejudice to Clauses 21.3, 21.4 and 21.5, the Supplier shall promptly correct, at no cost to the Purchaser, any defect in any goods or parts repaired or replaced pursuant to Clauses 21.3, 21.4 and 21.5 above, upon receipt of a written notice. In this case, the warranty period extends with 12 months upon receipt of the Purchaser acceptance of the repaired or replaced goods or parts.

If during the contract implementation a systematic defect occurs, the Supplier shall

check, redesign, replace or repair, on own expense, the respective element at all delivered Goods.

A systematic defect is defined as a design or manufacture defect which cause failure or abnormal wear of the Goods and is reported on the same component or subassembly on more than 20% of the of the Goods delivered in an interval of 12 consecutive months during the warranty period.

The supplier shall replace, on own expense, any component or subassembly which has been subject to more than two (2) defects within one calendar year.

For the purposes of the warranty, the place(s) of final destination(s) shall be *49, Harmanului St., Brasov - Romania*

21.5 The period for repair or replacement shall be: **5 working days for simple faults and 10 working days for significant faults.**

If, the Supplier fails to remedy the defect within the specified time, the Purchaser may, within a **maximum of 7 days**, shall be entitled to take remedial action as deemed appropriate, at Supplier's risk and expense, and without prejudice any of the Purchaser rights stated in the contract, including but not limited to the warranty rights.

26 Change Orders and Contract Amendments

Replace the GCC26.1 with the following:

The Purchaser may at any time order the Supplier through notice in accordance with GCC 5, to make changes within the general scope of the Contract in any one or more of the following:

- 26.1**
- (a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
 - (b) the method of shipment or packing;
 - (c) the place of delivery;
 - (d) the quantities of goods to be supplied, and
 - (e) the Related Services to be provided by the Supplier.

Add the following paragraph:

26.4 Such changes shall be introduced through a change order, amendment or addenda and shall be the subject to Bank's prior approval before being signed by the parties.

28 Termination

Add the following paragraph at the end of the sub-clause:

28.2 (iv) (iv) if the Supplier fails to deliver the Homologation Certificate for the bus to be supplied under the contract before the delivery of the first batch of buses or within maximum 4 months after the signature of the contract, whichever comes first.

28.4 (a) The effective date of the termination notice shall be: four (4) **months** from the date of the notice of termination.