



**THE CONTRACT FOR CONSTRUCTION
OF KASONGA GIRLS HOSTEL FENCE
AT MALOSA CONSTITUENCY –
KASONGA WARD
BETWEEN
PRICHALA CIVIL ENGINEERING
AND
ZOMBA DISTRICT COUNCIL**

**PROCUREMENT REFERENCE NUMBER
ZDC/GESD/DDF/W/2021/2022/2**

DATE:1ST DECEMBER,2021



**AGREEMENT FOR CONSTRUCTION OF KASONGA
GIRLS HOSTEL FENCE MALOSA CONSTITUENCY IN
ZOMBA DISTRICT**

THIS AGREEMENT is made on the 01st day of December Two thousand and TWENTY ONE.

BETWEEN

- (1) **ZOMBA DISTRICT COUNCIL**, P.O.BOX 23, ZOMBA
("The Employer")

AND

- (2) Prichala Civil Engineering,
P.O.BOX 22,
Blantyre,
Malawi. ("The Contractor")

Procurement Reference No : ZDC/GESD/DDF/W/2021/2022/2

WHEREAS the Employer is desirous that the Contractor execute **Construction of Kasonga Girls Hostel Fence** (hereinafter called "the Works") and the Employer has accepted the Bid by the Contractor for the execution and completion of such construction and the remedying of any defects therein for the sum of

MK40,612,245.10 (Forty Million, Six Hundred and Twelve Thousand, Two Hundred and Forty Five Kwacha and Ten Tambala) (hereinafter called the Contract Price).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Contract referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz:
 - (a) the General Conditions of Contract;

- (b) the Special Conditions of Contract;
- (c) the Schedule of Requirements;
- (d) the Bid Submission Form and the priced Activity Schedule or priced submitted by the Supplier;
- (e) the Employer's Notification to the contractor of award of contract
- (f) Notice of Acceptance

3. In consideration of the payments to be made by the Employer to the Supplier as hereinafter mentioned, the Supplier hereby covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.

- 4. The Employer hereby covenants to pay the Supplier in consideration of the execution and completion of the delivery and the remedying of defects therein the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.
- 5. The Contract Price or such other sum as may be payable shall be paid in Malawi Kwacha.

IN WITNESS whereof the parties thereto have caused this Agreement to be executed in accordance with the law specified in the Special Conditions of Contract on the day, month and year indicated above:

Signed by:

[Signature]

27 DEC 2021

(for the Employer)

Name:

S. L. Gwedemula

Position:

DC

Witnessed by:

[Signature]

Name:

Charles Chilunda

Address:

P.O. Box 22
Zomba
Prichala Civil Engineering

Signed by:

[Signature]

(for the contractor)

Name:

Position:

Managing Director

Witnessed by:

[Signature]

Name:

CONWEL KAVALO

[Signature]



Section 7: General Conditions of Contract

1. Definitions

1.1 The following words and expressions shall have the meanings hereby assigned to them:

The **"Activity Schedule"** means the priced Activity Schedule forming part of the Bid for a Lump Sum Contract.

An **"Admeasurement Contract"** means a contract based on a priced Bill of Quantities or schedule of unit price rates in which payment to the Contractor is subject to measurement of physical quantities of items by the Employer.

The **"Adjudicator"** is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in Clauses 13 and 14 hereunder.

"Bill of Quantities" means the priced and completed Bill of Quantities forming part of the Bid for an Admeasurement contract.

"Compensation Events" are those defined in Clause 27 hereunder.

The **"Completion Date"** is the date of completion of the Works as certified by the Project Manager, in accordance with Sub-Clause 35.1.

The **"Contract"** is the Contract between the Employer and the Contractor to execute, complete, and maintain the Works.

The **"Contract Price"** is the price stated in the Notice of Acceptance and thereafter as adjusted in accordance with the provisions of the Contract.

"Contractor" means the Supplier appointed under the Contract for the performance of the Works.

"Days" are calendar days; **"months"** are calendar months.

"Dayworks" are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.

A **"Defect"** is any part of the Works not completed in accordance with the Contract.

The **"Defects Liability Certificate"** is the certificate issued by Project Manager upon correction of defects by the Contractor.

The **"Defects Liability Period"** is the period named in the Special Conditions of Contract and calculated from the Completion Date.

"Drawings" include calculations and other information provided or approved by the Project Manager for the execution of the Contract.

"Employer" means the Procuring Entity who employs the Contractor to carry out the Works.

"Equipment" is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.

The **"Initial Contract Price"** is the Contract Price listed in the Employer's Notice of Acceptance.

The **"Intended Completion Date"** is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is specified in the Special Conditions of Contract. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.

"Materials" are all supplies, including consumables, used by the Contractor for incorporation in the Works.

"Plant" is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.

The "Procuring Entity" is the party who employs the Contractor to carry out the Works.

The "Project Manager" is the person named in the Special Conditions of Contract (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract.

The "Site" is the area defined as such in the Special Conditions of Contract.

"Site Investigation Reports" are those that were included in the bidding documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.

"Specification" means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.

The "Start Date" is given in the Special Conditions of Contract. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any Site Possession Dates.

A "Subcontractor" is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.

The "Supplier" is a person or corporate body whose Bid to carry out the Works has been accepted by the Procuring Entity.

The "Contractor's Bid" is the completed bidding document submitted by the Contractor to the Procuring Entity.

A "Variation" is an instruction given by the Project Manager which varies the Works.

The "Works" are what the Contract requires the Contractor to construct, install, and turn over to the Employer, as defined in the Special Conditions of Contract.

2. Language and Law

- 2.1 The language of the Contract is English and the governing law is that of Republic of Malawi.

3. Project Manager's Decisions

- 3.1 Except where otherwise specifically stated and subject to any restrictions in the Special Conditions of Contract, the Project Manager will decide contractual matters between the Employer and the Contractor in the role representing the Employer.

4. Communications

- 4.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.

5. Subcontracting

- 5.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor's obligations.

6. Other Suppliers

- 6.1 The Contractor shall cooperate and share the Site with other suppliers, contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Suppliers, as referred to in the Special Conditions of Contract. The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Suppliers, and shall notify the Contractor of any such modification.

7. Personnel

- 7.1 The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in the Special Conditions of Contract, to carry out the functions stated in the Schedule or other personnel approved by the Project Manager. The Project Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Schedule.
- 7.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven (7) days and has no further connection with the work in the Contract.

8. Contractor's Risks

- 8.1 From the Starting Date until the Defects Correction Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) are the Contractor's risks.

9. Insurance

- 9.1 The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts stated in the Special Conditions of Contract for the following events which are due to the Contractor's risks:
- (a) loss of or damage to the Works, Plant, and Materials;
 - (b) loss of or damage to Equipment;
 - (c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and
 - (d) personal injury or death and Third Party liability.
- 9.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for approval before the Start Date. All such insurance shall provide for compensation to be payable as required to rectify the loss or damage incurred. If the Contractor does not provide any of the policies and certificates required, the Employer may effect the insurance which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.
- 9.3 Alterations to the terms of an insurance shall not be made without the approval of the Project Manager.
- 10. Contractor to Construct the Works**
- 10.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.
- 11. The Works to Be Completed by the Intended Completion Date**
- 11.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.

12. Safety

- 12.1 The Contractor shall be responsible for the safety of all activities on the Site.

13. Disputes

- 13.1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within fourteen (14) days of the notification of the Project Manager's decision.

14. Procedure for Disputes

- 14.1 The Adjudicator shall give a decision in writing within twenty-eight (28) days of receipt of a notification of a dispute.
- 14.2 The Adjudicator shall be paid by the hour at the rate specified in the Special Conditions of Contract, together with reimbursable expenses of the types specified in the Special Conditions of Contract, and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within twenty-eight (28) days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above twenty-eight (28) days, the Adjudicator's decision will be final and binding.
- 14.3 The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the place shown in the Special Conditions of Contract.
- 14.4 Should an Adjudicator resign or die, or should the Employer and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator will be jointly appointed by the Employer and the Contractor. In case of disagreement between the Employer and the Contractor, within thirty (30) days, the Adjudicator shall be designated by the Appointing Authority designated in the Special Conditions of Contract at the request of either party, within fourteen (14) days of receipt of such request.

15. Program

- 15.1 Within the time stated in the Special Conditions of Contract, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works.
- 15.2 The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period stated in the Special Conditions of Contract.
- 15.3 The Project Manager's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Project Manager again at any time. A revised Program shall show the effect of Variations and Compensation Events.

16. Extension of the Intended Completion Date

- 16.1 The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost.

17. Delays Ordered by the Project Manager

- 17.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.

18. Early Warning

18.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.

18.2 The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.

19. Correction of Defects

19.1 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the Special Conditions of Contract. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

19.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.

20. Uncorrected Defects

20.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice, the Project Manager will assess the cost of having the Defect corrected, and the Contractor will be liable for this amount. The amount will be deducted from current and future payment certificates, or paid by the Contractor if insufficient funds are due under the contract.

21. Bill of Quantities or Activity Schedule

21.1 This Contract is:

- (a) An Admeasurement Contract with a Bill of Quantities, subject to Option 1; or
- (b) A Lump Sum Contract with an Activity Schedule, subject to Option 2, as indicated in the Special Conditions of Contract.

Option 1: Bill of Quantities for Admeasurement Contract

21.2 The Bill of Quantities shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor.

21.3 The Bill of Quantities is used to calculate the Contract Price. The Contractor is paid for the quantity of the work done at the rate in the Bill of Quantities for each item.

Option 2: Activity Schedule for Lump Sum Contract

21.4 The Contractor shall provide updated Activity Schedules within fourteen (14) days of being instructed to by the Project Manager. The activities on the Activity Schedule shall be co-ordinated with the activities on the Program.

21.5 The Contractor shall show delivery of Materials to the Site separately on the Activity Schedule if payment for Materials on Site shall be made separately.

22. Change in the Bill of Quantities or Activity Schedule**Option 1: Changes in the Bill of Quantities for Admeasurement Contracts**

- 22.1 If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than twenty-five (25) percent, provided the change exceeds one (1) percent of the Initial Contract Price, the Project Manager shall adjust the rate or price to allow for the change.
- 22.2 The Project Manager shall not adjust rates or prices from changes in quantities if thereby the Initial Contract Price is exceeded by more than five (5) percent, except with the prior approval of the Employer.
- 22.3 If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities.

Option 2: Changes in the Activity Schedule for Lump Sum Contracts

- 22.4 The Activity Schedule shall be amended by the Contractor to accommodate changes of Program or method of working made at the Contractor's own discretion. Prices in the Activity Schedule shall not be altered when the Contractor makes such changes to the Activity Schedule.

23. Variations

- 23.1 All Variations shall be included in updated Programs (or in the case of Lump Sum Contracts in updated Programs and Activity Schedules) produced by the Contractor.

24. Payment for Variations

- 24.1 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager.
- 24.2 For Admeasurement Contracts only, if the work in the Variation corresponds with an item description in the Bill of Quantities, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.
- 24.3 If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager's own forecast of the effects of the Variation on the Contractor's costs.
- 24.4 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.
- 24.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.

25. Payment Certificates

- 25.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed and materials on site less the cumulative amount certified previously.
- 25.2 The Project Manager shall check the Contractor's executed work and materials on site and certify the amount to be paid to the Contractor.

25.3 The value of work executed and materials on site shall be determined by the Project Manager.

26. Payments

26.1 Payments shall be adjusted for deductions for advance payments and retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within thirty (30) days of the date of each certificate. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing and add normal absolute net adjustment of price differences.

26.2 Items of the Works for which no rate or price has been entered in will not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.

27. Compensation Events

27.1 The following shall be Compensation Events:

- (a) The Employer does not give access to a part of the Site by the Site Possession Date stated in the Special Conditions of Contract.
- (b) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.
- (c) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
- (d) Other suppliers, contractors, public authorities, utilities, or the Employer cause delay or extra cost to the Contractor.
- (e) The advance payment is delayed.
- (f) The Project Manager unreasonably delays issuing a Certificate of Completion.

27.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.

27.3 The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor not having given early warning.

28. Currencies

28.1 Payments shall only be made in Malawi Kwacha.

29. Retention

29.1 The Employer shall retain from each payment due to the Contractor the proportion stated in the Special Conditions of Contract until Completion of the whole of the Works.

29.2 On completion of the whole of the Works, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected.

29.3 With the approval of the Employer, the Contractor may substitute retention money with an "on demand" Bank guarantee.

30. Liquidated Damages

30.1 The Contractor shall pay liquidated damages to the Employer at the rate per day stated in the Special Conditions of Contract for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the Special Conditions of Contract. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

31. Advance Payment

31.1 The Employer shall make advance payment of the amount stated in the Special Conditions of Contract against provision by the Contractor of an Unconditional Bank Guarantee, in a form and by a bank acceptable, to the Employer.

31.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilisation expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.

31.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, to be recovered within one half of the completion period.

32. Securities

32.1 The Performance Security shall be provided to the Employer no later than twenty-one (21) days after receipt of the Notice of Acceptance and shall be issued in the form of a Guarantee in the format specified in the contract and in an amount specified in the Special Conditions of Contract and by a bank acceptable to the Employer. The Performance Security shall be valid until a date twenty-eight (28) days from the date of issue of the Certificate of Completion.

33. Dayworks

33.1 If applicable, the Dayworks rates in the Contractor's Bid shall be used for small additional amounts of work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.

33.2 All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two (2) days of the work being done.

33.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

34. Cost of Repairs

34.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

35. Completion

35.1 The Contractor shall request the Project Manager to issue a certificate of Completion of the Works, and the Project Manager will do so upon deciding that the work is completed.

36. Taking Over

36.1 The Employer shall take over the Site and the Works within seven (7) days of the Project Manager's issuing a Certificate of Completion.

37. Final Account

37.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within thirty (30) days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within thirty (30) days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.

38. Termination

38.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.

38.2 Fundamental breaches of Contract shall include, but are not limited to, the following:

- (a) the Contractor stops work for twenty-eight (28) days when no stoppage of work is shown on the current Program and the stoppage has not been authorised by the Project Manager;
- (b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within twenty-eight (28) days;
- (c) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within ninety (90) days of the date of the Project Manager's certificate;
- (e) the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
- (f) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the Special Conditions of Contract; and
- (g) if the Contractor, in the judgement of the Employer has engaged in corrupt, fraudulent, collusive or coercive practices in competing for or in executing the Contract.

For the purpose of this paragraph:

"corrupt practice" means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the procurement process or in contract execution.

"fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract;

"collusive practices" means a scheme or arrangement between two or more Bidders, with or without the knowledge of the Employer, designed to establish prices at artificial, noncompetitive levels; and

"coercive practices" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract.

38.3 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under Sub-Clause 38.2 above, the Project Manager shall decide whether the breach is fundamental or not.

38.4 Notwithstanding the above, the Employer may terminate the Contract for convenience.

38.5 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.

39. Payment upon Termination

39.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as indicated in the Special Conditions of Contract. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.

39.2 If the Contract is terminated for the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.

40. Property

40.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Employer if the Contract is terminated because of the Contractor's default.

41. Force Majeure

41.1 For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Contractor that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Contractor. Such events may include, but not be limited to, acts of the Employer in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

41.2 If a Force Majeure situation arises, the Contractor shall promptly notify the Employer in writing of such condition and the cause thereof. Unless otherwise directed by the Employer in writing, the Contractor shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

41.3 The Contractor shall not be liable for forfeiture of its performance security or retention monies held, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

42. Release from Performance

42.1 If the Contract is frustrated by an event of Force Majeure or by any other event entirely outside the control of either the Employer or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.

Section 8. Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

GCC Clause Reference	Special Conditions
GCC 1.1	<p>The name and procurement reference number of the Contract is:</p> <p>The Project Manager is: Director of Public Works</p> <p>The Works consist of : Construction of Nasawa Police Unit at Thondwe Constituency in Zomba</p> <p>The Site is located at: Thondwe and is defined in Drawings Nos.: N/A</p> <p>The Start Date shall be: To be advised.</p> <p>The Intended Completion Date for the Works shall be: 3 months from the start date.</p> <p>The Defects Liability Period shall be: 12 months</p>
GCC 3.1	<p>The Employer's specific approval is required for:</p> <p>individual Variations (GCC Clauses 23 and 24) or Compensation Events (GCC Clause 27) or Measurements (GCC Clause 22) which would result in an increase to the Initial Contract Price of more than 5 (five) percent; But through the DIRECTOR OF PUBLIC WORKS with Internal Procurement & Disposal of Assets Committee's (IPDC) Approval</p> <p>any new Variations or Compensation Events or Measurements which together with previously approved Variations and Compensation Events and Measurements, would result in an increase to the Initial Contract Price of not more than Fifteen(15) percent to be approved by THE DISTRICT COMMISSIONER through the IPDC.</p>
GCC 6.1	The Schedule of Other Suppliers Shall not be part of the Contract
GCC 7.1	The Schedule of Key Personnel Shall be part of the Contract
GCC 9.1	<p>The minimum insurance cover and deductibles shall be:</p> <p>(a) The minimum cover for insurance of the Works, Plant and Materials is: MWK 0.5 Million (≤15 million contract amount); MWK 1.0 million (≥ 15 million contract amount); per occurrence with the number of occurrences unlimited.</p> <p>(b) The maximum deductible for insurance of the Works, Plant and Materials is: N/A</p> <p>(c) The minimum cover for insurance of Equipment is: MWK 0.5 Million (≤15 million contract amount); MWK 1 million (≥ 15 million contract amount); per occurrence with the number of occurrences unlimited.</p> <p>(d) The maximum deductible for insurance of Equipment is: N/A</p> <p>(e) The minimum cover for insurance of property is: MWK 0.5 Million (≤15</p>

GCC Clause Reference	Special Conditions								
	<p>million contract amount); MWK 1 million (\geq 15 million contract amount); per occurrence with the number of occurrences unlimited.</p> <p>(f) The maximum deductible for insurance of property is: N/A</p> <p>(g) The minimum cover for personal injury or death insurance is: <u>MWK2 million</u> with no deductibles.</p>								
GCC 14.2	The hourly rate to be paid to the Adjudicator is: Shall be advised by NCIC Fees and types of reimbursable expenses to be paid to the Adjudicator are: To be agreed at the appointed time								
GCC 14.3	The institution whose arbitration procedures shall be used is: NCIC Arbitration shall take place at: Lilongwe Malawi								
GCC 14.4	The Appointing Authority for a replacement Adjudicator is: NCIC								
GCC 15.1	The Contractor shall submit a revised Program for the Works within 14 calendar days of delivery of the Notice of Acceptance.								
GCC 15.2	The period between Program updates is 14 calendar days.								
GCC 19.1	The Defects Liability Period is: 12 months for works								
GCC 21.1	This Contract is ad measurement Contract.								
GCC 26.1	The rate of interest for late payments is 0.05% .								
GCC 27.1	The Site Possession Date shall be: 22nd February, 2021								
GCC 29.1	The proportion of payments retained is 5% .								
GCC 30.1	The rate per day for liquidated damages is 0.05% percent of the final Contract Price per day. The maximum amount of liquidated damages for the whole of the Works is 5% of the final Contract Price.								
GCC 31.1	The Advance Payment will be equivalent to 20% percent of the Contract Price. It will be paid to the Contractor no later than 2 weeks after submission of an invoice and a commitment letter to carry out the works.								
GCC 31.2	The Advance Payment will be repaid by deducting as follows:								
	<table border="1"> <thead> <tr> <th>Percentage Completed</th><th>Payment</th></tr> </thead> <tbody> <tr> <td>20%</td><td>10%</td></tr> <tr> <td>50%</td><td>40%</td></tr> <tr> <td>100%</td><td>50%</td></tr> </tbody> </table>	Percentage Completed	Payment	20%	10%	50%	40%	100%	50%
Percentage Completed	Payment								
20%	10%								
50%	40%								
100%	50%								
GCC 32.1	The Performance Security shall be for N/A percent of the Contract Price:								
GCC 39.1	The percentage to apply to the value of the work not completed, representing the Employer's additional cost for completing the Works, is: 20%								