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REGIONAL ARAB PROGRAMME FOR THE DEVELOPMENT
OF SUB-CONTRACTING

DP/RAB/86/001

Technical report: Legal, fiscal and customs questions
linked to sub-contracting in Egypt*

Prepared for the Government of Egypt
by the United Nations Industrial Development Organization,
acting as executing agency for the United Nations Development Programme

Based on the work of Mr. M. Souhaité, Legal and fiscal expert in
collaboration with Mr. H. Mansour, Egyptian Legal Consultant

Backstopping officer: A. de Crombrughe, Industrial Infrastructure Branch

United Nations Industrial Development Organization
Vienna

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LEGAL ASPECTS

I. GENERAL REMARKS

1. Suggested definition

Sub-contracting is the situation resulting from an agreement in which an enterprise as the ordering party delegates to a third party designated as the sub-contractor all or part of the execution of an agreement that it has concluded with its principal.

This general definition is consistent with the Egyptian Civil Code. In order to be more concrete and correspond more closely to practice with regard to industrial sub-contracting, Mr. Mansour proposes the following definition:

A sub-contracting agreement is one by which an enterprise is requested to produce all or part of an industrial product for the exclusive account of an ordering party, which uses it either by finishing or processing it, incorporating it in a larger assembly or for its own commercial needs.

This second definition shows that industrial sub-contracting relationships are bilateral rather than multilateral. Nevertheless, they exclude:

- The classic relationships between a manufacturer/supplier and a customer, which amount to simple sales contracts;
- Joint contracting in the strict sense, because the sub-contractor is not a party to the transaction or to the contract concluded between the principal contractor and the principal;
- It differs from the memorandum of association of a company, which associates the parties in results and also in risks.

2. Specific problems of industrial sub-contracting

The difficulties encountered by the sub-contractor are as follows:

- Owing to his dominant position, the ordering party can conclude agreements that are very nearly leonine;
- It is almost impossible for the sub-contractor to take successful action for payment against the final customer when the ordering party defaults;
- Action for damages is frequently taken by the final customer, which, despite the lack of clarity of the contracts, has repercussions on the sub-contractor;
- The ordering party frequently demands a guarantee from the sub-contractor to cover risks in the event of non-execution or defects, but without reciprocity, that is to say, without a guarantee of payment in the event of default of the ordering party.

II. NATIONAL SUB-CONTRACTING

1. Regulations in Egypt

In the field of sub-contracting, the Egyptian Civil Code promulgated in 1948 deals solely with contracts related to construction or civil engineering.

Industrial sub-contracting agreements are a more recent development in Egypt. Consequently, the Egyptian Civil Code will be applied to industrial sub-contracting agreements only in cases in which this article does not conflict with the nature of such industrial sub-contracting agreements. In the event of conflict, the Special Conditions contained in the contract are applied.

Among the problems specific to Egypt, Mr. Mansour emphasizes that industrial sub-contracting projects may lie within the scope of several government administrative authorities involved in the project.

He considers that, owing to the large number of regulations and bodies in question, reorganization would be necessary and could be enshrined in specific provisions for industrial sub-contracting, especially sub-contracting by SMIs.

2. Principles regulating possible disequilibria between the partners

Egyptian legislation makes express provision for re-establishing a proper balance in contracts, by virtue of article 149 of the Egyptian Civil Code, which permits the modification or even the annulment of leonine clauses.

Article 453 of the Egyptian Civil Code also provides for the possibility of reinforcing the guarantee commitment in respect of latent defects, except in cases of dissimulation. "The contracting parties may, by special agreements, intensify, restrict or eliminate the guarantee commitment."

Finally, article 622 of the Egyptian Civil Code enables sub-contractors to take direct action against the principal.

3. Disputes

In the case of local sub-contracting, Egyptian law applies the regulations of the Civil Code and the provisions of the agreement, provided that they are not leonine.

III. INTERNATIONAL SUB-CONTRACTING

One can proceed on the principle that international sub-contracting exists when one of the partners is not Egyptian. Apparently, there is no limit to contractual freedom. The agreement as established is paramount in this case, since, in the absence of precise legislation on sub-contracting, that agreement regulates all the difficulties that the parties may encounter in the context of their sub-contracting relations.

With regard to disputes arising out of international contracts with European enterprises, Mr. Mansour, citing the examples of FIAT and NASCO, indicates the procedure usually followed to settle disputes arising out of this type of contract:

- The International Chamber of Commerce is requested to arbitrate;
- The legal basis applied in settling disputes is as follows:
 - (1) The contractual stipulations themselves;
 - (2) The laws applicable in the country of the licensor.

As far as the Arab region is concerned, Mr. Mansour makes distinctions between the following groups of countries:

- (1) The Arab countries that are influenced by the Egyptian system, which in turn is influenced by the French Code Napoléon or by Roman law, namely, Tunisia, Morocco, Algeria;
- (2) The countries that follow the Anglo-American system, including Jordan;
- (3) The Gulf States - excepting Kuwait, where the legal system is identical with that of Egypt - which are mainly governed by Islamic legislation, i.e. the Shari'a. None of these countries have laws or regulations dealing with the aspect of international sub-contracting.

Mr. Mansour emphasizes the existence of operations carried out under Law 32/177 on investment and in the Egyptian free zones which, despite these advantages, have disadvantages owing to the absence of specific rules on sub-contracting and to the large number of State agencies and regulations involved in sub-contracting projects.

IV. RECOMMENDATIONS

- (1) To establish legislation specific to international sub-contracting that is bilateral rather than tripartite.
- (2) To standardize procedures by such legislation, which should be administered by only one agency, preferably attached to the Ministry of Industry.

V. ANNEXES

- (1) A guide to the principal questions to be considered in establishing sub-contracting relationships (annex 1).
- (2) Preparatory documents inspired by contracts used by European Community countries for the establishment of definitive sub-contracting agreements:
 - Model invitation to tender (annex 2.1);
 - Model tender (annex 2.2);
 - Model order (annex 2.3).
- (3) Definitive agreement:
 - Special Conditions (annex 3.1);
 - General Conditions (annex 3.2).

Annex 1

List of points to be examined in the framework of
a sub-contracting agreement

I. SUBJECT-MATTER OF THE AGREEMENT

Commercial or legal provisions:

- (a) Indication of the nature of the products, parts or services that constitute the subject-matter of the agreement.
- (b) Nature of the work sub-contracted:
 - Manufacture of parts with materials provided by the sub-contractor;
 - Execution of work with materials provided by the ordering party; or
 - Execution of work with semi-processed parts provided by the ordering party.
- (c) Number of parts covered by the agreement:
 - Either a specific number is fixed at the outset; or
 - A minimum or maximum quantity is fixed.

The ordering party may undertake to order a given minimum number of parts during the period of the agreement; for his part, the sub-contractor may, if appropriate, undertake to produce all the parts ordered, up to a certain maximum number.

II. TECHNICAL SPECIFICATIONS

- (a) Under this heading, a complete and precise list should be made of all the provisions to be included in the technical specifications.
- (b) Also, the annex to the agreement should indicate all the technical documents necessary for the proper manufacture of the product, drawings, nomenclatures, and reference standards, if possible countersigned by the two parties.

III. DATE OF CONCLUSION OF THE AGREEMENT

In principle, this is the date of confirmation of receipt of the definitive order, unless agreed otherwise.

IV. PROVISIONS REGARDING SPECIAL TOOLS AND MODELS

- (a) Invoicing procedure:
 - Determination of the price for an agreed number of parts;
 - Separate invoicing;
 - Sharing in the manufacturing costs.
- (b) Rights and obligations in respect of ownership, maintenance, replacement, and insurance.
- (c) Cases in which the ordering party provides the sub-contractor with tools.

V. TIMING OF ORDERS. DELIVERY PERIODS

- (a) Fixing of a given number of parts or of a minimum number or a range for given periods of time.
- (b) Fixing of the time elapsing between the date on which the ordering party must advise the sub-contractor of the exact number of parts ordered for a given period of time and the date on which the sub-contractor must deliver.

Adoption, if appropriate, of a schedule of advance orders.

- (c) Determination of tolerances for deliveries above or below the agreed amount, either in number or percentage.
- (d) Procedure for increasing or decreasing the rate of delivery.
- (e) Possible obligation on the part of the sub-contractor to keep a buffer stock (materials, blanks or finished parts).

VI. FAILURE TO ADHERE TO PROVISIONS REGARDING TIMING, QUANTITIES OR DATES

- (a) Stipulation of consequences:
 - For the ordering party;
 - For the sub-contractor.
- (b) Determination of the commencement date of the delivery period and the consequences of a delay in delivery.
- (c) Cases of force majeure or cases requiring similar treatment (enumerate).

VII. PRICE

- (a) Determination of the price.

It is necessary to specify what elements this includes or does not include: design work (2.3 and 3.3.2.6), tools (3.3.2.1), internal inspection procedures (3.3.2.2), production waste (3.3.2.3), packing, transport, taxes.

- (b) Factors capable of altering the price:
 - Revision formula;
 - Alteration of the price for large production runs or for utilizing slack periods;
 - Sometimes, the sub-contractor may undertake to keep a buffer stock, in which case provision should be made for financing it;
 - If the sub-contractor has to acquire special tools or equipment, amortization conditions should be determined.

VIII. PAYMENT CONDITIONS AND ARREARS OF PAYMENT

- (a) Payment conditions:
 - By cheque, accepted bill or promissory note (acceptance period);
 - To whom are premiums charged? Is a sum withheld as guarantee?
- (b) Payments on account, if any: payments on placing the order, on the acceptance of sample parts, on receipt at the factory, on availability.
- (c) Arrears of payment:

Fixing of contractual interest on arrears and the right of annulment of the agreement after a certain period, with retention of the parts, models or tools belonging to the principal contractor.

IX. DELIVERY, TRANSPORT, PACKING

- (a) Place of delivery of the parts manufactured by the sub-contractor and date of transfer of ownership.
- (b) Who bears the risks on the transport of such parts?
- (c) Location at which the materials or parts supplied by the ordering party are to be made available to the sub-contractor.
- (d) Who bears the risks on the transport of such materials?

- (e) Problems of packing and storage (particularly, arrangements regarding packing material such as containers, crates and pallets that remain the property of the sub-contractor).

X. INSPECTION OF MATERIALS OR PARTS SUPPLIED BY THE ORDERING PARTY

- (a) Has the sub-contractor an obligation to inspect such materials or parts? On what conditions and subject to what time-limits?;
- (b) Obligation of the ordering party regarding the replacement of the material or parts rejected on inspection;
- (c) Compensation of the sub-contractor in respect of defects not revealed by the inspection methods envisaged.

XI. RESPONSIBILITY OF THE SUB-CONTRACTOR FOR THE LOSS OR DETERIORATION OF MATERIALS OR PARTS SUPPLIED BY THE ORDERING PARTY DURING THE EXECUTION OF THE WORK

- (a) Percentage of waste or rejects allowed;
- (b) Who takes responsibility for the loss or deterioration of these materials or parts?:

The various possible solutions:

- Risk borne by the ordering party;
- Risk borne by the sub-contractor (incorporating a risk premium in his price);
- Risk borne by one or the other depending on whether or not there is a fault of some degree of gravity on the part of the sub-contractor;
- Blanket arrangements with the provision that the sub-contractor bears the risk when, for example, the loss exceeds a certain percentage of the parts supplied.

- (c) Loss or deterioration through an act of force majeure or equivalent.

XII. INSPECTION AND ACCEPTANCE OF PARTS DELIVERED BY THE SUB-CONTRACTOR

- (a) Manufacture of sample parts submitted to the ordering party for acceptance before execution of the first order;
- (b) Time-limits for the delivery and acceptance of the sample parts;
- (c) Place of and time-limit for the acceptance of parts delivered;
- (d) Technical conditions regarding acceptance (specifications).

In particular, indicate the nature of the internal or special inspection procedures or tests, respects in which the parts are subject thereto and the technical standards applicable.

XIII. CONSEQUENCES OF FAILURE OF PARTS DELIVERED BY THE MANUFACTURING SUB-CONTRACTOR TO MEET SPECIFICATIONS

- Nature of the guarantee;
- Guarantee period;
- Costs of machining and finishing parts rejected (possibly blanket arrangements);
- Risks after the parts are put into service;
- Repair of parts that do not meet specifications.

XIV. CONFIDENTIAL NATURE OF TECHNICAL DOCUMENTS - INTELLECTUAL PROPERTY

- (a) Obligation of both parties to preserve secrecy regarding the documents made available and the trade secrets of the other party;
- (b) Obligation on the part of the ordering party to recognize the sub-contractor's intellectual property rights in respect of drawings, designs or special tools developed by the latter;
- (c) Release from responsibility in respect of imitations.

XV. DISPUTES

Specify what court is competent and what law is applicable in the case of an international sub-contracting agreement.

A N N E X 2.1

FORM OF INVITATION TO TENDER

(For use by the ordering party)

- Name of the principal contractor inviting tenders and indication of his representative:
- Name of the sub-contractor to whom the present invitation is addressed:
- Subject-matter of the present invitation to tender:
 - Description of the work to be sub-contracted:
 - The work that is the subject of the present invitation to tender is described in article 2 of the Special Conditions annexed hereto.
- References to the principal contract:
 - Name of the principal:
 - Indication of the principal contract and reference to the specifications applicable to it:
 - Place of execution of the work:
 - Deadline for execution of the principal contract:
 - Date for opening of the tenders by the principal:

OR

- Date of order by the principal:
- Sub-contracting conditions:

Article 1:

The General and Special Sub-contracting Conditions annexed hereto and the conditions of the present invitation to tender shall be applied to the present agreement.

Article 2: TRANSMISSION OF THE DRAWINGS AND COST ESTIMATES AS WELL AS OF ALL OTHER TECHNICAL DOCUMENTS

- List:

OR

Indication of the place at which the drawings and the cost estimates and all the other technical documents relevant to the sub-contracting agreement can be consulted:

- Address:
- List of drawings and estimates to be consulted:

Article 3: STANDARDS AND TECHNICAL SPECIFICATIONS APPLICABLE

- List:

Article 4: VARIANTS OR SUGGESTIONS

- No variants or suggestions shall be allowed.

OR

- Variants or suggestions are authorized for all the parts of the work sub-contracted/for the following parts of the work sub-contracted:
.....
(Specify)

OR

- The following variants are required:
..... (Specify)

Variants not accompanied by a tender for the basic solution will not be accepted.

No account will be taken of variants freely proposed by the sub-contractor when the provisions of the principal contract have excluded them.

Article 5: PRICES

The transaction is concluded on the basis of:

- An all-inclusive lump-sum price;
- Unit prices;
- An all-inclusive and lump-sum price and unit prices as specified in the list of items annexed hereto;
- Actual costs incurred;
- Verification of expenditure.

However determined, the prices shall be understood as being net of VAT.

Article 6: MEASUREMENT METHOD OR CODE

(Indication of the method or code reference used).

Article 7: PRICE VARIATIONS

The agreement is concluded on the basis of firm and non-revisable prices.

OR

Price variations shall be subject to the conditions and the formula indicated below:

- Structure of the formula:
- Value and explanation of the indices and parameters chosen:
- Publication of changes in such indices:

Article 8: PERIOD FOR EXECUTION OF THE WORK

The period is to be agreed.

OR

The period shall be fixed in article 7.2 of the Special Conditions.

Article 9: ATTESTATIONS TO BE ATTACHED TO THE TENDER

The sub-contractor must attach to his tender evidence of his professional qualifications or occupational classification for the work sub-contracted and an attestation that he has met his fiscal and social security obligations.

Article 10: OTHER CONDITIONS

.....

Article 11: SUBMISSION OF THE TENDER

The sub-contractor must submit his tender in
copies not later than
The sub-contractor is bound by his tender:

- For a period of days as from
(date or event)
- Until the following date:

Article 12: CONCLUSION OF THE AGREEMENT

Tenders have/have not been invited from more than one sub-contractor in respect of the work referred to in the present invitation to tender.

Article 13: ALTERATIONS TO THE WORK TO BE SUB-CONTRACTED

.....
If, during the period of validity of the sub-contractor's tender, alterations are made to the principal contract that affect the work envisaged in the present invitation to tender, the principal contractor must immediately notify the sub-contractor(s) consulted thereof; after having noted such alterations, the latter shall undertake to inform the principal contractor without delay of the new conditions that he demands/they demand.

The present invitation to tender and the tender shall become null and void if the parties fail to agree on such new conditions.

Article 14: LAPSE OF THE INVITATION TO TENDER

The present invitation to tender is issued without obligation. The principal contractor reserves the right to withdraw it at any time, but he undertakes in that case to make immediate notification of such withdrawal to the sub-contractor consulted.

Article 15: VERIFICATION OF QUANTITIES

The sub-contractor shall/shall be not required to verify the quantities in the quantitative estimate.

.....
(Signature of the principal contractor and date).

A N N E X 2.2
FORM FOR SUBMISSION OF TENDER
(For use by the sub-contractor)

- Name of the sub-contractor submitting the tender:
.....
- Name of the principal contractor to whom the tender is addressed:
.....
- Form of undertaking by the sub-contractor:

The undersigned undertakes to execute the work referred to in the invitation to tender of (date), in conformity with the conditions thereof and the General and Special Sub-contracting Conditions, against payment of:

- An all-inclusive lump-sum price;
- Unit prices according to the list of unit prices annexed hereto;
- An all-inclusive and lump-sum price and unit prices according to the list of unit prices annexed hereto;
- Actual costs incurred;
- Verification of expenditure according to the following payment arrangements:
.....

Value-added tax shall be paid on such amounts at the rate in force at the time of the operation that attracts VAT and according to the normal legal system.

The present tender shall be valid for the period fixed in the invitation to tender.

The present tender has been prepared in the light of the results of the sub-contractor's calculations and findings based on the drawings and the cost estimates and after a visit to the site.

The following errors have been discovered:
..... (List)

- In conformity with the invitation to tender, the sub-contractor has/has not verified the quantities in the quantitative estimate.
- Variants or suggestions:
- Price variations:
 - Declaration by the sub-contractor accepting the formula proposed by the principal contractor:
- OR
- Alternative formula proposed by the sub-contractor:
.....
- Other conditions stipulated by the sub-contractor:
.....
- Annexes:

1. Detailed cost estimates for the work, signed by the sub-contractor.

2. Other documents required under the terms of the invitation to tender:
(List)
(Signature of the sub-contractor and date).

A N N E X 2.3

ORDER FORM

- Name of the principal contractor and of his representative placing the order:
.....
- Name of the sub-contractor entrusted with the work:
- Subject-matter of the order: (concise description of the work and references to the invitation to tender, on the one hand, and to the tender and its annexes, in particular, the cost estimates, on the other hand):
.....
- Payment for the order shall be made:
 - At the all-inclusive lump-sum price of:
 - According to the list of unit prices annexed hereto;
 - According to the annexed detailed estimates of the all-inclusive and lump-sum prices and of the unit prices;
 - At the cost prices proposed by the sub-contractor;
 - On the basis of verification of expenditure, plus per cent.

Value-added tax shall be paid on such amounts at the rate in force at the time of the operation that attracts VAT and according to the normal legal system.

- The agreement is concluded:
 - Definitively.

OR

 - Subject to the suspensive condition of the conclusion of the principal contract and/or of the approval of the sub-contractor by the principal.
- Conditions other than those mentioned in the General and Special Sub-contracting Conditions.
- Variants or suggestions of the sub-contractor accepted by the principal contractor:
(Specify).
.....
(Signature of the principal contractor and date).

A N N E X 3.1

SPECIAL AND GENERAL SUB-CONTRACTING CONDITIONS

A. SPECIAL CONDITIONS

Article 1: THE PARTIES

- Name or designation of the principal contractor and of the sub-contracting enterprise:
 1. Principal contractor:
 2. Sub-contractor:
- Addresses or registered offices:
 1.
 2.
- Commercial register:
 1.
 2.
- Social security and VAT registration:
 1.
 2.
- Affiliation with the body awarding or verifying professional qualifications and indication of qualifications:
 1.
 2.
- Affiliation with professional association:
 1.
 2.
- Names and titles of representatives of the parties:
 1.
 2.

Article 2: SUBJECT-MATTER OF THE AGREEMENT AND DESIGNATION OF THE WORK

- Work that is the subject-matter of the present agreement:

.....
(Concise description of the work entrusted to the sub-contractor).
- Place of execution of the work:
- References to the principal contract:
 - Name of the principal:
 - Name of the principal contractor or of the architect:
 - Indication of the principal contract and references to the specifications applicable thereto:
 - Overall completion date for the general contract:
 - Date of opening of tenders:

OR

Date of the order:

Article 3: CONTRACTUAL DOCUMENTS

3.1 The General Conditions below as well as the drawings, estimates, technical documents, standards and technical specifications mentioned in articles 3.2 and 3.3 below shall be applicable to the present agreement.

The correspondence exchanged prior to the signature of the present document, in particular the invitation to tender of the principal contractor, shall have no contractual significance and shall be replaced by the present Special and General Conditions.

OR

The invitation to tender of the principal contractor, the tender of the sub-contractor and the order of the principal contractor shall be part of the agreement.

3.2 Transmission of the drawings, estimates and other technical documents:

- List of drawings, estimates and other technical documents:
- Indication of the place at which the drawings, estimates and technical documents relative to the sub-contracting agreement can be consulted:

3.3 Standards and technical specifications applicable: (List)

Article 4: CONCLUSION OF THE AGREEMENT

The agreement is concluded:

4.2 Definitively

OR

4.3 Subject to the suspensive condition of the conclusion of the principal contract and/or of the approval of the sub-contractor by the principal.

Article 5: GUARANTEE OR SECURITY

5.1 The sub-contractor shall not be required to provide any security or guarantee.

OR

5.2 Pursuant to article 5.2 of the General Conditions, the sub-contractor shall be required to provide a guarantee in respect of per cent of the work sub-contracted.

OR

5.3 Pursuant to article 5.3 of the General Conditions, the sub-contractor shall be required to provide security of a value equal to per cent of the amount of the work sub-contracted, to be deposited with (designation of the third party or agency). The security shall take the form of cash/stock.

5.4 The duration of the security or guarantee commitment shall be that fixed in article 5.4 of the General Conditions.

OR

The duration of the guarantee commitment is fixed at:

Article 7: COMMENCEMENT OF THE WORK, PERIOD OF EXECUTION AND WORK SCHEDULE

7.1 Commencement of the work:

- Within a period of calendar days from the placement of the order, at the request of the principal contractor.
OR
- On the day of the general work schedule.
OR
- On (date).

7.2 Period for execution of the work:

7.2.1 The period for execution of the work sub-contracted is fixed at calendar days.

OR

7.2.2 With reference to article 7.2.2 of the General Conditions, the period for execution of the work sub-contracted is fixed at working days.

Any day during which work has been rendered impossible owing to adverse weather conditions or their consequences for a period of hours shall not be considered as a working day.

OR

7.2.3 The work sub-contracted must be completed on (indicate the precise date), work having commenced in that case not later than (indicate the precise date).

7.3 Work schedule:

7.3.1 The general work schedule of the principal contract can be consulted at (indicate the place).

7.3.2 No detailed schedule for execution of the work shall be established between the parties.

Article 8: PENALTIES FOR FAILURE TO OBSERVE TIME-LIMITS AND THE WORK SCHEDULE

8.1 When the contractual time-limit for execution of the work is exceeded through fault of the sub-contractor, a penalty shall be imposed on him amounting to:

- francs per calendar day of delay.

OR

- (formula).

8.2 In the event of failure to observe the detailed work schedule or, in the absence of a detailed work schedule, of the general work schedule, a penalty shall be imposed on the sub-contractor, amounting to:

- francs per calendar day of delay.

OR

- (formula).

Article 10: ALTERATIONS TO THE WORK SUB-CONTRACTED

10.1 Pursuant to the provisions of article 10.1 of the General Conditions, the sub-contractor must execute supplementary work, the volume of which shall not exceed a total amount of(indicate the amount and the currency).

10.2 If the alterations to the work sub-contracted involve a reduction greater than:

- per cent of the total amount of the present agreement (indicate the percentage)

OR

- the amount of (indicate the amount and the currency),

the clause provided for under article 10.2 of the General Conditions shall be applied.

Article 11: CONTRACTUAL PRICE

The work referred to in article 2 of the present Special Conditions shall be executed against payment of:

- An all-inclusive lump-sum price of: (Indication of the price),
- The unit prices specified in the list of unit prices annexed hereto;
- The all-inclusive and lump-sum prices and the unit prices specified in the list annexed hereto;
- Actual costs incurred;
- Reimbursement, according to the following payment arrangements:

Article 12: VAT

These prices are to be understood as net of VAT. On the date of the conclusion of the contract, the rate of VAT is (indication of the rate).

Article 13: PAYMENT ARRANGEMENTS

13.1 The contract shall give rise to a single payment on acceptance of the work.

OR

The work executed shall be paid for in monthly instalments, and a balance shall be paid on acceptance of the work.

OR

The work shall be paid for in tranches of francs pari passu with its execution.

OR

The work shall be paid for according to its degree of completion at the following stages:

13.2 Payments shall be made within days counting from receipt by the principal contractor of the sub-contractor's invoice accompanied by a progress report on the work.

When a balance is due, the final account shall be drawn up within days after acceptance of the work (cf article 27.1 of the General Conditions).

This final account shall be verified and the amount shall be paid within days following its receipt.

Article 14: CURRENCY OF ACCOUNT AND CURRENCY OF PAYMENT

14.1 The currencies of account and payment shall be those stipulated in article 14.1 of the General Conditions.

OR

14.2 The currencies of account and payment shall be as follows:

- Currency of account:
- Currency of payment:

14.3 All payments shall be made at (indicate the place).

Article 15: PRICE VARIATIONS

15.1 The parties agree to submit contract prices to the following variation formula:

- 15.1.1 Structure of the formula:
- 15.1.2 Value and explanation of the indices and parameters chosen:
- 15.1.3 Publication of variations in these indices:

OR

15.2 The contract is concluded on the basis of firm and non-revisable prices.

Article 16: ADVANCES

16.1 Amount of the advance:

16.2 Date of payment: The advance shall be paid: (indicate the precise date).

OR

The advance shall be paid on request by the sub-contractor, giving days' notice.

16.3 Recovery arrangements:

- 16.3.1 Recovery in full out of the next payment.
- 16.3.2 Recovery in tranches of per cent out of successive payments.
- 16.3.3 Other arrangements:

16.4 Advances shall be subject to revision pursuant to the provisions of article 15 above.

OR

Advances shall not be subject to revisions.

16.6 The sub-contractor shall/shall not be required to provide a guarantee to ensure the repayment of advances.

Article 17: RATE OF INTEREST APPLICABLE TO ARREARS IN PAYMENT

..... per cent.

Article 18: PRO RATA EXPENSE ALLOCATION ACCOUNT

13.1 No pro rata expense allocation account shall be kept in respect of ~~common~~ services expenditure on the site.

OR

18.2 A pro rata expense allocation account shall be kept in respect of the ~~common~~ services expenditure on the site referred to in article 18 of the General Conditions as well as for the following expenditure: (list).

The monthly statements of the pro rata expense allocation account shall be submitted for approval to a ~~committee~~ consisting of the following persons: (list).

18.3 Contribution of the sub-contractor to the pro rata account:

18.3.1.1 Lump-sum contribution of francs.

18.3.1.2 The contribution is fixed at per cent, representing the proportional value of the work sub-contracted to the whole volume of work carried out for the principal.

18.3.1.3 The contribution is fixed at the proportion of man/hours of services rendered by the enterprises present on the site.

18.3.2 Ceiling of contribution to the pro rata account: The sub-contractor's contribution to the pro rata account shall in all cases be limited to per cent of the final amount of the contract for work that is sub-contracted to him.

18.4 Management of the pro rata account.

The pro rata account shall be managed by the principal contractor.

OR

The pro rata account shall be managed by Mr. (name), who shall be designated by the principal contractor.

Article 22: INSURANCE

22.2 In addition to the insurance referred to in article 22 of the General Conditions, the sub-contractor shall be required to take out the following special insurance:

Article 23: LIABILITY

23.2 Special guarantee clauses: (Indication of the special guarantees formulated by the principal or by the principal contractor by reason of a provision in the principal contract).

Article 28: LIABILITY FOR LATENT DEFECTS

28.1 Notwithstanding the provisions of article 28.1 of the General Conditions, the period of liability of the sub-contractor for latent defects is fixed at

Article 29: AUTOMATIC MEASURES

The automatic measures applicable shall be those stipulated in article 29 of the General Conditions.

OR

The automatic measures specified below are expressly agreed:
.....

Article 30: CANCELLATION OF THE CONTRACT

30.2.2 Notwithstanding the provisions of article 30.2.2 of the General Conditions, if one of the parties ceases independent operations as a legal person - for example through merger or absorption - the other shall be entitled to cancel the agreement.

In that event, no compensation shall be due from either party.

Article 32: SETTLEMENT OF DISPUTES

The parties agree to submit disputes between them:

- To the arbitration provided for under article 32 of the General Conditions:

OR

- To arbitration by the following persons:
..... (names).

Article 33: LAW APPLICABLE

The law applicable shall be that specified in article 33 of the General Conditions.

OR

Notwithstanding the provisions of article 33 of the General Conditions, the following shall be applicable:

(Delete where inapplicable)

A N N E X 3.2

B. GENERAL CONDITIONS

Article 3: CONTRACTUAL DOCUMENTS

3.4 With respect to the interpretation of the agreement, the contract documents shall prevail in the following order:

- (a) The Special Conditions;
- (b) The conditions contained and accepted in the invitation to tender of the principal contractor, in the tender of the sub-contractor and in the order of the principal contractor in cases in which the Special Conditions have stipulated the application of these documents.
- (c) The General Conditions.

3.5 In the event of conflict, the provisions of the tender shall prevail over those of the invitation to tender when the former have been accepted without reservation by the principal contractor. In the event of conflict, the conditions of the order shall prevail over the provisions of the sub-contractor's tender when the sub-contractor has accepted the order or executed the work without reservation.

The drawings, estimates and technical provisions relative to the work sub-contracted shall prevail over the standards and technical specifications to which the present agreement refers except when such standards and technical specifications are mandatory at the location of the works.

When a list of drawings, estimates or technical documents is transmitted as stipulated in article 3.2 of the Special Conditions, such drawings, estimates and technical documents shall prevail in the order of their enumeration.

Article 5: GUARANTEE AND SECURITY

The guarantee or security ensures the correct execution of the work sub-contracted.

- 5.2 When a guarantee is required from the sub-contractor, the guarantor must be a banking or financial institution.
- 5.3 When security is required from the sub-contractor, such security must be deposited with the person or agency designated in the Special Conditions.
- 5.4 Unless the Special Conditions provide otherwise, the guarantor shall be released from his commitment or the security deposit shall be released on expiration of one year after acceptance of the work.
- 5.5 Proof of the provision of the guarantee or security must be furnished to the principal contractor within 30 days from the formulation of a request by the latter.

Proof of the provision of the guarantee or security shall be furnished by handing over an original of the contract of guarantee, or the receipt for the deposit of cash or stock issued by the third party or agency, in the case of security.

In the event of failure of the sub-contractor to furnish proof of the provision of this guarantee or security within this time-limit, the principal contractor may, after unsuccessful service of notice, either withhold from the payments due to the sub-contractor an amount equal to the

guarantee money or security or apply the automatic measures referred to in article 29 below.

- 5.6 It is expressly agreed that the provision of a guarantee or security covers the completion and proper performance of all the work that is the subject-matter of the agreement, including the alterations or supplementary work entrusted to the sub-contractor in the course of the agreement.

Article 6: ATTESTATIONS

At the request of the principal contractor, the sub-contractor shall, during the period of validity of the present agreement:

- 6.1 Furnish evidence of his professional qualifications or occupational classification for the work that is the subject-matter of the agreement;
- 6.2 Prove that he has fulfilled his obligations in fiscal, salary and social security respects and furnish all attestations in this regard.

Article 7: COMMENCEMENT OF WORK, TIME-LIMITS AND WORK SCHEDULE

7.1 Commencement of work

Except in cases in which the commencement of work is fixed at a specific date, the order for commencement of the work shall be given in writing by the principal contractor to the sub-contractor.

When it has not been possible to give the order for commencement of the work by the date envisaged in the Special Conditions, the parties shall agree thereon without prejudice to their rights.

7.2 Time-limits

All the time-limits mentioned in the present General Conditions other than the time-limit for completion referred to below, shall be expressed in calendar days.

7.2.1 When the time-limit for completion is fixed in calendar days, weeks, months or years or on a specific final date, all days without exception shall be considered in calculating the time-limit.

7.2.2 When the time-limit for completion of the work is fixed in working days, days during which work is not authorized by laws and regulations or during which the enterprises cannot work owing to the provisions of collective agreements applicable to the location at which the work sub-contracted is executed, or days during which, as recognized by the principal contractor, work has been rendered impossible owing to adverse weather conditions or their consequences for the number of hours fixed in article 7.2.2 of the Special Conditions shall not be considered as working days.

7.3 Work schedule

7.3.1 The sub-contractor must conform to the provisions of the general work schedule imposed by the principal on the principal contractor, or approved by the former. The principal contractor shall notify the sub-contractor of all the alterations that are made to this work schedule by the principal that influence the execution of the work sub-contracted.

7.3.2 The Special Conditions may provide that a detailed work schedule be applicable to the work sub-contracted. In that event, the work schedule shall be established and, if appropriate, altered by mutual agreement between the parties.

7.3.3 Disruption of the sub-contractor's work schedule owing to alteration of the general work schedule shall give rise to compensation.

Article 8: PENALTIES FOR FAILURE TO COMPLY WITH TIME-LIMITS AND THE WORK SCHEDULE

- 8.1 The amount of penalties for exceeding the contractual time-limit by the fault of the sub-contractor shall be fixed in the Special Conditions. These penalties shall fall due after service of written notice by the principal contractor on the sub-contractor.
- 8.2 The amount of penalties for failure on the part of the sub-contractor to comply with the detailed work schedule, or, failing such detailed work schedule, the general work schedule, shall be fixed in the Special Conditions. Arrears with respect to the work schedule shall be assessed on the date of preparing financial statements in respect of the work covered by the work schedule that the sub-contractor has failed to comply with. The penalties shall fall due after service of written notice by the principal contractor on the sub-contractor.
- 8.3 The penalties shall be deducted in making the corresponding payments for work done. However, when the sub-contractor makes arrears good without causing a time-lag or additional expenditure in the work of the other enterprises on the site, the amount of the penalty shall be reimbursed on the occasion of the next subsequent payment. In the opposite case, the amount shall be added to that of the penalties for exceeding the contractual time-limit.

Article 10: ALTERATIONS TO THE WORK SUB-CONTRACTED

- 10.1 All alterations to the work sub-contracted that are imposed by the principal contractor must be executed by the sub-contractor. Major alterations shall be the subject of an endorsement accepted by the parties. In particular, this refers to alterations that necessitate the determination of a new price, that leads to a change in the time-limit for completion or that disrupt the work schedule for the work sub-contracted.

The sub-contractor is not obliged to execute new work that is outside the scope of his enterprise nor work whose volume exceeds the amount fixed in article 10.1 of the Special Conditions.

- 10.2 If alterations to the work sub-contracted lead to a decrease in the amount of the present agreement greater than the limits fixed in article 10.2 of the Special Conditions, a general revision of the price conditions of the agreement shall be negotiated between the principal contractor and the sub-contractor.

Article 11: PRICES UNDER THE AGREEMENT

Except in the case of sub-contracting agreements of a low amount or limited duration, payments shall be made in instalments, with payment of a final balance in accordance with the timing stipulated in the Special Conditions.

When payment is to be made in weekly or monthly instalments, such instalments shall be paid only in respect of the work carried out by the end of such periods. When the price is payable in tranches, payment shall fall due from the time at which the value of the work carried out reaches the amount of each tranche. When the payment must be made according to the completion of stages of the work, for example, when foundations have been laid, when the roof is completed, and on final acceptance, the corresponding payments shall fall due from

the moment at which the work comprised in the stage in question has been completed.

In all circumstances, the instalments indicated above may be set off only against the total amount under the agreement, which shall be determined at the time of drawing up the final accounts.

Article 12: VAT

However prices are fixed, they shall be understood as being net of VAT.

The parties must inform themselves in good time of the rates of VAT applicable, the operations that attract the tax, and the time-limits within which and the party by whom the tax must be paid.

When VAT is payable by the sub-contractor, the price fixed in article 11 of the Special Conditions shall be increased by the amount of the tax.

The rate of VAT indicated in the Special Conditions is that in force at the date of the agreement and is quoted merely as an indication.

Article 13: PAYMENT ARRANGEMENTS

13.2 The payment periods shall be fixed in the Special Conditions.

Article 14: CURRENCY OF ACCOUNT AND CURRENCY OF PAYMENT

14.1 Both in the case of instalments and of the final balance due, statements of receivables and invoices addressed by the sub-contractor to the principal contractor shall be expressed in the currency of account in force in relations between the principal contractor and the principal.

Payments by the principal contractor to his sub-contractor shall be made in the currency of payment used by the principal.

14.2 However, if the sub-contractor demands payment for his services in a currency different from the currency of payment of the principal contract, the exchange transaction shall take place at the rate in force on the date of payment. In that event, the sub-contractor shall bear the risks and the costs of the exchange transaction and currency fluctuations, the principal contractor being excluded.

14.3 All payments shall be made at the place fixed in the Special Conditions.

Article 15: PRICE VARIATIONS

15.1 The Special Conditions or the accepted provisions of the invitations to tender, the tender or the order, when these documents are part of the agreement, shall specify whether there shall be any variation in prices and the relevant arrangements for any such variation.

Article 16: ADVANCES

16.3 When advances are paid by the principal contractor to the sub-contractor, such amounts shall be recovered either by deduction from the subsequent instalment or by percentage deduction from all the instalments paid in execution of the agreement or according to the arrangements provided in the Special Conditions.

16.4 Unless article 16.4 of the Special Conditions provides otherwise, advances shall not be subject to revision. In this case they shall be deducted from the instalments before the revision formula is applied to the latter.

- 16.5 When advances are not paid by the principal contractor on the dates stipulated in the Special Conditions, they shall attract interest on arrears at the rate fixed in article 17 of the Special Conditions, after due service of notice.
- 16.6 The Special Conditions may stipulate a guarantee, at the expense of the sub-contractor, to ensure the reimbursement of advances.

Article 17: INTEREST ON ARREARS OF PAYMENT

All sums due in execution of the present agreement that are paid in arrears shall attract the interest stipulated in the Special Conditions, as from the date of service of written notice on the principal contractor.

The stipulation of interest on arrears of payment mentioned in the Special Conditions shall not constitute an obstacle to the right of the sub-contractor to additional compensation covering the loss actually suffered, provided, however, that the national legislation applicable to the agreement does not forbid this.

Article 18: PRO RATA ACCOUNT

- 18.2 When there is provision for a pro rata account intended to finance expenditure on common services chargeable to all the enterprises on the site, a monthly statement thereof shall be kept and a copy of that statement shall be transmitted to the sub-contractor. The pro rata account shall be submitted for approval to a committee appointed pursuant to the Special Conditions.

This pro rata account shall cover the following items of expenditure, in addition to those stipulated in the Special Conditions:

- Consumption of water, power and lighting necessary for the work;
 - The provision, assembly, dismantling and maintenance of fences and security barriers;
 - Guarding, regular sweeping and cleaning of the site;
 - Temporary charges for road use;
 - The utilization and maintenance of lifting gear and access to the site;
 - Costs for the installation, removal, rental and operation of telephones.
- 18.4 Unless article 18.4 of the Special Conditions provides otherwise, the pro rata account shall be managed by the principal contractor.

Article 21: LABOUR MATTERS

The sub-contractor has sole responsibility for complying with collective agreements and legal provisions and regulations on social security matters.

If, after service of notice, the sub-contractor has not duly regulated matters, the principal contractor may take all appropriate automatic measures, including those stipulated in article 29 of the General Conditions, to compel the sub-contractor to comply with collective agreements and legal provisions and regulations of a social nature (wages, social security costs, insurance, working hours, safety and health, etc.) which the sub-contractor is bound to observe.

In any case, the sub-contractor shall guarantee the principal contractor against any proceedings against him arising out of an infringement of the above provisions.

Article 22: INSURANCE

- 22.1 The sub-contractor must take out adequate insurance to cover his third party liability as well as his liability in respect of work accidents of his staff.
- 22.2 The Special Conditions shall mention as appropriate any other types of insurance required by the principal contractor.
- 22.3 The sub-contractor must produce all these insurance policies on request and without delay for inspection by the principal contractor.

Article 23: LIABILITY

- 23.1 The liability of the parties results from the obligations incumbent on them by reason of the contractual provisions agreed between them and by reason of the law applicable to the agreement.
- 23.2 The special guarantees required from the sub-contractor are indicated in the Special Conditions.
- 23.3 The principal contractor and the sub-contractor are each liable for any criminal or quasi-criminal fault and shall hold their fellow contractors harmless, and shall undertake, if applicable, to guarantee them from any proceedings.

Article 24: INTELLECTUAL RIGHTS

If, in the course of the work that is the subject of the present agreement, the principal contractor or the sub-contractor obtains knowledge of manufacturing processes, operations, utilization procedures, etc., he may not appropriate them to himself, use them for his own profit or communicate them to third parties.

Article 25: MUTUAL INFORMATION OBLIGATION

The parties undertake to inform each other immediately of any difficulty arising in the course of execution of the work that would be of such a nature as to disrupt punctual and harmonious performance.

In particular, the principal contractor and the sub-contractor undertake to exchange all information of a technical nature that is in their possession or that comes to their knowledge and on which the execution of the work under the principal contract and the sub-contracting agreement depends.

The principal contractor must also inform his sub-contractor of all payments received from the principal that are related to the work sub-contracted.

Article 26: UNFORESEEABLE CIRCUMSTANCES

In the event of any fortuitous act, act of State, act by third parties or other act constituting force majeure, the parties declare that they will be guided by the solutions allowed by the law applicable to the agreement, but without prejudice to more advantageous provisions of the principal contract, which shall also be applied to the present agreement.

The principal contractor shall communicate to the sub-contractor the provisions of the principal contract related to such circumstances.

However, the sub-contractor may not claim application of such more favourable provisions if the principal contractor has not been able to benefit by them. The principal contractor must initiate all action vis-à-vis the principal for this purpose.

Article 27: ACCEPTANCE OF THE WORK SUB-CONTRACTED

27.1 The acceptance of the work sub-contracted shall take place in principle on the expiration of the contractual period for completion of the work sub-contracted and at the earliest on the date of completion of that work, according to the following arrangements:

- Acceptance must be requested in a letter from the sub-contractor to the principal contractor or his agent;
- Within 15 days of the request, the principal contractor or his agent must inspect the work, and a written report shall be drawn up thereon. In 15 days from drawing up the written report, the principal contractor must indicate to the sub-contractor the acceptance or refusal of acceptance of the work;
- Failing the drawing up of a written report or notification of acceptance or refusal of acceptance of the work within the above time-limits, the work shall be considered as accepted;
- In all cases and failing any contrary stipulation in the notification, acceptance shall take effect retroactively to the day of completion of the work indicated by the sub-contractor in his request.

27.2 Acceptance by their principal contractor shall have the following effects:

- The transfer of risks;
- Coverage in respect of apparent defects;
- Cessation of penalties for arrears;
- Drawing up of the final account. Article 13.2 of the Special Conditions shall stipulate the period within which the final account shall be drawn up. In the absence of such stipulation, a period of three months shall apply.
- The reversal of the onus of proof for defects;
- The commencement of the guarantee period.

Article 28: LIABILITY FOR LATENT DEFECTS

28.1 Unless article 28.1 of the Special Conditions provides otherwise and without prejudice to the provisions of article 27.2 of the General Conditions, the sub-contractor shall remain liable for latent defects during the same periods and under the same conditions as the principal contractor vis-à-vis the principal.

During that period, the sub-contractor must carry out all the repairs made necessary by a latent defect, even of a minor nature, with regard to which he is at fault. Unless the sub-contractor carries out the repairs, the principal contractor may, after serving written notice, apply in respect of the expenses and risks of the sub-contractor at fault the automatic measures mentioned in article 29 of the present General Conditions.

Article 29: AUTOMATIC MEASURES

29.1 Except in cases in which a specific sanction is stipulated in the Special Conditions or the other conditions of the present General Conditions, any serious infringement of the agreement shall give rise, after unsuccessful service of notice, to one of the following measures:

29.1.1 Cancellation of the agreement:

When cancellation takes place for the benefit of the principal contractor, the guarantor must fulfil his commitment, without prejudice to compensation due from the sub-contractor;

The sub-contractor must, at the request of the principal contractor, place at the latter's disposal the provisional works, the essential equipment and the materials provided on the site or in the factory or in store and essential for the continuation of the work;

29.1.2 The conclusion of an agreement with a third party for the account and at the expense of the sub-contractor at fault.

29.2 Independently of the interest on arrears mentioned in article 17 of the General Conditions, arrears of payment by the principal contractor exceeding 90 days shall authorize the sub-contractor to interrupt his work. If service of notice has had no effect after 30 days, the sub-contractor may unilaterally cancel the agreement at the expense of the principal contractor.

29.3 Whatever the action taken, the party at fault shall be notified in writing of the decision to take automatic measures. In all cases, an inventory of the work shall be drawn up jointly.

Article 30: CANCELLATION OF THE CONTRACT

30.1 The principal contractor may cancel the present agreement when the principal contract is itself cancelled without any fault on his part. In this case, the sub-contractor shall be entitled to payment for the work done and shall receive compensation up to the amount of the loss that he has incurred; such compensation shall be due from the principal.

The present agreement shall also be cancelled ipso jure when the principal contract is cancelled for fault of the principal contractor, who must in that case make good any loss incurred by the sub-contractor.

30.2

30.2.1 When the agreement is concluded with a physical person, the decease of the latter - whether of the principal contractor or the sub-contractor - shall entitle the other contracting party to opt between the dissolution and continuation of the agreement. Such other contracting party must exercise the option within a short period after the decease.

In such cases, no compensation shall be due from either party.

30.2.2 Unless the Special Conditions provide otherwise, this same option shall not be open to the principal contractor or the sub-contractor, as the case may be, when the other contracting party is a legal person who ceases independent operations, for example, by merger with or absorption by a third party.

Article 31: PERSONAL EXECUTION OF THE WORK

The sub-contractor may not cede, assign or further sub-contract all or part of the work that is the subject of the present agreement without the prior authorization of the principal contractor in writing.

Article 32: SETTLEMENT OF DISPUTES

Article 33: LAW APPLICABLE

Unless the Special Conditions provide otherwise, the law applicable to the sub-contracting agreement shall be the law of the country in which the work of the principal contract is executed.

UNITED NATIONS INDUSTRIAL
DEVELOPMENT ORGANIZATION
(UNIDO)

LEGAL, FISCAL AND CUSTOMS QUESTIONS
LINKED TO SUB-CONTRACTING
IN TUNISIA

CHAPTER II

THE FISCAL SYSTEM OF INDIRECT TAXATION
APPLICABLE TO THE TRANSFER FROM ONE ENTERPRISE TO ANOTHER
OF AN INDUSTRIAL PRODUCT SUB-CONTRACTED AND THE DESIRABILITY
OF APPLYING THE VAT SYSTEM
IN TUNISIA

A study by Michel Souhaité, Legal and fiscal expert

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1. GENERAL REMARKS

1.1 Tunisia is quite convinced of the desirability of applying the principles that govern Value Added Tax (VAT), extending it to cover all activities.

1.2 Analysis of the present system of taxes on turnover (TCA), which has recently undergone many changes, shows the following peculiarities:

1.2.1 A basic text governs three very different taxes:

- A production tax;
- A consumption tax;
- A services tax.

The production and services taxes have been progressively transformed into a kind of VAT without being so named. That has led to a proliferation of taxes, each operating on a different basis, whose application is complex.

1.2.2 The coexistence of the former system with the utilization of procedures proper to VAT leads to a system in which VAT, which should be perfectly neutral in the economic process, is not neutral in specific cases.

As an example, the principle of a choice of system leads to anomalies:

- A person rendering services who opts for the producer system will be at an advantage if he is dealing with a producer and at a disadvantage if he is dealing with a non-producer;
- The tax base varies according as to whether the price for the transport of the finished products from the enterprise to its customers is included in the price of the product or invoiced separately. Transport is not subject to TCA when it is invoiced separately.

1.2.3 The number of rates of taxes applicable is considerable, especially if it is remembered that an SMI not subject to a lump-sum system can have a wide variety of activities, the legal obligations of which entail a particularly heavy burden in the field of accounting; the inevitable result is difficulties of application both for the enterprise and for the auditors. This inevitably leads to non-application of laws and regulations, quite apart from the question of fraud in the strict sense.

1.2.4 Taxes on turnover are calculated on the price including all taxes (TTC) and the habit of thinking in net-of-tax terms is not common, except at the high level of international groups.

De facto, the TTC line of reasoning leads operators to calculate their production costs from amounts that already include taxes. To the extent that certain of the taxes are recoverable, the reasoning is totally false and leads to double taxation.

1.2.5 The stopper rule with regard to recovery of taxes remains in force.

The principle is that the deduction mechanism cannot lead to even partial reimbursement of the tax that has been levied on particular merchandise.

1.2.6 - Local commerce provides many small contracts for supplies (for example, welding rods), in which case the taxes levied cannot be recovered.

1.3 As Professor Abdel Majid Abouda emphasizes, there is no specific system applicable to sub-contracting (1982 seminar).

1.3.1 Domestic sub-contracting is subject to the normal legal system

The sub-contractor is subject to the production tax if he is a producer. If he renders services, he is subject to services tax and benefits from the principle of financial deduction in determining his tax base, that is to say that he can deduct from his taxable turnover the amount that has been invoiced to him by his sub-contractor. The producer who uses the services of a third party to sub-contract part of some work cannot recover the services tax on the production tax.

The question of the special system for activities classified in table E seems to have been solved today. Cumulative taxation could occur when the production activity was classified in table E and when the producer had opted for that special system.

1.3.2 Sub-contracting of international contracts follows the principle that turnover taxes are normally imposed on the contract in the State in which the work is executed.

Nevertheless, attention must be devoted to the following problem:

1.3.2.1 Foreign companies executing work or providing sub-contracting services for the account of a Tunisian customer are subject to the services tax payable by the customer. The tax to which sub-contractors may be liable on their own contracts may be due either in their State of residence or in the State of residence of the customer, according to the place at which the sub-contractor renders his services and the territoriality criteria of the States concerned.

The criterion adopted in the North African countries is that of the place where the services are rendered and the place where the services are used. This principle is not without difficulties of application.

Two situations may arise:

a. The tax is due by the principal contractor and by the sub-contractor in the State of execution of the contract (Tunisia). Difficulties of internal law arise but may be more or less neutralized by the application of VAT.

b. The tax is due from the sub-contractor in his State of residence (outside Tunisia) and is also claimed from the principal contractor in the State of execution of the agreement (Tunisia).

This double location criterion can generate a cascade of taxation.

The Tunisian principal contractor (ordering party) will not be able to deduct the VAT invoiced by the foreign sub-contractor from the production tax or the services tax that he himself invoices to the customer.

It will be noted nevertheless that double taxation may be neutralized by exempting operations for the sub-contracting of services from taxation, for example, by means of a reimbursement system.

1.3.2.2 When the Tunisian enterprise is a sub-contractor in a foreign contract, the system is as follows:

- A system of tax exemption exists for the sale of goods intended for export. It is neutral at the level of indirect taxation unless the cost of production includes taxes in respect of which exemption has not been possible for purely material reasons (small contracts for supplies).
- Rendering of services is liable to services tax when the service rendered, the right ceded or the object rented are used or operated in Tunisia. There is no express provision for the assimilation of the rendering of services to tax-free export, in the case of a foreign contract (to be verified).

1.4 Since cascades of taxation are tending to diminish and Tunisia is turning towards the application of a new VAT, our recommendations will refer exclusively to the VAT project as envisaged and its application to SMIs in the framework of sub-contracting, that is to say, with regard to the following problems:

- Liquidity difficulties with respect to taxes payable;
- The complexity of the fiscal system in the light of the management resources of enterprises;
- Invoicing and tariffs;
- Double taxation.

Generally speaking, it would be desirable to introduce VAT immediately without waiting any longer, even if it may be necessary to establish transitory measures of a purely financial nature; that would at least have the advantage of making possible a new economic approach, which is particularly important for sub-contracting.

2. ANALYSIS OF THE VAT PROPOSAL FROM THE POINT OF VIEW OF ENCOURAGING INDUSTRIAL SUB-CONTRACTING

2.1 Financing of VAT by the enterprises

2.1.1 The operation attracting VAT

To the extent that VAT is payable on the delivery of goods, an advance is required from the enterprise. A sub-contractor who has delivered his work without having received an advance payment on the order will bear the VAT burden alone until such time as the ordering party has settled the invoice containing this VAT.

The same applies to situations in which a sub-contractor providing services is liable to pay VAT as soon as he has rendered a service.

Additional study seems to be necessary to find out what are the normal payment periods in sub-contracting operations. If there is found to be considerable time-lag, advance payment to the Treasury incontestably acts as a brake on sub-contracting operations by SMIs.

This problem is increased in the case of accounts outstanding. The procedure for charging or return in the case of outstanding payments must be a rapid one. The stopper system may be fatal to an SMI. Article 27-2 of Chapter 6 does not seem to permit reimbursement, unless the enterprise ceases its activity.

2.1.2 The stopper rule

This expressly excludes reimbursement (Article 20-4), which particularly penalizes the sub-contractor, especially when he has to invest in equipment as a result of the agreement and also has to buy large quantities of raw material in order to ensure from the outset the rate of delivery required by the ordering party.

Recommendations:

- As far as deliveries of goods are concerned, payment by guaranteed bond, i.e. by draft drawn on the Treasury, is a measure used inter alia in the EEC. While this does not completely solve the financial problem, it does attenuate it.
- As far as the rendering of services is concerned, since the party rendering the service is obliged to pay his staff and since wages represent his main item of costs as work proceeds, it seems essential that the operation attracting the tax should be the receipt of payment.
- The stopper rule should not be applied to accounts outstanding.
- In the case of major investment, special measures could be applied to the sub-contractor to make possible the financial recovery of VAT by reimbursement if he is in credit with regard to VAT payments for a period in excess of a number of months to be determined.

2.2 Complexity of the system

2.2.1 Proliferation of rates

Owing to the diversity of activities and the management structures of enterprises, the proliferation of rates retained in this new project does not seem to be appropriate.

- Some services, such as the private transport of goods and shipping, enjoy a preferential rate, which could lead to complications and anomalies.

2.2.2 Harmonization of deductions

The principle of 5 per cent for goods subject to depreciation seems to be very hard on the SMIs.

Recommendations:

1. A single rate should be applied to all operations related to industrial activity;
2. The system for the recovery of VAT on fixed assets should be simplified, particularly for SMIs.

2.3 Invoicing - rates - the VAT tax base

2.3.1 The radical introduction of VAT must be the occasion for all those subject to VAT to calculate in net-of-tax terms. This attitude is not facilitated by the fact that the tax is calculated on a base that already includes it.

Recommendations:

- VAT should be applied to the net-of-tax price and VAT should be excluded from the tax base;

- It should be compulsory to enter the net-of-tax price of operations on invoices and in the tariffs or scales of charges published by the enterprises.

2.3.2 Sub-contracting operations for the account of parties not subject to VAT

Such operations generally penalize the party subject to the tax, who has difficulty in invoicing a tax that the party not subject to the tax (such as a Government department) does not recover. Retention of the applicable rate of VAT in such cases often leads to fraud. An adjustment of the tax base may be an interim solution to the problem.

Additional study of this subject nevertheless seems to be necessary before any recommendation can be made.

2.4 Avoiding the risk of double taxation; the territoriality of services rendered

According to article 5, a services transaction is deemed to be carried out in Tunisia - and therefore subject to tax - when the services rendered, the right ceded and the object rented or hired are used or operated in Tunisia.

This principle sometimes leads to double taxation or at least to difficulties of application in the context of sub-contracting, particularly if no legal law or regulation expressly provides for the assimilation of services used abroad to exports.

Example:

- Studies and hiring of staff by a Tunisian enterprise (sub-contractor) for the (Tunisian) holder of a study contract for the account of a foreign client.
- Invoicing in respect of services rendered by a Tunisian sub-contractor in Tunisia for the account of a foreign ordering party who has a Tunisian contract for the construction of an industrial complex.

Recommendations:

Sub-contracting in respect of services intended for export should be expressly exempted from tax.

UNITED NATIONS INDUSTRIAL
DEVELOPMENT ORGANIZATION
(UNIDO)

LEGAL, FISCAL AND CUSTOMS SYSTEMS
RELATED TO SUB-CONTRACTING
IN EGYPT

CHAPTERS II AND III

FISCAL AND CUSTOMS SYSTEMS
APPLIED TO INDUSTRIAL PRODUCTS
THAT ARE THE SUBJECT OF NATIONAL AND
INTERNATIONAL SUB-CONTRACTING AGREEMENTS

A study by Michel Souhaité, Legal and Fiscal Expert
In collaboration with Hamed Mansour,
Egyptian Legal Consultant

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OUTLINE

FISCAL AND CUSTOMS ASPECTS

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PART I: INDIRECT TAXATION

I. Consumption tax

A. Applicable rules

Consumption tax is levied on the sale and import of certain goods, in particular on all industrial products (Law 133-1981). It replaces production tax.

This Law applies to all manufacturers and importers for all the products listed in the annex to the Law.

It is levied systematically on all industrial products even if they are produced in free zones and are sold inside Egypt. The only exception envisaged is that of products intended for export.

To sum up, all joint projects for the manufacture of industrial products in the context of international sub-contracting will be taxable except those carried out in the Port Said free zone and then only to the extent that they are exported.

- Numerous rates are applicable. They lie between 30 and 50 per cent.
- The operation that attracts the tax is delivery, which obliges the industrialist to advance the tax to the Treasury.
- With regard to the tax base, the ad valorem principle is applied, that is to say, the basis is the market selling price in normal sale conditions.

B. Specific problems of international sub-contracting

a. The application of consumption tax at the different stages of manufacture of an industrial product, particularly in the case of sub-contracting, has a severe effect on its price, since the tax is cumulative. At every stage of manufacture, tax is levied on the selling price of each input and is not recoverable. It should be noted that this principle is a major obstacle to international sub-contracting.

b. The Port Said free zone is the only one in which tax-free import is possible with a view to re-exporting. There seems to be no other provision for tax-free import or for reimbursement of tax in the event that the finished industrial product is intended for export.

c. Mr. Mansour emphasizes that even sub-contractors operating in the context of a joint venture that enjoys benefits under the law on investments are not exempted from this tax, although that law exempts the enterprise from all taxes on industrial and commercial profits (BIC).

II. Recommendations:

1. The development of SMIs is almost impossible under a system of indirect taxation in which taxes are cumulative. Large industrial firms are not interested in using the services of economic units that are compelled to add to their selling prices a tax that is not recoverable and that constitutes a by no means negligible additional cost. Industrial sub-contracting using SMIs can therefore develop only by neutralizing the additional cost of taxes. A principle could be established for deduction of the tax on the upstream side in the manufacture of an industrial product.

As an interim measure, Egyptian legislation could follow the example of Algeria, by using the principle adopted for the single comprehensive production tax (TUGP), before transition to a system comparable to the VAT

of the European countries, Morocco and Tunisia, where the mechanism is entirely satisfactory for sub-contracting.

2. Meanwhile, as the establishment of such a system is a long and difficult process, the creation of a free zone with controlled enterprises could be envisaged for sub-contracting, to permit the manufacture of products free of tax. This system would avoid the payment of taxes when the product is not intended for consumption in the domestic market. An analogous system has given good results in Tunisia.
3. Specific regulations could also be worked out to favour the reimbursement of taxes paid by industrialists and in particular by sub-contractors when they do not know the final destination of the product (export or the domestic market). The principle of tax-free purchases with settlement at the end of the year could also be used.

PART II : CUSTOMS DUTIES

I. Applicable rules

Egypt has adopted and uses the Brussels Tariff Nomenclature (the NIMEXE nomenclature used in the 12 EEC countries). Duty is calculated on an ad valorem basis.

The rates applicable to machines and mechanical systems vary from 0 to 250 per cent.

Exceptions are made only for Egyptian government equipment and for the Port Said free zone. in the latter case, when the equipment is exported.

Egypt seems to be lagging behind other countries in the Arab region as regards provisions favouring exemption from customs duty (temporary admission, draw-back), except in the case of the Port Said free zone.

Referring to the typical case of the "El Nasr Automotive Co.". Mr. Mansour states that local industry enjoys no privileges with regard to customs duties.

II. Recommendations:

International sub-contracting can be developed for Egyptian SMIs only when and in so far as appropriate measures make it easy for such enterprises to import duty free or to obtain reimbursement of customs duty on products to be exported. In this context, it must be emphasized that a simple and flexible system must be set up at a practical level, taking into account the fact that the enterprise does not know the exact final destination of its products and has to bear a financial cost that is detrimental to it.