

160A

ASEAN 16



FINANCING AGREEMENT

between

THE EUROPEAN ECONOMIC COMMUNITY

and the

ASSOCIATION OF SOUTH EAST ASIAN NATIONS

(ASEAN)

FINANCING AGREEMENT

The Commission of the European Communities, hereinafter referred to as "THE COMMISSION", acting for and on behalf of the European Economic Community, hereinafter referred to as "THE COMMUNITY",

of the one part, and

the Association of South East Asian Nations (A.S.E.A.N.) hereinafter referred to as "THE RECIPIENT",

of the other part,

HAVE AGREED AS FOLLOWS:

The project referred to in Article 1 below shall be executed and financed out of the budget resources of THE COMMUNITY in accordance with the Special and General Provisions set out below, supplemented by the Technical and Administrative Provisions annexed hereto (Annex A).

SPECIAL CONDITIONS

ARTICLE 1 - NATURE AND SUBJECT

THE COMMUNITY shall contribute under its 1978 aid programme, by way of grant, towards the financing of the following:

Project No. NA/78/16/G1

Title: Regional Grain Post Harvest Research and Training  
Centre Study  
hereinafter referred to as "THE PROJECT".

ARTICLE 2 - COMMUNITY COMMITMENT

The commitment of THE COMMUNITY is fixed at 300,000 European Units of Account.

ARTICLE 3 - ADDRESSES

Correspondence relating to the performance of this Agreement, stating the project number and title, shall be addressed to the following:

(a) for THE COMMUNITY:

Commission of the European Communities  
Directorate-General for Development  
rue de la Loi 200  
B-1049 Brussels

Telegraphic address: COMEUR BRUXELLES

(b) for THE RECIPIENT

ARTICLE 4 - NUMBER OF COPIES

This Agreement is drawn up in two copies each being equally valid.

ARTICLE 5 - ENTRY INTO FORCE

This Agreement shall enter into force on the date of signature hereof.

The Annexes shall be deemed an integral part of this Agreement.

Done at                      this                      day of

For THE RECIPIENT ,

FOR THE COMMUNITY

## GENERAL CONDITIONS

### TITLE I: FINANCING OF PROJECTS

#### ARTICLE 1 - COMMUNITY COMMITMENT

The commitment of THE COMMUNITY, the amount of which is laid down for each project in the Special Conditions of the Agreement, shall determine the limit within which commitment and execution of payments shall be carried out, within the framework of the approved contracts and estimates.

Any expenditure over and above the commitment of THE COMMUNITY shall be borne by THE RECIPIENT STATE.(1)

#### ARTICLE 2 - COMMITMENT OF THE RECIPIENT STATE

Where project execution depends on financial commitments out of the own resources of THE RECIPIENT STATE, as laid down in Annex A, the provision of the funds of THE COMMUNITY, in accordance with the schedule fixed in Annex A, shall be conditional upon performance of the obligations incumbent on THE RECIPIENT STATE.

#### ARTICLE 3 - PROVISION OF FUNDS

Within the limits set on the funds provided by THE COMMUNITY, requests for funds shall be presented by THE RECIPIENT STATE in accordance with the schedule laid down in Annex A and on presentation of documentary evidence relating to the payments made in respect of THE PROJECT.

However, supplies contracts and study contracts may provide for direct payment by THE COMMISSION to the contractors. Each contract shall lay down the rate and time of such payments, together with the documentary evidence to be produced.

Further, in projects executed on the basis of prepared estimates, a first payment instalment which, save where Annex A otherwise provides, shall not exceed 20% of the amount of the estimate approved by THE COMMISSION, may be made in favour of THE RECIPIENT STATE in order to facilitate the launching of THE PROJECT. Other payment instalments shall be made available, at the request of THE RECIPIENT STATE, on presentation of documentary evidence relating to payments made.

(1) The term 'Recipient State' shall be understood as referring to 'the recipient' throughout the General Conditions.

TITLE II: CONCLUSION OF CONTRACTS

ARTICLE 4 - CONCLUSION

The procedure to be followed prior to conclusion of works and supplies contracts, and prior to conclusion of technical cooperation contracts, shall be laid down in Annex A, following the principles set out below.

ARTICLE 5 - PARTICIPATION

1. For interventions where THE COMMUNITY is the only source of external aid, natural and legal persons in THE RECIPIENT STATE and those established in the European Economic Community shall be entitled to participate on equal terms in contracts, tendering procedures and other procedures for the award of contracts.

Participation may also be extended to other developing countries receiving Community aid under the programme referred to in Article 1 of the Special Conditions and the two previous programmes.

2. The same rules shall apply in cases where THE COMMUNITY provides funds together with other sources of funds.

In cases of co-financing of this kind, any participation by third countries in the contracts, tendering procedures and other procedures for the award of contracts, can only be authorized after examination case-by-case with THE COMMUNITY.

ARTICLE 6 - EQUALITY OF CONDITIONS

THE COMMISSION and the authorities of THE RECIPIENT STATE having responsibility therefor shall take the measures necessary to ensure equality of conditions for participation in the contracts, tendering procedures and other procedures for the award of contracts financed by THE COMMUNITY.

To this end, steps will be taken in particular to ensure that:

- (a) there is prior publication of invitations to tender simultaneously in the Official Journal of the European Communities and the Official Gazette of THE RECIPIENT STATE, or by any other suitable means of advertisement;
- (b) adequate time limits are introduced by mutual agreement for the submission of tenders;

- (c) any discriminatory practice or technical specification such as might prejudice the participation under equal conditions of all natural and legal persons of the States entitled to participate by virtue of Article 5 shall be eliminated;
- (d) General Conditions of Contract shall be drawn up in conformity with the models in current international use, such as the General Conditions of Contract of the European Development Fund.

#### ARTICLE 7 - AWARD OF WORKS AND SUPPLIES CONTRACTS

THE COMMISSION and the authorities of THE RECIPIENT STATE having responsibility therefor shall ensure that for every operation, Article 6 hereof is respected and that the offer selected is economically the most advantageous, particularly in view of the qualifications and guarantees offered by the tenderers, the nature and conditions for execution of the works or supplies, the price of the services, their cost of utilization and technical value.

Results of the invitations to tender shall be published in the Official Journal of the Communities as quickly as possible.

#### ARTICLE 8 - TECHNICAL COOPERATION CONTRACTS

1. Technical cooperation contracts shall be concluded by mutual agreement or when technical, economic or financial reasons so justify, following invitation to tender.
2. For each technical cooperation project, one or more candidates shall be selected on the basis of criteria guaranteeing their qualifications, experience and independence and taking into account their availability for the project in question.

3. Contracts shall be drawn up, negotiated and concluded either by the authorities of THE RECIPIENT STATE having responsibility therefor, or by THE COMMISSION when Annex A so provides.

4. Where contracts are drawn up, negotiated and concluded by THE RECIPIENT STATE, THE COMMISSION shall select one or more candidates on the basis of the criteria laid down in paragraph 2.

When there is a mutual agreement procedure and THE COMMISSION has selected several candidates, THE RECIPIENT STATE shall freely choose the candidate with which it proposes to conclude the contract from among those put forward.

When there is recourse to an invitation to tender procedure, the contract shall be awarded to the candidate who has submitted the offer which is acknowledged by THE RECIPIENT STATE and THE COMMISSION to be economically the most advantageous.

TITLE III: EXECUTION OF CONTRACTS

ARTICLE 9 - ESTABLISHMENT AND RIGHT OF INSTALLATION

Natural and legal persons taking part in works, supplies or services contracts shall benefit, under equal conditions, from a provisional right of residence and installation if the nature of the contract so justifies. The said right shall be acquired only for the benefit of the technical staff necessary to carry out studies preparatory to drawing up tenders; it shall continue until expiry of one month following the nomination of the successful tenderer.

The tenderer to whom the contract has been awarded shall enjoy similar rights throughout the period of execution of the contract and until expiry of one month following final acceptance.

Natural and legal persons who have established themselves for the purpose of executing works, supplies or services shall enjoy the absolute freedom, if they so desire, to re-export materials imported by them into THE RECIPIENT STATE for the purpose of execution.

ARTICLE 10 - ORIGIN OF MATERIALS AND SUPPLIES

Materials and supplies necessary for executing the contracts must, save where a derogation hereto has been authorized by THE COMMUNITY, originate in the States entitled to participate by virtue of Article 5.

ARTICLE 11 - IMPORT AND EXCHANGE CONTROL

The authorities responsible hereby undertake to grant the import permits and exchange control permits necessary to execute THE PROJECT. They equally undertake to apply the national regulations in the field of exchange control without discrimination among the States entitled to participate by virtue of Article 5.

ARTICLE 12 - TAX REGULATIONS

Taxes, customs and import duties shall be excluded from the financing of THE COMMUNITY.

ARTICLE 13 - PAYMENT PROCEDURES

1. For contracts financed by THE COMMUNITY, tenderers shall be drawn up and payment shall be made by THE COMMUNITY in the form of a bill of exchange (BOA), or a bill of exchange payable to order, or in the currency of the State which is the beneficiary of the financed project, or in any other form of payment which may be agreed upon by the tenderer and THE COMMUNITY.

2. When tenders are drawn up in EUA, payments relating thereto shall be made, as appropriate, in the currency named in the contract, on the basis of the equivalent value of the EUA on the day preceding payment.

3. THE COMMISSION shall take all measures necessary to ensure execution of payments due to contractors within the shortest possible time.

ARTICLE 14 - DISPUTES BETWEEN THE RECIPIENT STATE AND THE CONTRACTOR

Disputes arising between the Government of THE RECIPIENT STATE and the contractor during performance of a contract financed by THE COMMUNITY shall be settled definitively in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce.

ARTICLE 15 - COOPERATION BETWEEN THE COMMISSION AND THE AUTHORITIES OF THE RECIPIENT STATE

1. INSPECTION

1. THE COMMISSION shall have the right to send its own agents or duly authorized representatives to carry out any technical or financial mission or audit that it considers necessary to follow the execution of THE PROJECT.

The government of THE RECIPIENT STATE hereby undertakes to supply all information and documents which shall be requested of it, and to take all suitable measures to facilitate the work of persons instructed to carry out audits or inspections. The government shall be kept informed of the visit of the officials referred to above.

2. The Court of Auditors of THE COMMUNITY shall have the right to carry out, on the basis of documents and if necessary by means of any financial audit or inspection, all the checks, the certificates, invoices and other documentation relating to the project which may be available in THE RECIPIENT STATE and which relate to the aid of THE COMMUNITY.

ARTICLE 16 - THE PROJECT

THE COMMISSION shall follow the execution of THE PROJECT, request any explanation and, where necessary, suspend the payment of the aid to the Government concerned, on a few projects which it considers to be better aligned with the objectives of the aid.

THE COMMISSION shall report to the Council on the progress of the execution of THE PROJECT and on the results of its audits and inspections.

Where there is a failure to carry out an obligation set out in this Agreement, which has not been the subject of remedial measures taken in due time, THE COMMISSION may suspend the financing of THE PROJECT.

TITLE V: GENERAL AND FINAL PROVISIONS

ARTICLE 17 - RENUNCIATION BY THE RECIPIENT STATE

THE RECIPIENT STATE may, with the agreement of THE COMMISSION, renounce in whole or in part the execution of THE PROJECT.

An exchange of letters shall set out the detailed rules for the said renunciation.

ARTICLE 18 - AMENDMENT

Any amendment to this Agreement must be agreed between the parties hereto and can only be adopted after approval in writing by the parties.

ARTICLE 19 - CONSULTATION - DISPUTES

1. Any question relating to execution which has not been resolved by application of the provisions of this Agreement shall be the subject of consultation between THE RECIPIENT STATE and THE COMMISSION.

2. Any dispute relating to this Agreement which cannot be resolved by applying paragraph 1 of this Article shall be settled according to the arbitration procedure referred to in the Annex hereto (Annex B).

ARTICLE 20 - NOTICES - ADDRESSES

Any notice and any agreement between the parties provided for herein must be the subject of a written communication referring explicitly to the number and title of THE PROJECT. Such notices or agreements shall be made by letter sent to the person authorized to receive the same, and sent to the person notified by the said party. In case of urgency, telex or telegraphic communications shall be permitted and shall be considered to have been validly served, provided that they are confirmed immediately by letter.

Addresses are set out in the Special Conditions.

A N N E X A

TECHNICAL AND ADMINISTRATIVE PROVISIONS

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Parties : Member of the Association of South East Asian Nations (ASEAN)\*

Project title : "Regional Grain Post Harvest Research and Training Centre" (Study)

Project no : N.A.78/10/C1

1. Project definition

The project is to assist the ASEAN to carry out a study on post-harvest grain losses in the ASEAN Region (Indonesia, Malaysia, Philippines, Singapore, Thailand), and to make recommendations as to the means required to reduce these losses.

2. Overall objectives

Post harvest grain losses affect gravely the agricultural production of many developing countries (these losses reach sometimes 30 % of the crops in South East Asia). A reduction of these losses will permit a substantial improvement of the food situation throughout the ASEAN Region.

The study under consideration aims to define the practical means required to reach this objective.

3. Definition of the study

The study will comprise :

- a) an assessment of the extent of the post harvest grain losses in the region of their origin and of their economic and financial impact
- b) the definition of the possible role and characteristics of a research training centre dealing with this problem :
  - position within the national existing structures and relationships with the latter
  - structure, organisation and management
  - investment
  - operation, programme of activities, personnel...
  - budget and methods of financing (capital, operating costs)

ANNEX B

ARBITRATION

4. Any controversy between the parties hereto, which shall not be settled by applying the procedures laid down in Article 19 of the agreement, shall be submitted to arbitration by an Arbitral Tribunal as hereinafter provided.
5. The parties to such arbitration shall be THE RECIPIENT on the one side and THE COMMISSION on the other side.
  - a. The Arbitral Tribunal shall consist of three arbitrators appointed as follows: one arbitrator shall be appointed by THE RECIPIENT ;
  - b. a second arbitrator shall be appointed by THE COMMISSION; the third arbitrator (hereinafter sometimes called "THE UMPIRE") shall be appointed by agreement of the parties or, if they shall not agree, by the Secretary-General of the United Nations.
6. If either side fail to appoint an arbitrator, such arbitrator shall be appointed by THE UMPIRE.
7. If one arbitrator appointed in accordance with this section shall resign, die or become unable to act, a successor arbitrator shall be appointed in the same manner as herein described for the appointment of the original arbitrator; such successor shall have all the powers and duties of such original arbitrator.