



GENERAL CONDITIONS OF CONTRACT

CONTRACTS FOR THE PROVISION OF GOODS

These General Conditions of Contract shall apply to the provision of Goods to the IAEA, unless otherwise agreed in writing.

“Goods” as used hereinafter means equipment, materials, supplies and related manuals, and documentation. It also includes spare parts from the date the faulty parts are replaced.

The IAEA and the Contractor shall also each be referred to as a “Party” or jointly as “Parties” hereunder.

1. LEGAL STATUS: The Contractor shall have the legal status of an independent contractor *vis-à-vis* the IAEA, and nothing contained in or relating to the Contract shall be construed as establishing any relationship between the Parties except as a consequence of the rights and obligations arising from the Contract. The Contractor is not entitled to act as an agent or in the name of the IAEA. The officials, representatives, employees, agents, servants or subcontractors of a Party shall not be considered in any respect as being the employees or agents or contractors of the other Party and each Party shall be solely responsible for all claims arising out of or relating to its engagement of such persons or entities.

2. NON-EXCLUSIVITY: The Contract is signed on a non-exclusive basis. The IAEA shall have no limitation on its right to obtain goods or services of the same kind, quality and quantity described in the Contract from any other source at any time.

3. RESPONSIBILITIES OF THE CONTRACTOR:

3.1 The Contractor shall:

- a) Perform its obligations under the Contract in accordance with applicable laws, norms, standards and regulations;
- b) Perform its obligations in good faith and comply with both the express requirements of the IAEA, as defined in the Contract, and all obligations arising from the nature and purpose of the Contract;
- c) Procure tools, materials and personnel (hereinafter including but not limited to Contractor’s officials, employees, agents, servants, sub-contractors and other representatives) as necessary for the proper performance of the work;
- d) Be responsible for the conduct and professional competence of the personnel it assigns to perform under the Contract and ensure that its personnel respect all applicable laws and regulations, conform to a high standard of moral and ethical conduct and comply with the IAEA security requirements and instructions when at IAEA premises;
- e) Obtain and maintain all permits, licenses and/or authorisations as required by applicable laws and regulations and as necessary for the performance of its obligations under the Contract.

3.2 In the event of failure to obtain the permits, licences and/or authorisations required under Article 3.1 e) above within a reasonable time after the signature of the Contract, depending on the nature and the scope of the Contract, the IAEA may declare the Contract voided or terminate the Contract for the part not performed.

4. SOURCE OF INSTRUCTIONS: The Contractor shall neither seek nor accept instructions/restrictions from any authority external to the IAEA in connection with the performance of its obligations under the Contract.

5. SUB-CONTRACTING:

5.1 In the event the Contractor requires the services of sub-contractors, the Contractor shall obtain the prior written approval and clearance of the IAEA. The Contractor shall be solely responsible towards the IAEA for the proper execution by any sub-contractors. The terms of any sub-contract shall be subject to and in conformity with these General Conditions of Contract.

5.2 The rejection by the IAEA at any time (before or during the implementation of the Contract) of a sub-contractor shall not entitle the Contractor to claim any delays in the performance of the Contract, nor relieve the Contractor of any of its obligations under the Contract.

6. CONFIDENTIALITY:

6.1 Information, documents, plans, drawings and data (“Information”) that is considered proprietary by either Party or that is delivered or disclosed by one Party (“Discloser”) to the other Party (“Recipient”) during the course of performance of the Contract, and that is designated as *Highly Confidential*, *Confidential* or *Restricted* shall be handled as follows:

- a) The Recipient of such Information shall:
 - (i) use the same care and discretion to avoid disclosure, publication or dissemination of the Information as it uses with its own similar Information that it does not wish to disclose, publish or disseminate; *and*,
 - (ii) use the Information solely for the purpose for which it was disclosed.
- b) The Recipient may disclose Information to:
 - (i) any other party with the Discloser’s prior written consent, provided that the Recipient has a written agreement with the persons or entities requiring them to treat the Information as confidential; *and*,
 - (ii) the Recipient’s employees, officials, representatives and agents who have a need to know such Information for purposes of performing obligations under the Contract.

6.2 As a general rule, all technical, financial information or other documentation and data compiled for or received from the IAEA under the Contract shall be treated as confidential and subject to the provisions of paragraph 6.1 above.

6.3 On completion of the Contract, all Information received from the IAEA in a tangible form (paper or electronic format) shall be returned to the IAEA’s authorized officials or destroyed (as instructed by the IAEA).

6.4 In case the Contractor is requested by law or judicial order or by any national authority to disclose Information received by the IAEA, before any such disclosure is made the Contractor shall give the IAEA immediate notice of such a request in order to allow the IAEA to take protective measures or such action as other may be appropriate.

6.5 The IAEA may disclose Information to the extent required pursuant to its Statute, or pursuant to resolutions or regulations of the General Conference, Board of Governors or rules promulgated thereunder.

6.6 The Recipient shall not be precluded from disclosing Information that: (i) is obtained from a third party without restriction; (ii) is disclosed by the Discloser to a third party without any obligation of confidentiality; (iii) is previously known by the Recipient, as shown by written evidence; or (iv) at any time is developed by the Recipient completely independently of any disclosures hereunder.

7. INDEMNIFICATION:

7.1 The Contractor shall indemnify, hold and save harmless and defend, at its own expense, the IAEA, its officials, agents and employees from and against all suits, claims, demands and liability of any nature or kind, including their costs and expenses, arising out of: (i) acts or omissions of the Contractor or its personnel in the performance of the Contract, including claims and liability in the nature of workmen's compensation; (ii) product liability; and (iii) claims arising out of the unauthorised use of patented inventions or devices, copyrighted material or other intellectual property provided by the Contractor under the Contract.

7.2 The responsibility of the Contractor under this Article shall not be limited by or subject to any terms of existing Contractor's insurances.

8. TERMINATION:

8.1 The IAEA may terminate the Contract in whole or part, upon thirty (30) days' written notice to the Contractor.

8.2 Where notice of termination is given, the Contractor shall, as from the date of receipt of such notice from the IAEA:

- a) Take immediate steps to bring the work and services to a close in a prompt and orderly manner and reduce expenses to a minimum;
- b) Refrain from undertaking any further commitments;
- c) If required by the IAEA, transfer title and deliver to the IAEA the fabricated parts, work in process, completed work, supplies and other material produced or acquired for the portion of the Contract terminated; and
- d) Deliver all completed or partially completed plans, drawings, and any other information subject to Intellectual Property Rights.

8.3 In the event of any termination, the IAEA shall be entitled to obtain reasonable written accountings from the Contractor concerning all obligations performed or pending in accordance with the Contract.

8.4 On termination, the IAEA shall be liable to pay the Contractor for those goods delivered and services satisfactorily performed and accepted in accordance with the requirements of the Contract or purchased in preparation thereof, but only if such goods or services were ordered, requested or otherwise provided prior to the Contractor's receipt of notice of termination by the IAEA.

8.5 In no event will the IAEA be liable to pay to the Contractor an amount greater than the agreed Contract price.

8.6 The IAEA may, without prejudice to any other right or remedy available to it, terminate the Contract immediately by giving the Contractor written notice of such termination, after full consideration of all relevant circumstances, including the reply of the Contractor, in the event that:

- a) The Contractor commits a fundamental breach to the terms of the Contract and it fails to remedy the situation within a reasonable time upon the IAEA written request;
- b) It becomes apparent that the Contractor loses its ability to perform, or suffers a serious deficiency in its credit worthiness, or its conduct in performing or preparing the performance makes it apparent that it will not perform a substantial part of its obligations and the Contractor fails to remedy the situation or provide assurances/evidence of its capability to perform, upon the IAEA written request;
- c) The Contractor is adjudged bankrupt, or make a general assignment for the benefit of its creditors, or a receiver is appointed on account of the Contractor's insolvency;
- d) There is a breach of Articles 5, 6, 10 and 11 of these General Conditions of Contract. The right to termination

under this paragraph shall also apply with respect to any subcontractor for the part of work related to such subcontractor.

8.7 In case of termination under Article 8.6 above the IAEA has the right to, at its own option:

- a) Have the work performed under its direct responsibility, in which case the Contractor shall be obliged to pay all additional costs arising for the IAEA;
- b) Have the work performed by way of a replacement contract with a third party, in which case the Contractor shall be obliged to pay all additional costs arising for the IAEA;
- c) Have the work terminated, in which case the IAEA shall be entitled to full compensation for the expenses incurred by the IAEA caused by the Contractor's non-fulfilment of its contractual obligations.

8.8 Termination under Articles 8.6 and 8.7 above shall be without prejudice to any other rights or remedies that the IAEA may be entitled to hereunder or at law with particular reference to claims for damages and losses occurred.

8.9 In case of termination under this Section 8. any liability of the IAEA for loss of actual or expected profit, and for indirect or consequential losses, is expressly excluded.

9. FORCE MAJEURE:

9.1 In the event of any cause constituting *force majeure*, the affected Party shall promptly give notice in writing to the other Party of such occurrence or cause, if the affected Party is thereby rendered unable, wholly or in part, to perform its obligations under the Contract, including any possible period of delay. The affected Party shall also notify the other Party of any other changes in conditions or the occurrence of any event which interferes or threatens to interfere with its performance of the Contract. Not more than sixty (60) days following the provisions of such notice of *force majeure* or other changes in condition or occurrence, the affected Party shall also submit a statement to the other Party of estimated expenditures (if any) that might be incurred as a consequence of *force majeure* or the duration of the change in condition. On receipt of such notice, the Party not affected by the occurrence of a cause constituting *force majeure* shall take such action as it reasonably considers being appropriate or necessary in the circumstances, including the granting to the affected Party of a reasonable extension of time in which to perform any obligations under the Contract.

9.2 *Force majeure* as used herein means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, terrorism, industrial and/or civil disturbances, formal orders of local courts and authorities or any other act of a similar nature or force, provided that such acts arise from causes beyond the control of a Party and without the fault or negligence of that Party.

9.3 If the Contractor is rendered unable, wholly or in part, by reason of *force majeure* to perform its obligations under the Contract, the IAEA shall have the right to terminate the Contract in full or in part on the same terms and conditions as are provided for in Article 8 "Termination", except that the period of notice shall be fifteen (15) days instead of thirty (30) days. For the purpose of this Article, the Contractor shall be considered unable to perform its obligations under the Contract in case it is unable to perform its obligations, wholly or in part, by reason of *force majeure* for any period in excess of sixty (60) days from the date of receipt of the relevant notice by the IAEA or the IAEA becoming aware, by any other means, of such Contractor's inability.

10. CHILD LABOR: The Contractor represents and warrants that neither it, its parent entities (if any), nor any of the Contractor's subsidiary or affiliated entities (if any), is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which, *inter alia*, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. The Contractor acknowledges

and agrees that the provisions hereof constitute an essential term of the Contract and that any breach of this representation and warranty shall entitle the IAEA to terminate the Contract immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind.

11. OFFICIALS NOT TO BENEFIT: The Contractor warrants that no officials, agents and employees of the IAEA are, have been or will be granted any direct or indirect benefit arising from the Contract or the award thereof, whether of financial or other nature. The Contractor agrees that breach of this provision may lead, at the IAEA's sole discretion, to the full avoidance of the Contract irrespective of any work performed. Avoidance shall exclude any right of the Contractor to claim any payment, even for work already performed. All delivered goods, whether used or not, will be returned at Contractor's expenses. Avoidance will be without prejudice to any further remedies that the IAEA may be entitled to hereunder or at law with particular reference to refund of payments already made, claims for damages and losses occurred, bribery and fraud. The provisions under this Article shall also apply with respect to any subcontractor for the part of work related to such sub-contractor.

12. USE OF NAME, EMBLEM OR OFFICIAL SEAL OF THE IAEA: The Contractor shall not advertise or otherwise make public the fact that it is a Contractor with the IAEA. Also the Contractor shall, in no other manner whatsoever use the name, emblem or official seal of the IAEA or any abbreviation of the name of the IAEA in connection with its business or otherwise, unless authorized in writing by the IAEA.

13. NOTICES: Official notices related to the Contract shall be in English and shall be valid if sent by registered mail, fax or any standard recognized form of electronic communication (such as E-mail, certified electronic mail or any future standard commercial communication method) to the address of the recipient Party defined in the Contract.

14. AMENDMENTS: Amendments to the Contract provisions shall be made in writing. No modification, change, waiver or additional contractual obligation or relationship shall be valid and enforceable against the IAEA unless agreed by means of a written amendment to the Contract signed by the Contractor and a duly authorized IAEA Contracting Officer.

15. NON-WAIVER OF RIGHTS: The failure by either Party to exercise any rights available to it, whether under the Contract or otherwise, shall not be deemed for any purposes to constitute a waiver by the other Party of any such right or any remedy associated therewith, and shall not relieve the Parties of any of their obligations under the Contract.

16. ASSIGNMENT: The Contractor shall not assign, transfer, pledge or make any other disposition of the Contract or of any part thereof or of any of its rights, claims, liabilities or obligations under the Contract without the prior written consent of the IAEA. Any such unauthorized assignment, transfer, pledge or other disposition shall not be binding on the IAEA.

17. SURVIVAL: The obligations set forth in Articles 6, 7, and 12 of these General Conditions of Contract shall not cease upon completion, expiration or termination of the Contract.

18. TAX EXEMPTION:

18.1 The Contractor shall not invoice or charge the IAEA for any taxes, fees or duties, unless required to do so by the relevant national authorities after consideration of the privileges and immunities accorded to the IAEA by its Member States. Any such requirement shall be in writing and submitted to the IAEA. The Contractor shall collaborate with the IAEA on a best effort basis in order to achieve tax exemption in the relevant country. If it is determined that any exempt taxes have nevertheless been included in the price, the IAEA may deduct the exempt amount at the time of payment. Payment of such reduced amount shall constitute full payment by the IAEA.

18.2 The IAEA is exempted from Value Added Tax (VAT) in the territory of the European Union (EU) in accordance with EU Directive 2006/112/EC - Article 151 (previously EU VAT Directive 77/388/EEC - Article 15 paragraph 10). Contractors located in EU countries shall not include VAT in the invoices to the IAEA. VAT will not be paid by the IAEA to EU contractors. Only contractors located in Austria will be paid the net amount plus VAT. Contractors should refer on the invoice to the above EU Directive or to the relevant VAT law applicable in the Contractor's country. The IAEA will provide a certificate of exemption only upon request.

19. AUDITS: Each invoice paid by the IAEA shall be subject to a post-payment audit by auditors, whether internal or external, of the IAEA or by other authorized or qualified agents of the IAEA at any time during the term of the Contract and for a period of three (3) years following the expiration or termination of the Contract. The IAEA shall be entitled to a refund from the Contractor for any amount shown by such audits to have been paid by the IAEA other than in accordance with the terms and conditions of the Contract.

20. SETTLEMENT OF DISPUTES:

20.1 The Parties shall use their best efforts to amicably settle any dispute, controversy, or claim relating to this Contract. In the event of a failure to reach an amicable settlement within one hundred and eighty (180) days after receipt by one Party of the other Party's written request for such amicable settlement, either Party shall have the right to refer such dispute, controversy, or claim to arbitration, in accordance with the UNCITRAL Arbitration Rules then in effect. The number of arbitrators shall be one. The place of arbitration shall be Vienna, Austria. The language of the arbitration shall be English. The decisions of the arbitrator shall be final and binding on the Parties. Any arbitral proceedings in accordance with this Article must be commenced within three (3) years after receipt of notice by one Party of the other Party's written request for amicable settlement.

20.2 The arbitrator shall have no authority to award punitive damages or to award interest in excess of two per cent (2 %), and any such interest shall be simple interest only.

21. PRIVILEGES AND IMMUNITIES: Nothing in the Contract or any related notices and amendments shall be construed as a waiver of the privileges and immunities accorded to the IAEA by its Member States.

22. DELIVERY OF GOODS: The Contractor shall deliver the goods in accordance with terms and dates specified in the Contract. INCOTERMS 2010 or any further version in force at the date of signature of the Contract shall apply. Partial deliveries are not acceptable unless as agreed in advance with the IAEA. The Contractor shall ensure that the IAEA or any freight forwarder designated by the IAEA receives all necessary transport, export and custom documents/authorisations in a timely manner.

23. EXPORT LICENSES: The Contractor shall be responsible for obtaining any export license required with respect to the goods, products, materials or technologies (including software, whether separate or embedded) sold, delivered, licensed or otherwise provided to the IAEA or any recipient third party indicated by the IAEA under the Contract. It is the responsibility of the Contractor to procure any such export license in an expeditious manner.

23.1 **Dangerous Goods and Radioactive Materials:** In addition to the above, the Contractor acknowledges and agrees that, with respect to any obligations related to the export or transportation or delivery of Dangerous Goods or Radioactive Materials to any country indicated by the IAEA as recipient of such goods or materials, any delays or failure to perform such obligations arising from or relating to missing or delayed authorisation or permissions shall not, in and of itself, constitute a cause of *Force Majeure* under the Contract. Should any Governmental entity refuse, delay or hinder Contractor's ability to obtain any such export license, the Contractor shall promptly consult with the IAEA to discuss possible measures to resolve the matter.

24. PACKING: The Contractor shall package the goods appropriately for the modes of transport to be used (land, sea, air) and, where appropriate, the relevant international modal dangerous goods regulations, including, at a minimum, the “Regulations for the Safe Transport of Radioactive Material”, 2012 Edition, SSR-6 and any revisions thereto. The Contractor shall be responsible for any damage or loss resulting from faulty or inadequate packing.

25. PRODUCT WARRANTY: Without prejudice to any other warranties, remedies or rights of the IAEA stated in or arising under the Contract, the Contractor warrants and represents that the goods are: (i) new and unused, of good quality, free from defects in workmanship, material and design; (ii) fit for the purposes ordinarily used and for any purposes expressly made known to the Contractor and conform with the requirements and specifications of the IAEA; and (iii) free from any right of claim by any third-party, including claims of infringement of any IPRs, including, but not limited to, patents, copyright and trade secrets.

25.1 All warranties will remain fully valid following any delivery of the goods and for a period of not less than twelve (12) months as of the date of acceptance of the goods by the IAEA, or, if no claims for defects or non-conformities are made, eighteen (18) months after shipment in accordance with the IAEA’s instructions, whichever date is earlier.

25.2 In case the IAEA claims defects or non-conformities of the goods and it is not possible to restore the required functionality of the goods or parts thereof, the Contractor shall, at the discretion of the IAEA, either replace the defective or non-conforming goods, or provide an alternative solution and reduce the Contract price accordingly or return the goods or parts thereof and reimburse any payments made by the IAEA under the Contract. Cost of repairing, replacing or returning goods shall be borne by the Contractor.

25.3 Except as otherwise agreed in writing, spare parts shall be kept available until at least five (5) years after completion of the Contract.

26. INSPECTION AND ACCEPTANCE: The IAEA shall have a reasonable time after delivery of the goods to inspect/test them, and to reject or refuse acceptance of goods that do not conform to the IAEA requirements or specifications in accordance with Article 25.2 above; the payment for such goods shall not be deemed an acceptance. Acceptance shall not release the Contractor from any warranty or other obligations under the Contract.

27. DEFAULT OF THE CONTRACTOR:

27.1 In case of failure by the Contractor to obtain the necessary export licences or to deliver all or part of the goods by the agreed delivery dates, the IAEA may, after giving the Contractor reasonable notice to perform and without prejudice to any other rights or remedies, exercise one or more of the following rights: (i) procure all or part of the goods from other sources, in which event the IAEA may hold the Contractor responsible for any additional costs beyond the balance of the Contract price resulting from any such procurement, including the costs of engaging in such procurement; (ii) refuse to accept late delivery of all or part of such goods, or (iii) declare the Contract avoided or terminate the Contract for the part not delivered.

27.2 The IAEA shall not be liable for any cost incurred by the Contractor in connection with goods that have been procured and not delivered or any other remedy expenses incurred by the Contractor.