

# General Conditions of CERN Contracts

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# GENERAL CONDITIONS OF CERN CONTRACTS

The European Organization for Nuclear Research is an intergovernmental organisation with its seat in Geneva, Switzerland. Its facilities are located on either side of the border between Switzerland and France. By virtue of its international legal status, the Organization enjoys certain privileges and immunities in its Member States<sup>1</sup>.

## Definitions

For the purpose of the General Conditions of CERN Contracts (hereinafter referred to as the “General Conditions”):

- The term “Associate Member State(s)” shall mean both associate member state(s) and associate member state(s) in the pre-stage to membership of CERN, except where expressly stipulated otherwise.
- The term “CERN” shall mean the European Organization for Nuclear Research.
- The term “Confidential Information” shall mean any information related to the Contract that has been identified as confidential or that can reasonably be understood to be confidential.
- The term “Contract” shall mean a contract, a purchase order or any other agreement with CERN for the delivery of Supplies or the provision of Services.
- The term “Contractor” shall mean the Party(ies) other than CERN that has (have) entered into the Contract.
- The term “Country(ies) of Origin” shall mean:  
For Supplies: the country(ies) of manufacture or last major transformation of the Supplies (including sub-assemblies and components) by the Contractor and its subcontractor(s);  
For Services: the country(ies) in which the Contractor and its subcontractor(s) are established.
- The terms “Day”, “Week” and “Month” shall mean a calendar day, week or month and shall, except where expressly stipulated otherwise, exclude the period of CERN’s end-of-year closure.
- The term “Equipment” shall mean any infrastructure, premises or equipment made available by CERN for the performance of the Contractor’s obligations under the Contract but shall exclude any materials.
- The term “Force Majeure” shall mean any circumstances beyond the reasonable control of the Party invoking Force Majeure, including acts of nature, fire and war, which prevent it, wholly or partially, from performing its obligations under the Contract. Strikes and other labour conflicts that do not form part of an industry-wide conflict shall not constitute Force Majeure. A default by a subcontractor shall in no event constitute Force Majeure for the Contractor if it is not due to any of the circumstances defined above as Force Majeure.

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<sup>1</sup> <http://home.cern/about/member-states>

- The term “Group of Firms” shall mean a consortium, joint venture or any other arrangement concluded between legal entities for the joint execution of the Contract but shall exclude any subcontractors. The terms “Party” and “Contractor” shall include each and every member of the Group of Firms.
- The term “Intellectual Property” shall mean all intellectual property, including know-how, in its various forms such as drawings, designs, documents, inventions, software programmes, reports, processes and protocols, that is protected by means such as secrecy, patents, copyrights and trademarks.
- The term “Laws” shall mean all CERN rules and regulations relevant for the execution of the Contract and all laws, treaties, rules, regulations and orders of any local, national or other authority having jurisdiction over the Contractor.
- The term “Member State(s)” shall mean both full member state(s) and Associate Member State(s) of CERN, except where expressly stipulated otherwise.
- The terms “Party” and “Parties” shall mean the party that has, or the parties that have, entered into the Contract.
- The term “Subcontract(s)” shall mean any arrangement whereby the Contractor contracts with another legal entity (the subcontractor), except legal entities under its direct control, for the delivery of a major part of the Supplies (including sub-assemblies and components) or any part of the provision of the Services. The term “Subcontract(s)” shall include sub-subcontract(s).
- The terms “Supplies” and “Services” shall include each and every part thereof.

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## **1. Applicability**

The General Conditions shall apply to Contracts in which it is stipulated that they apply. Any reference made to a clause shall be understood as a reference to a clause in the General Conditions. Where a Contract for the purchase of Supplies includes the provision of Services, the clauses concerning Services shall apply to such Services, and where a Contract for the purchase of Services includes the delivery of Supplies, the clauses concerning Supplies shall apply to such Supplies.

## **2. Entry into force of the Contract**

The Contract shall be signed by the authorised signatory(ies) of the Parties, and shall enter into force upon signature by the last of the Parties to sign. However, the Contract shall also apply to any activities in relation to the Contract that are performed by the Contractor, at the written request of the CERN Procurement Service, before the entry into force of the Contract.

## **3. Performance of the Contract**

- 3.1 By signing the Contract, the Contractor confirms its acceptance of the Contract and that it is fully conversant with all the requirements of the Contract and all the conditions associated with the performance of its obligations under the Contract, and that the Contract price is sufficient to meet such requirements and obligations.
- 3.2 The Contractor shall perform its obligations under the Contract with skill, care and diligence and in accordance with professional standards and the state of the art.
- 3.3 Where the Contractor seeks CERN's permission or approval, the granting thereof shall not release the Contractor from the performance of its obligations under the Contract or from any liability.
- 3.4 The Contractor shall forthwith notify CERN in writing of any circumstance, including in relation to its Subcontract(s), that affects or threatens to affect the performance of its obligations under the Contract, failing which it shall in no event be entitled to claim compensation of costs, an extension of time or any other remedy in relation to the circumstance concerned. It shall take such measures as are required to mitigate the consequences of any such circumstance for the Contract.

## **4. Documents constituting the Contract**

- 4.1 The Contract shall comprise the documents listed below, where they exist, including any amendments thereto:
  - the terms;

- the service level agreement;
- the delivery schedule;
- the technical specification;
- the other annexes, excluding the invitation to tender and the General Conditions;
- the invitation to tender, excluding the General Conditions;
- the General Conditions;
- the Contractor's bid, including any order confirmation or document submitted by the Contractor and accepted in writing by the CERN Procurement Service.

In the event of any ambiguity or contradiction between these documents, they shall apply in decreasing order of priority, starting from the top.

- 4.2 Notwithstanding clause 4.1, the Contract shall in no event be subject to the Contractor's general conditions, whether or not they form part of its bid or are referred to in any correspondence between the Parties.
- 4.3 If any provisions of the Contract are or subsequently become invalid for any reason, the remaining provisions shall remain in full force and effect.

## **5. Group of Firms**

- 5.1 If the Contractor is a Group of Firms, the Contract shall be signed by the authorised signatory(ies) of each member of the Group of Firms.
- 5.2 The Contractor shall not change the following without prior written permission from the CERN Procurement Service:
- the lead firm representing the Group of Firms;
  - the composition of the Group of Firms;
  - the percentage shares of the amount of the Contract, or of the obligations under the Contract, of each member of the Group of Firms.
- 5.3 CERN may terminate the Contract in whole or in part with immediate effect if the Contractor makes any of the above changes without prior written permission from the CERN Procurement Service.

- 5.4 Each member of the Group of Firms shall be jointly and severally liable for the performance of the Contractor's obligations under the Contract.

## **6. Country of Origin**

- 6.1 Any change of the Country(ies) of Origin or of the percentage breakdown of the amount of the Contract between the Country(ies) of Origin shall require prior written permission from the CERN Procurement Service.
- 6.2 CERN may terminate the Contract in whole or in part with immediate effect if the Contractor makes such a change without prior written permission from the CERN Procurement Service.

## **7. Representatives and correspondence**

- 7.1 Each Party shall be represented exclusively by, and all notices and correspondence concerning the Contract shall be communicated exclusively by and to, its contact person(s) or the unit(s) of the Parties appointed to deal with the matter concerned. Any communication by or to any other person(s) or unit(s) shall have no effect under the Contract.
- 7.2 If a Party's contact person or unit is not named in the Contract, that Party shall forthwith notify the other Party in writing of the contact person(s) or unit(s) appointed to represent it.
- 7.3 Each Party shall notify the other Party forthwith, in writing, of any change of contact person, unit or address.

## **8. Subcontracting**

- 8.1 The Contractor shall not, without prior written permission from the CERN Procurement Service, subcontract the performance of its obligations under the Contract to any other subcontractor(s) than that (those) named in the Contract.
- 8.2 Any permission given by CERN to subcontract shall apply exclusively to the specified subcontracted obligation(s) and to the specified subcontractor(s) and may be subject to conditions, it being understood that in any event:
- the Contractor shall not subcontract to a single subcontractor Supplies and Services representing a total amount exceeding 50% of the value of the Contract;
  - obligations to be performed on the CERN site shall not be sub-subcontracted; and

- the management of the Contract shall not be subcontracted.
- 8.3 The Contractor shall inform its subcontractor(s) of all provisions of the Contract that are relevant to the performance of the Subcontract(s). The Contractor shall ensure that its Subcontract(s) is (are) consistent with the provisions of the Contract.
- 8.4 The Contractor shall inform its subcontractor(s) of CERN's status as an intergovernmental organisation, with its seat in Geneva, Switzerland, from which it follows *inter alia* that any disputes of a commercial nature are not subject to national jurisdiction but decided by arbitration.
- 8.5 The Contractor shall comply with its obligations under the Subcontract(s).
- 8.6 Any subcontracting shall automatically entail the Contractor's agreement that, in the event of a breach of any of the Contractor's obligations towards the subcontractor(s), CERN shall be entitled to exercise the Contractor's rights and perform the Contractor's obligations under the Subcontract(s). To this end, the Contractor shall include the necessary provisions in the Subcontract(s).
- 8.7 Any permission given by CERN shall not release the Contractor from its liability for the performance of the subcontracted obligation(s). The Contractor shall hold CERN free and harmless from, and indemnify it for, any loss or damage, including legal costs, arising from any claim related to the performance of such obligation(s).
- 8.8 CERN may terminate the Contract in whole or in part with immediate effect if the Contractor subcontracts the performance of any of its obligations under the Contract without prior written permission from the CERN Procurement Service or fails to comply with any of the conditions attached to any permission given by CERN.

## **9. Assignment**

- 9.1 The Contractor shall not assign to a third party any part of its obligations under the Contract without prior written permission from the CERN Procurement Service. Any such permission may be subject to conditions.
- 9.2 CERN may terminate the Contract in whole or in part with immediate effect if the Contractor assigns to a third party any part of its obligations under the Contract without prior written permission from the CERN Procurement Service.



**10. Compliance with the Laws**

- 10.1 The Contractor shall comply with the Laws, and shall hold CERN free and harmless from, and indemnify CERN for, any loss or damage, including legal costs, arising from their infringement.
- 10.2 CERN may terminate the Contract in whole or in part with immediate effect in the event of infringement of the Laws by the Contractor.

**11. Personnel**

- 11.1 The personnel assigned by the Contractor to the Contract shall at all times remain under the Contractor's sole direction and responsibility. The Contractor shall ensure that authorisations for access to the CERN site granted to its personnel are used for the exclusive purpose of the performance of the Contractor's obligations under the Contract.
- 11.2 CERN may refuse access to its site to any personnel assigned by the Contractor to the Contract who fail to comply with the Laws or whose presence on the CERN site is deemed undesirable by CERN.
- 11.3 The Contractor shall be liable for the consequences of such refusal of access for the performance of its obligations under the Contract.

**12. Use of CERN images, logos and names**

The Contractor shall not use or make reference to any images depicting or belonging to CERN, the CERN logos or any of the names under which CERN is known without prior written permission from the CERN Procurement Service. Any permission shall expire upon termination of the Contract. CERN may withdraw any permission granted pursuant to clause 12 at any time.

**13. Confidentiality**

- 13.1 The Contractor shall keep confidential and shall not, without prior written permission from CERN, disclose Confidential Information to a third party or use it for any purpose other than the performance of its obligations under the Contract. The Contractor shall not distribute Confidential Information except on a strictly need-to-know basis and shall ensure that the recipients are aware of and comply with the obligations defined in clause 13.
- 13.2 Notwithstanding clause 13.1, the Contractor shall be entitled to disclose any Confidential Information that it is required by law to disclose. It shall notify CERN of such disclosures and shall ensure that the recipients are aware of and comply with the obligations defined in clause 13.1.

- 13.3 The Contractor shall continue to comply with the obligations defined in clause 13 for a period of five years from the date of disclosure of the Confidential Information.
- 13.4 The obligations defined in clauses 13.1 and 13.3 shall not apply in respect of Confidential Information:
- that has become public knowledge due to circumstances other than a breach by the Contractor of these obligations; or
  - that the Contractor has obtained from a third party in a lawful manner without any obligation of confidentiality; or
  - that the Contractor has generated independently of the Contract.

#### **14. Intellectual Property**

- 14.1 The disclosure of Intellectual Property by CERN to the Contractor shall not create any right for the Contractor in respect of that Intellectual Property, other than a licence to use the Intellectual Property in so far as necessary for the performance of its obligations under the Contract.
- 14.2 The disclosure of Intellectual Property by CERN to the Contractor shall be without any warranty, express or implied, by CERN and CERN shall accept no liability in relation to such disclosure. The Contractor shall be solely liable for the use it makes of any Intellectual Property disclosed by CERN.
- 14.3 All Supplies delivered and Services provided by the Contractor shall be deemed to include a licence for any Intellectual Property necessary for the free and unlimited use of such Supplies and Services, including for their repair, modification and replacement by CERN or by any third party designated by CERN, within the scope of CERN's activities.
- 14.4 The Contractor shall ensure that the use of Intellectual Property within the scope of clause 14.3 does not infringe third-party Intellectual Property rights and shall hold CERN free and harmless from, and indemnify it for, any loss or damage, including legal costs, arising from any claim related to the use by CERN of the Intellectual Property.
- 14.5 Any Intellectual Property generated in the performance of the Contract shall be vested exclusively in CERN, and the Contractor shall execute all documents and perform all actions required by CERN to ensure such vesting.
- 14.6 Subject to the conclusion of a written agreement specifying the applicable licence conditions, CERN shall grant the Contractor a licence to use the Intellectual Property generated in the performance of the Contract.

**15. Equipment and materials made available by CERN**

- 15.1 CERN shall, at its own expense, replace or repair any Equipment and materials made available to the Contractor by CERN, provided that the Contractor notifies CERN in writing of any defect forthwith and in any event not later than two Weeks after taking receipt of them. The Contractor shall not be liable for any delay incurred in so far as it has resulted from any such replacement or repair, provided that the Contractor has made all reasonable efforts to mitigate the consequences of such delay for the performance of its obligations under the Contract.
- 15.2 The Contractor shall use the Equipment and materials exclusively for the performance of its obligations under the Contract.
- 15.3 Without prejudice to clause 15.1, the Contractor shall be solely liable for the use of the Equipment and materials until their return to CERN pursuant to clause 15.5. CERN accepts no liability for such Equipment and materials, which it makes available in their existing condition and without any express or implied warranty.
- 15.4 The Contractor shall, at its own expense and in accordance with professional standards and CERN instructions, maintain the Equipment and materials and replace or repair them if lost or damaged. The Contractor shall notify CERN forthwith in writing of its intention to replace or repair carried out on the Equipment and materials.
- 15.5 The Contractor shall, forthwith and at its own expense, return the Equipment and any remaining materials to CERN as soon as it has finished using them. The Contractor shall be liable for any use of materials in excess of that agreed, but shall not be liable for normal wear and tear of the Equipment or normal deterioration of the materials.
- 15.6 Ownership of the Equipment and materials shall remain vested in CERN. The Contractor shall take such measures as may be necessary to make known and protect CERN's ownership, including by indicating such ownership in a visible and legible manner on the Equipment and materials.

**16. Activities on the CERN site**

The Contractor shall not perform any activity or establish premises on the CERN site other than as stipulated in the Contract.

**17. Monitoring**

In order to monitor the performance of the Contractor's obligations under the Contract, CERN and any party designated by CERN shall be entitled to visit the premises of the Contractor and its subcontractor(s). If CERN requests that it or any party designated by it witness any tests or measurements that are to be performed by the Contractor or its subcontractor(s), the Contractor

shall give CERN reasonable prior written notice of the date(s) and place(s) of such tests and measurements. In the event of failure by the Contractor to give such notice, CERN shall be entitled to require at any time that such tests and measurements be repeated at the expense of the Contractor, which shall be liable for any delay resulting therefrom.

## **18. Documents**

The Contractor shall, until the end of the warranty period, keep available for inspection by CERN and any party designated by CERN all documents prepared by the Contractor and its subcontractor(s) for the purpose of the performance of the Contract. The Contractor shall, upon CERN's first written request, provide copies of such documents for use by CERN and/or transfer the original documents to CERN.

## **19. Delivery**

- 19.1 The Contractor shall not, without prior written permission from CERN, deliver Supplies and provide Services at any date(s) or place(s) other than as specified in the Contract.
- 19.2 The Contractor shall complete all formalities necessary for the delivery of Supplies and the provision of Services in accordance with the Contract, and shall be liable for any related costs or delay.
- 19.3 Supplies shall be packaged in a manner suitable for safe transportation, handling and storage. The reference number of the Contract shall be clearly indicated on the packaging.
- 19.4 Any delivery receipt issued by CERN for Supplies shall solely constitute evidence of the number of separate packages received and the condition of the external packaging. It shall not constitute evidence that a specific quantity of Supplies has been received, or that the Supplies are in suitable condition or perform properly, or that they are in any other respect in conformity with the Contract.
- 19.5 CERN may refuse the delivery of Supplies in the event of an incorrect number of packages, damaged packaging, manifestly damaged Supplies or failure to complete the necessary formalities.
- 19.6 CERN may refuse the delivery of the Supplies and the provision of the Services and terminate the Contract in whole or in part with immediate effect if:
- CERN is informed by the Contractor that it will not be able to deliver the Supplies or provide the Services in conformity with the Contract and, as a result, their delivery or provision loses its purpose for CERN; or

- the date of delivery of the Supplies or the provision of the Services is not in conformity with the Contract and leaves insufficient time to carry out the acceptance procedure defined in clause 21.

## **20. Changes required by CERN**

- 20.1 CERN may at any time change the date(s) and/or place(s) of the delivery of the Supplies and the provision of the Services by giving the Contractor prior written notice. Such changes shall affect only the date(s) and/or place(s) of the delivery of the Supplies and the provision of the Services concerned.
- 20.2 In addition to its entitlement pursuant to clause 20.1, CERN may at any time suspend, with immediate effect, any part of the performance of the Contractor's obligations under the Contract. CERN shall inform the Contractor of the expected duration of the suspension based on the information available and shall give the Contractor notice to resume the performance of its obligations under the Contract.
- 20.3 If CERN postpones the delivery of the Supplies, the Contractor shall, during the period of postponement, store, preserve, protect and otherwise make safe the Supplies. These measures shall be free of charge for CERN during a period of two Months.
- 20.4 Except as provided in clause 20.3, CERN shall compensate the Contractor for all costs wholly and necessarily incurred by the Contractor as a result of any change required by CERN pursuant to clause 20.

## **21. Acceptance procedure**

- 21.1 The Contractor shall notify CERN in writing of the completion of the delivery of the Supplies and the provision of the Services and, if applicable, the completion of any remedial measures taken pursuant to clause 21.3 or clause 25. CERN shall be entitled to carry out a detailed inspection, including acceptance tests and measurements, to verify the conformity of the Supplies and Services with the Contract.
- 21.2 The Supplies and Services shall be deemed to have been accepted by CERN with effect from the earlier of the following events:
- issue of written notice of acceptance by CERN; or
  - payment by CERN of the full price of the Supplies and Services.
- 21.3 If any Supplies or Services are not in conformity with the Contract, CERN shall notify the Contractor thereof in writing. In that event, the Contractor shall forthwith, and at its own

expense, take such remedial measures, including replacement if necessary, as required to ensure their conformity, whereupon the procedure defined in clause 21 shall apply anew.

- 21.4 Notwithstanding clause 21.3, in the event of non-conformity, CERN may terminate the Contract in whole or in part with immediate effect if, as a result of the time required for the remedial measures to be implemented and taking into account the specific nature of the Supplies or Services concerned, as such nature results from the Contract, their delivery or provision loses its purpose for CERN.
- 21.5 If a period of three Months from the date on which the Contractor has given the notification referred to in clause 21.1 lapses without either of the events defined in clause 21.2 occurring, or without CERN advising the Contractor in writing that the Supplies or Services are not in conformity with the Contract, the Supplies and Services shall be deemed to have been accepted by CERN on the Day following the end of that period.
- 21.6 Ownership of the Supplies shall automatically be transferred to CERN upon their acceptance by CERN.

## **22. Contract price**

- 22.1 The Contract Price shall be net, firm and inclusive of all costs relating to the performance of the Contractor's obligations under the Contract and shall take into account CERN's exoneration from VAT and import duties.
- 22.2 Where the Contract provides for a price revision mechanism, this shall not apply where the Supplies are delivered or the Services provided within the period covered by the revision as a result of a delay for which the Contractor is responsible. Any price revision shall in any event be limited to the compensation of cost increases actually incurred by the Contractor in the performance of its obligations under the Contract within the period covered by the price revision.

## **23. Invoicing and payment**

- 23.1 The Contractor shall submit its invoice to CERN in accordance with such instructions as CERN may give but in any event not later than three Months following the acceptance of the Supplies and Services pursuant to clause 21.
- 23.2 The invoice shall be paid by CERN within one Month from its receipt or one Month from acceptance by CERN of the Supplies and Services pursuant to clause 21, whichever occurs later, provided that:
- the invoice is correct and has been submitted in accordance with clause 23.1; and

- the Contractor has submitted all other documents that it is required under the Contract to submit to CERN prior to payment of the invoice.

23.3 Where an amount is payable by the Contractor to CERN under the Contract, CERN may deduct the same from any amount payable by it to the Contractor.

## **24. Bank guarantee**

24.1 If so required by CERN, the Contractor shall provide a bank guarantee for the performance of its obligations under the Contract. The guarantee must be issued by a bank approved by CERN, for the amount stipulated in the Contract and in the exact format specified in Annex I.

24.2 No advance payment shall be payable by CERN until the Contractor has provided a bank guarantee pursuant to clause 24.1.

24.3 If the expiry date of the bank guarantee is linked to a date or a milestone stipulated in the Contract, the Contractor shall, whenever the date or the milestone changes, immediately extend the bank guarantee until the amended date or the amended date of the milestone. The Contractor shall provide CERN with proof of the extension as soon as it has been obtained.

24.4 Failure to extend the bank guarantee shall entitle CERN to draw on it. The Contractor shall be entitled to repayment (without interest) of the amount drawn by CERN within one Month of:

- the replacement by the Contractor of the bank guarantee by a bank guarantee extended to the amended date or to the amended milestone; or
- the amended date or the amended milestone;

provided that no event has occurred in the meantime entitling CERN to draw on the bank guarantee for other reasons than those defined in clause 24.4.

## **25. Warranty**

25.1 Except where the law governing the Contract provides for a longer period, the Contractor shall warrant the conformity with the Contract of the Supplies and Services, including their proper performance, for a period of two years from the date of their acceptance pursuant to clause 21.

25.2 The Contractor shall forthwith, at its own expense, take all necessary measures to remedy any defect of which CERN has notified it during the warranty period. This obligation shall extend to all Supplies and Services under warranty at the time of notification of the defect, that are likely to suffer from the same defect. The Contractor shall notify CERN in writing as soon as such remedial measures have been taken, whereupon the acceptance procedure defined in clause 21 shall apply anew.

- 25.3 If the Contractor fails to meet any of its obligations as defined in clause 25.2, CERN shall, at the Contractor's expense, be entitled to carry out the remedial measures itself or through a third party of its choice. In that event, the Contractor shall provide such assistance and take such measures as may be necessary to enable CERN or the third party to carry out the remedial measures. CERN's entitlement shall be without prejudice to the Contractor's obligations defined in clause 25 and to any other right or remedy CERN may have in such circumstances.
- 25.4 Except where Supplies are replaced, the warranty period for all Supplies and Services affected by the remedial measures shall be extended by a period equal to the time that has elapsed between notification by CERN of the non-conformity and acceptance of the Supplies and Services concerned pursuant to clause 21. Where Supplies are replaced, a new warranty shall apply to the replacement Supplies upon their acceptance by CERN pursuant to clause 21, under the same conditions as the initial warranty according to clause 25.1.
- 25.5 CERN shall, at the Contractor's expense, be entitled to dispose of any replaced Supplies that have not been collected within one Month of the date of replacement.
- 25.6 The Contractor shall be liable for all costs, including the cost of any expert assessment, transport or insurance, arising from or related to its warranty obligations pursuant to clause 25.

## **26. Force Majeure**

- 26.1 If a Party is subject to Force Majeure it shall forthwith notify the other Party in writing thereof, giving details, including the expected duration of the Force Majeure. It shall forthwith notify the other Party in writing when the Force Majeure ceases.
- 26.2 The Party that is subject to Force Majeure shall, for the duration of the Force Majeure and subject to clause 26.1, be released from the performance of its obligations to the extent that such performance is affected by the Force Majeure. Such Party shall make all reasonable efforts to minimise the consequences of the Force Majeure for the performance of the Contract.
- 26.3 Each Party shall be responsible for all direct and indirect financial consequences affecting it as a result of or in connection with the Force Majeure. The occurrence of Force Majeure shall not entitle either Party to any additional payment or compensation.
- 26.4 If the Force Majeure continues for a consecutive period of two Months or more, the other Party shall be entitled to terminate the Contract in whole or in part with immediate effect without any liability for either Party, except for liability that has accrued prior to the date on which the termination of the Contract takes effect.



**27. Liability**

27.1 Each Party shall hold the other Party free and harmless from, and indemnify it for, any loss, damage and related legal costs resulting from its acts or omissions under the Contract, including but not limited to loss and damage resulting from personal injury and death.

27.2 Except in the event of gross negligence or wilful misconduct on its part, a Party shall not be liable to the other for loss of contract, loss of income or revenue, loss of customers or reputation or any other indirect or consequential loss or damage.

27.3 Except in the case of:

- liability pursuant to clause 10.1 or clause 14.4;
- liability resulting from personal injury or death; and
- liability resulting from gross negligence or wilful misconduct;

each Party's total liability under the Contract shall be limited to the highest of the following amounts:

- the Contract price;
- 1.000.000 CHF;
- the amount of the insurance cover under the liable Party's applicable insurance policy.

27.4 The Contractor shall take out insurance to cover its liability under the Contract and shall provide evidence of this insurance cover if so requested by CERN.

**28. Termination by either Party**

In addition to the entitlement to terminate the Contract pursuant to clause 26.4, a Party may terminate the Contract in whole or in part with immediate effect in the event of:

- gross negligence or wilful misconduct by the other Party in relation to the Contract, including fraud, attempted corruption, corruption and misrepresentation; or
- any breach of Contract by the other Party that has not been remedied within the period stipulated by the Party notifying the breach and requesting remedial action. It is understood, however, that, without prejudice to any other entitlement to terminate pursuant to the Contract, if penalties are payable for a specific breach of Contract, the entitlement to terminate as a result of such breach shall only accrue once the maximum amount of penalties specified in the Contract has become due; or

- the other Party making a composition or arrangement with its creditors, or becoming bankrupt or insolvent, or having an administrator or receiver appointed, or in the event of any circumstance similar or analogous to any of these events, occurring or threatening to occur.

## **29. Termination at will by CERN**

In addition to the entitlement to terminate the Contract pursuant to clauses 5.3, 6.2, 8.8, 9.2, 10.2, 19.6 and 21.4, CERN may at any time terminate the Contract at will in whole or in part with immediate effect.

## **30. Consequences of termination**

- 30.1 In the event that the Contract is terminated in whole or in part by the Contractor pursuant to clause 28, or at will by CERN pursuant to clause 29, CERN shall compensate the Contractor for all costs wholly and necessarily incurred by the Contractor in the performance of its obligations under the Contract prior to the date on which the termination takes effect. For Supplies, the total amount of such compensation shall not exceed the part of the Contract price that remains unpaid by CERN at the date of termination. For Services, the total amount of such compensation shall not exceed the amount payable for the provision of the Services for a period of three Months, calculated on the basis of the average monthly Contract price paid by CERN prior to the date on which the termination takes effect.
- 30.2 In the event that the Contract is terminated in whole or in part by CERN pursuant to clauses 5.3, 6.2, 8.8, 9.2, 10.2, 19.6, 21.4 or 28, the Contractor shall compensate CERN for all costs wholly and necessarily incurred by CERN as a result of such termination. Such costs shall include the additional costs of having any contractual obligation performed by a third party of CERN's choice.
- 30.3 Subject to clause 27, the liability defined in clauses 30.1 and 30.2 shall be without prejudice to any other liability that may arise pursuant to the Contract, which shall be calculated independently.

## **31. Concessions and waivers**

No concession or waiver made by a Party in relation to a breach by the other Party shall affect its rights pursuant to the Contract, except to the extent that such rights are modified by the concession or waiver.

**32. Clauses surviving termination of the Contract**

Notwithstanding termination of the Contract, its provisions shall continue to bind the Parties in so far and for as long as may be necessary to give effect to their respective rights and obligations that have accrued prior to termination. Clauses 13, 14, 15, 24, 25, 27, 32, 34 and 35 shall in any event survive the termination of the Contract.

**33. Communication in writing**

Whenever the Contract stipulates that information is to be communicated in writing, the requirement shall be deemed to have been met if the information is communicated by letter or electronic mail, it being understood that the burden of proving that the information has been communicated shall at all times remain with the issuing Party. Written communication shall be deemed to have taken place on the date of receipt of such notification by the receiving Party.

**34. Governing law**

34.1 The provisions of the Contract shall be interpreted in accordance with their true meaning and effect.

Without prejudice to CERN's status as an intergovernmental organisation, reference shall be made to Swiss substantive law where:

- a matter is not specifically covered by the Contract; or
- a Contract provision is ambiguous or unclear.

34.2 Such reference shall be made exclusively for the matter or the Contract provision concerned, and shall in no event apply to the other provisions of the Contract.

34.3 The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

**35. Arbitration**

35.1 If any dispute under the Contract fails to be settled amicably, the Parties shall resort to the arbitration procedure defined in clauses 35.2 to 35.8 inclusive, drawn up by CERN in accordance with its status as an intergovernmental organisation. Notwithstanding the reference of any dispute to arbitration, the Parties shall continue to perform their obligations under the Contract.

35.2 Within thirty Days of a Party giving to the other Party written notification of its intention to resort to arbitration, the first Party shall appoint an arbitrator. The second Party shall appoint

an arbitrator within three Months of the appointment of the first arbitrator. The two arbitrators shall, by joint agreement and within three Months of the appointment of the second arbitrator, select a third arbitrator, who shall subsequently be appointed by the Parties to preside over the arbitration tribunal.

- 35.3 If the second Party fails to appoint an arbitrator or if the two arbitrators fail to agree on the selection of a third arbitrator, the second or, as the case may be, the third arbitrator, shall be selected by the President of the Administrative Tribunal of the International Labour Organization, established in Geneva, Switzerland, and shall subsequently be appointed by the Parties, at the request of the first Party to do so.
- 35.4 None of the arbitrators shall be drawn from amongst persons who are or have been in any way in or at the service of CERN or the Contractor or any subsidiary or affiliate of the latter or who have any other conflict of interest. The arbitrators shall act impartially in the execution of their duties.
- 35.5 The arbitration proceedings shall take place in Geneva. The parties shall agree on the terms of reference of the arbitration tribunal, including the procedure to be followed, within thirty Days of the appointment of the third arbitrator.
- 35.6 The arbitration tribunal shall faithfully apply the Contract and shall set out in its award the detailed grounds for its decision. The costs of the arbitration, including all reasonable fees expended by the Parties, shall be borne by the unsuccessful Party or Parties and the award shall specify how such costs are to be divided. The arbitration tribunal shall have no authority to award interest.
- 35.7 The arbitral award shall be final and binding upon the Parties, which hereby expressly renounce the right to any form of appeal or revision, whether ordinary or extraordinary, it being understood that each Party may, within two Weeks from the date of the award, request the arbitration tribunal to give a written interpretation of the award or to correct computational or typographical errors. The interpretation or correction shall be made known to the Parties within two Months from the date of the request and shall become part of the award. Until the date of the delivery by the arbitration tribunal of any requested interpretation or correction, the execution of the arbitral award shall be suspended.
- 35.8 Save to the extent required by law, the arbitral award shall not be published or its contents made known to any third party without the prior written approval of each Party.

## **36. Amendments**

Any amendment to the Contract shall enter into force only upon signature by the authorised representative(s) of each Party.

**37. Languages**

The English-language version and the French-language version of the General Conditions shall be equally authoritative, it being understood, however, that in the event of ambiguity between the two, the English language version shall prevail.

ANNEX 1

To: The European Organization for Nuclear Research  
CH-1211 Geneva 23

We, [name] \_\_\_\_\_ of [address and phone number] \_\_\_\_\_, have been informed by our clients, [name] \_\_\_\_\_ (“the Contractor”), that they have entered into contract [contract reference] \_\_\_\_\_ (“the Contract”) of [date of conclusion of Contract] \_\_\_\_\_ with the European Organization for Nuclear Research (“CERN”). Pursuant to the Contract, the Contractor is required to deliver a bank guarantee to CERN to guarantee the proper performance by the Contractor of its obligations under the Contract.

We, \_\_\_\_\_, hereby guarantee irrevocably and unconditionally, as primary obligor and not merely as a surety, to pay to CERN upon its first written request the amount stipulated by CERN, up to a maximum amount of [maximum amount] \_\_\_\_\_

We undertake to make this payment without any deduction, withholding, counterclaim, interpleader, limitation, condition, set-off or any right of objection on our part. We agree that there shall be no obligation on CERN to prove that the Contractor is in breach or that CERN has suffered any loss or damage, to show reasons for its request, or first to make request on or take any proceedings against the Contractor.

We agree that our liability under this guarantee shall not be discharged in whole or in part or otherwise affected by any reason whatsoever, except by our payment to CERN of the maximum amount stated above or by the expiry of this guarantee in accordance with that stated hereunder.

This guarantee shall remain valid and in full force and effect from the date hereof until/inclusive 30 Days from [date] \_\_\_\_\_, whereupon it shall cease to have effect, save in respect of any request notified to us prior to the expiry of the said period of 30 Days.

We confirm that our obligations under this guarantee are enforceable against us under the laws of the courts that have jurisdiction over our place of establishment. Where they are not enforceable under such laws, we hereby accept the application of Swiss law by such courts.

We agree that we shall not assign, charge or transfer this guarantee to any person under any circumstances.

Any notice or other communication under this guarantee shall be made by registered letter to the respective addresses set out above.

Date: \_\_\_\_\_

Signatures of authorised officer(s): \_\_\_\_\_