



ORGANISATION EUROPEENNE POUR LA RECHERCHE NUCLEAIRE
EUROPEAN ORGANIZATION FOR NUCLEAR RESEARCH

General Conditions of CERN Contracts

TABLE OF CONTENTS

Clause	Title	Page
	Definitions	1
1.	Applicability.....	3
2.	Entry into force of the Contract	3
3.	Performance of the Contract	3
4.	Documents constituting the Contract.....	3
5.	Group of Firms	4
6.	Country of Origin.....	4
7.	Representatives and correspondence	4
8.	Subcontracting	5
9.	Assignment and legal succession	5
10.	Compliance with Laws.....	6
11.	Personnel	6
12.	Use of CERN images, logos and names	6
13.	Confidentiality	6
14.	Intellectual Property	7
15.	Data Protection	7
16.	Equipment and materials made available by CERN	8
17.	Activities on the CERN site	8
18.	Monitoring	8
19.	Documents	9
20.	Delivery	9
21.	Changes required by CERN.....	9
22.	Acceptance procedure	10
23.	Contract Price.....	10
24.	Invoicing and payment.....	10
25.	Bank guarantee	11
26.	Warranty	11
27.	Force Majeure	12
28.	Liability	13
29.	Termination by either Party	13
30.	Termination at will by CERN.....	13
31.	Consequences of termination	13
32.	No-waiver	14
33.	Clauses surviving termination of the Contract.....	14
34.	Communication and information technology security	14
35.	Governing law	15
36.	Arbitration.....	15
37.	Amendments.....	15
38.	Languages.....	15
	ANNEX 1	16

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. Pursuant to its founding Convention, CERN fosters international scientific collaboration in fundamental particle physics research. CERN refrains from activities for military purposes and the results of its research are made generally available. By virtue of its international legal status, CERN enjoys certain privileges and immunities in its Member States¹, and nothing in the Contract (including any reference to external rules) shall constitute or be construed as a waiver by it of these privileges and immunities.

The headings and titles in these General Conditions of CERN Contracts shall not be taken as part thereof or be taken into consideration in the interpretation of the Contract, and where the context so permits, words in the singular shall be deemed to include the plural and *vice versa*.

Definitions

For the purpose of these General Conditions of CERN Contracts:

- “Associate Member State” shall mean both associate member states and associate member states in the pre-stage to membership of CERN, except where expressly stipulated otherwise.
- “CERN” shall mean the European Organization for Nuclear Research.
- “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.
- “Contract” shall mean a contract, a purchase order or any other written agreement with CERN for the delivery of the Supply and/or Services.
- “Contract Price” shall mean the price defined in the Contract, which may be expressed as a maximum and/or total estimated price as the case may be.
- “Contractor” shall mean the Party other than CERN that has entered into the Contract, including any legal successor not refused by CERN.
- “Country of Origin” shall mean:
 - For Supply: the country or countries of manufacture or last major transformation of the Supply (including sub-assemblies and components) by the Contractor and its Subcontractor as the case may be;
 - For Services: the country or countries in which the Contractor and its Subcontractor are established.
- “Day”, “Week” and “Month” shall mean a calendar day, week or month respectively and shall, except where expressly stipulated otherwise, exclude the period of CERN’s end-of-year closure.
- “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.

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

- “Force Majeure” shall mean any reasonably unforeseeable circumstances beyond the reasonable control of a Party, including pandemics, acts of nature, fire and war, and which prevent it, either 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.
- “Group of Firms” shall mean a consortium, joint venture or any other arrangement concluded between two or more legal entities for the joint performance of the Contract but shall exclude any Subcontractor. The terms “Party” and “Contractor” shall include each and every member of the Group of Firms.
- “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.
- “Laws” shall mean all CERN rules and regulations applicable to the performance of the Contract and all applicable laws, treaties, rules, regulations and orders of any local, national or other competent authority.
- “Member State” shall mean both full member states and Associate Member States of CERN, except where expressly stipulated otherwise.
- “Party” and “Parties” shall mean the party that has, or the parties that have, entered into the Contract, including any legal successor not refused by CERN.
- “Personal Data” shall mean any information relating to an identified or identifiable person.
- “Subcontract” shall mean any arrangement whereby the Contractor contracts with another legal entity (the “Subcontractor”), except a legal entity under its direct control or, in case the Contractor is a Group of Firms, a member of that Group of Firms, for the delivery of a major part of the Supply (including sub-assemblies and components) or any part of the provision of the Services. The terms “Subcontract” and “Subcontractor” shall include sub-subcontracts and sub-subcontractors, respectively.
- “Supply” and “Services” shall mean the supply and services as defined in the Contract. The terms “Supply” and “Services” shall include each and every part thereof. The term “delivery” shall mean the “provision” of Services or the “delivery” of Supply as the case may be.
- “Warranty Period” shall mean the period during which the Contractor shall warrant the conformity of the Supply and/or Services with the Contract and remain liable to remedy any non-conformity.

-- < ◇ > --

1. Applicability

These General Conditions of CERN Contracts shall apply to Contracts in which it is stipulated that they apply. Any reference herein made to a clause shall be understood as a reference to a clause in these General Conditions of CERN Contracts. Where a Contract for the procurement of a Supply includes the provision of ancillary activities, they shall be considered Services. Where a Contract for the procurement of Services includes a deliverable, it shall be considered as a Supply.

2. Entry into force of the Contract

The Contract shall be signed by the authorised signatory of each of the Parties, and shall enter into force upon signature by the last of the Parties to sign. Any measure taken by the Contractor in relation to the Contract before the entry into force of the Contract shall be subject to prior written approval from the CERN Procurement Service. The Contract shall also apply to any such approved measure.

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, or unit prices if the Contract Price is not fixed, is sufficient to meet all such requirements and obligations.
- 3.2. The Contractor shall perform its obligations under the Contract with due skill, care and diligence and in accordance with professional standards and the state of the art.
- 3.3. Where the Contractor seeks prior approval from CERN, 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 promptly notify CERN in writing of any circumstance (including in relation to its Subcontracts and any situation of conflict of interest) 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.
- 3.5. The Contractor, including its personnel, shall not be considered as an employee of CERN, nor behave in any way that could give such impression, and it shall not represent CERN without its prior written approval.

4. Documents constituting the Contract

- 4.1. The Contract shall comprise the documents listed below, where they exist, including any amendment thereto:
 - the terms;
 - the technical specification;
 - the other annexes, excluding the invitation to tender and these General Conditions of CERN Contracts;
 - the invitation to tender, excluding these General Conditions of CERN Contracts;
 - these General Conditions of CERN Contracts;
 - 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 terms and 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 of each member of the Group of Firms.
- 5.2. The Contractor shall not change any of the following without prior written approval 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 approval 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 of Origin or of the percentage breakdown of the amount of the Contract between the Countries of Origin shall require prior written approval 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 approval 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 or the unit appointed to handle the matter. Any communication by or to any other person or unit 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 notify the other Party promptly in writing of the contact person or unit appointed to represent it.
- 7.3. Each Party shall notify the other Party promptly, in writing, of any change of contact person, unit or address.

8. Subcontracting

- 8.1. The Contractor shall not, without prior written approval from the CERN Procurement Service, subcontract the performance of its obligations under the Contract to any other subcontractor than that named in the Contract, nor, in any other manner, cause the Contract to be performed by a third party.
- 8.2. Any approval given by CERN to the Contractor to subcontract shall apply exclusively to the specified subcontracted obligation and to the specified Subcontractor and may be subject to conditions, it being understood that in any event:
 - the Contractor shall not subcontract to a single subcontractor any Supply and/or Services representing a total amount exceeding 50% of the Contract Price;
 - obligations to be performed on the CERN site shall not be sub-subcontracted;
 - the management of the Contract shall not be subcontracted.
- 8.3. The Contractor shall inform its Subcontractor of all provisions of the Contract that are relevant to the performance of the Subcontract. The Contractor shall ensure that its Subcontract is consistent with the provisions of the Contract. The Contractor shall be solely responsible for its Subcontractor's compliance with the provisions of the Contract that are relevant to the subcontracted Supply and/or Services.
- 8.4. The Contractor shall inform its Subcontractor of CERN's status as an intergovernmental organisation, with its seat in Geneva, Switzerland, from which it follows *inter alia* that disputes of a commercial nature are not subject to national jurisdiction but are to be decided by arbitration. Such arbitration shall be in accordance with clause 36 unless agreed otherwise by the Parties.
- 8.5. The Contractor shall comply with its obligations under the Subcontract.
- 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, CERN shall be entitled to exercise the Contractor's rights and perform the Contractor's obligations under the Subcontract. To this end, the Contractor shall include the necessary provisions in the Subcontract.
- 8.7. Approval by CERN to the Contractor to subcontract, does not release the Contractor from its obligations under the Contract and its exclusive responsibility for the proper performance of the Contract. 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 obligations.
- 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 approval from the CERN Procurement Service or fails to comply with any of the conditions attached to any approval given by CERN.

9. Assignment and legal succession

- 9.1. The Contractor shall not assign to a third party any part of its rights or obligations under the Contract without prior written approval from the CERN Procurement Service. Any such approval 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 rights or obligations under the Contract without prior written approval from the CERN Procurement Service.
- 9.3. CERN may terminate the Contract in whole or in part with immediate effect if it refuses the legal successor of the Contractor.

10. Compliance with Laws

- 10.1. The Contractor shall comply with Laws and shall ensure that its Subcontractor does the same. The Contractor shall hold CERN free and harmless from, and indemnify CERN for, any loss or damage, including legal costs, arising from non-compliance with Laws.
- 10.2. CERN may terminate the Contract in whole or in part with immediate effect in the event of non-compliance with Laws by the Contractor or its Subcontractor.

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 granted to its personnel for access to the CERN site 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 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

Except as required for the performance of the Contract, the Contractor shall not use or make reference to any images depicting or belonging to CERN, any CERN logos, or any names or acronyms under which CERN is known without prior written approval from the CERN Procurement Service. Any approval by any other person than the member of the CERN Procurement Service designated in the Contract shall not be valid. The effects of any approval shall end two years after expiry or termination of the Contract. CERN may at any time change its decision and notify the Contractor thereof, whereupon the Contractor shall immediately cease using CERN's images, logos and names.

13. Confidentiality

- 13.1. The Contractor shall keep confidential and shall not, without prior written approval 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 Laws 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;
 - 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. Any distribution, reproduction or other use is subject to prior written approval from the CERN Procurement Service.
- 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. The Supply and/or Services delivered by the Contractor shall be deemed to include a licence for any background Intellectual Property necessary for the free and unlimited use of such Supply and/or 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 Supply and/or Services do 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 Supply and/or Services.
- 14.5. Any Intellectual Property or results 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. The Contractor shall, upon completion of the Contract, deliver such Intellectual Property and results, including all information related thereto, to CERN in a format acceptable to CERN, enabling modifications and removal of any branding.
- 14.6. If requested by the Contractor and subject to the conclusion of a separate written agreement detailing the applicable licence conditions, CERN shall grant the Contractor a royalty-free non-exclusive licence to use the Intellectual Property generated in the performance of the Contract for its commercial exploitation purposes. Such agreement shall require the Contractor to submit an annual report of use of such Intellectual Property for the first five years of the licence term.

15. Data Protection

- 15.1. Where the Contractor processes Personal Data on behalf of or provided by CERN, it shall ensure that its processing complies with the principles set out in CERN's rules and regulations and that appropriate safeguards are in place to protect the privacy of the data subject concerned. Unless agreed otherwise in writing between the Parties, CERN's template shall be used for any data processing agreement.
- 15.2. In particular, the Contractor shall:
 - process the Personal Data solely for the performance of the Contract, unless otherwise required by Laws, in which case the Contractor shall notify CERN in advance, or within two Days from the date of processing;
 - take appropriate technical and organisational security measures, and notify CERN promptly of any data breach, and assist CERN in complying with its obligations under CERN's rules and regulations;
 - not transfer Personal Data to any third party without the prior written approval from the CERN Procurement Service;
 - assist CERN in responding to requests from data subjects under CERN's rules and regulations;
 - if requested by CERN, demonstrate its compliance with its data privacy protection obligations under the Contract, and contribute to audits, including inspections, conducted by CERN or any appointed representative;
 - permanently delete or return all Personal Data to CERN following completion of its contractual obligations or termination of the Contract.

- 15.3. The Contractor shall ensure that any transfer of Personal Data from the Contractor to CERN or any third party complies with Laws.

16. Equipment and materials made available by CERN

- 16.1. The Contractor shall use any Equipment and materials made available to the Contractor by CERN exclusively for the performance of its obligations under the Contract.
- 16.2. CERN shall, at its own expense, replace or repair any defective Equipment and materials made available to the Contractor by CERN, provided that the Contractor notifies CERN in writing of any such defect promptly and, in any event, no 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.
- 16.3. Without prejudice to clause 16.2, the Contractor shall be solely liable for the use of the Equipment and materials until their return, and CERN accepts no liability for the Equipment and materials, which it makes available to the Contractor on an as-is basis and without any express or implied warranty of any kind.
- 16.4. The Contractor shall, at its own expense and in accordance with professional standards and any CERN instructions, use, maintain and store the Equipment and materials and, at CERN's sole discretion, replace, repair or compensate CERN for them if lost, misused or damaged. Any replacement or repair by the Contractor shall be subject to prior written approval from CERN.
- 16.5. Upon completion of its obligations under the Contract, the Contractor shall, at its own expense and in accordance with any instructions given by CERN, promptly return the Equipment and any unused materials to CERN. 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.
- 16.6. Ownership of the Equipment and materials shall remain vested in CERN. The Contractor shall take such measures as 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.

17. 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.

18. Monitoring

- 18.1. 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.
- 18.2. 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, the Contractor shall give CERN reasonable prior written notice of the date and place of such tests and measurements and shall grant such access. 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.

19. 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 for the purpose of the performance of the Contract. The Contractor shall, upon CERN's written request, promptly provide copies of such documents for use by CERN and/or transfer the original documents to CERN in a format acceptable to CERN.

20. Delivery

- 20.1. The Contractor shall deliver the Supply and/or Services as specified in the Contract. Any change shall be subject to prior written approval from CERN.
- 20.2. The Contractor shall complete all formalities necessary for the delivery of the Supply and/or Services in accordance with the Contract, and shall be liable for any related costs or delay.
- 20.3. The Supply 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.
- 20.4. Any delivery receipt issued by CERN for the Supply shall solely constitute evidence of the number of separate packages delivered, the date and location of the delivery to CERN and the condition of the external packaging. It shall not constitute evidence that a specific quantity has been delivered, or that the delivered Supply is in suitable condition or performs properly, or that it is in any other respect in conformity with the Contract.
- 20.5. CERN may refuse the delivery of the Supply in the event of an incorrect number of packages, damaged packaging, manifest damage or failure to complete necessary formalities.
- 20.6. CERN may refuse the delivery of the Supply and/or Services and may terminate the Contract in whole or in part with immediate effect if:
 - the Contractor is not able to deliver the Supply and/or Services in conformity with the Contract and, as a result, their delivery loses its purpose for CERN; or
 - the date of delivery of the Supply and/or Services is not in conformity with the Contract and leaves insufficient time to carry out the acceptance procedure defined in clause 22.

21. Changes required by CERN

- 21.1. CERN may, at any time, change the date and/or place of the delivery of the Supply and/or Services by giving the Contractor prior written notice. Such changes shall affect only the date and/or place of the delivery of the Supply and/or Services concerned.
- 21.2. In addition to its entitlement pursuant to clause 21.1, 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.
- 21.3. If CERN postpones the delivery of the Supply, the Contractor shall, during the period of postponement, store, preserve, protect and otherwise make safe the Supply. These measures shall be free of charge for CERN during a period of two Months.
- 21.4. Except as provided in clause 21.3, CERN shall compensate the Contractor for justified reasonable costs wholly and necessarily incurred by the Contractor as a result of any change required by CERN pursuant to clause 21.

22. Acceptance procedure

- 22.1. The Contractor shall notify CERN in writing of the completion of the delivery of the Supply and/or Services and, if applicable, the completion of any remedial measures taken pursuant to clause 22.3 or clause 26. CERN shall be entitled to carry out a detailed inspection, including acceptance tests and measurements, to verify the conformity of the Supply and/or Services with the Contract.
- 22.2. The Supply and/or 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 Supply and/or Services.
- 22.3. If the Supply and/or Services are not in conformity with the Contract, CERN shall notify the Contractor thereof in writing. In that event, the Contractor shall within the timeline specified by CERN, 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 22 shall apply anew.
- 22.4. Notwithstanding clause 22.3, 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 Supply and/or Services concerned, as such nature results from the Contract, their delivery or provision loses its purpose for CERN.
- 22.5. If a period of three Months from the date on which the Contractor has given the notification referred to in clause 22.1 lapses without either of the events defined in clause 22.2 occurring, or without CERN advising the Contractor in writing that the Supply and/or Services are not in conformity with the Contract, the Supply and/or Services shall be deemed to have been accepted by CERN on the Day following the end of that period.
- 22.6. Ownership of the Supply shall automatically be transferred to CERN upon its acceptance by CERN.

23. Contract Price

- 23.1. The Contract Price, or the unit prices if the Contract Price is not fixed, 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.
- 23.2. Where the Contract provides for a price revision mechanism, this shall not apply where the Supply and/or Services are delivered 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. A price revision shall not have any retroactive effect.

24. Invoicing and payment

- 24.1. 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 Supply and/or Services related to the payment pursuant to clause 22.
- 24.2. The invoice shall be paid by CERN within one Month from its receipt or one Month from acceptance by CERN of the Supply and/or Services pursuant to clause 22, whichever occurs later, provided that:
 - the invoice is correct and has been submitted in accordance with clause 24.1; 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.
- 24.3. If total payments made by CERN to the Contractor exceed the amount actually due under the Contract or if money is otherwise owed by the Contractor to CERN under the Contract, the Contractor shall promptly reimburse or pay the amount concerned in the currency indicated in the Contract on receipt of a credit note issued by CERN and in accordance with CERN's instructions.
- 24.4. 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.

25. Bank guarantee

- 25.1. If a bank guarantee is required by CERN, the Contractor shall provide a bank guarantee for the entire 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 using the template of Annex I without modifying it whatsoever.
- 25.2. If a bank guarantee is required by CERN, no payment, including any advance payment, shall be payable by CERN until the Contractor has provided a bank guarantee pursuant to clause 25.1, which has not been refused by CERN.
- 25.3. If the Contract Price or if a date or milestone stipulated in the Contract changes, the Contractor shall promptly amend the bank guarantee accordingly. The Contractor shall provide CERN with the proof of the updated bank guarantee as soon as it has been obtained.
- 25.4. Where a change of the bank guarantee is required under clause 25.3, failure to do so 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 from either:
- the replacement by the Contractor of the bank guarantee by a new bank guarantee reflecting such change; or
 - the amended bank guarantee reflecting such change;

provided that no event has occurred in the meantime entitling CERN to draw on the bank guarantee.

26. Warranty

- 26.1. Except where the law governing the Contract, Laws or the Contract provides for a longer period, in which case the longest shall apply, the Contractor shall warrant the conformity with the Contract of the Supply and/or Services, including their proper performance, for a period of two years from the date of their acceptance pursuant to clause 22. In particular, the Contractor warrants that the Supply incorporates only new, unused, quality materials, components, equipment and substances.
- 26.2. If at any point during the Warranty Period CERN discovers a non-conformity, defect or damage ("Non-conformity") in the Supply and/or Services, CERN shall notify the Contractor within 30 Days of such discovery. Notification of a Non-conformity under this clause protects CERN's warranty entitlements and eliminates any requirement for CERN to initiate legal action.
- 26.3. Upon notification pursuant to clause 26.2, the Contractor shall promptly, at its own expense, take all necessary measures to remedy the Non-conformity by the date specified by CERN, or, if no date is specified, within a reasonable period of time. This obligation shall extend to all Supply and/or Services under warranty at the time of notification of the Non-conformity and that are likely to suffer from the same Non-conformity. The Contractor shall notify CERN in writing as soon as such remedial measures have been taken, whereupon the acceptance procedure defined in the Contract shall apply anew.

- 26.4. If the Contractor fails to meet any of its obligations as defined in clause 26.3, which shall include any unsuccessful remedial measures, 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 26 and to any other right or remedy CERN may have in such circumstances, including termination pursuant to clause 29.
- 26.5. Except where a Supply is replaced, the Warranty Period for all Supply and/or 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 remedied Supply and/or Services concerned pursuant to the Contract. Where a Supply is replaced, a new warranty shall apply to the replacement Supply upon its acceptance by CERN pursuant to the Contract, under the same conditions as the initial warranty according to clause 26.1.
- 26.6. CERN shall be entitled, at the Contractor's expense, to dispose of any Supply that has been replaced if it has not been collected within one Month of the date of acceptance of its replacement.
- 26.7. If the Contractor challenges the existence of the Non-conformity and/or the applicability of the warranty, any Party may request the intervention of a neutral, independent, adequately qualified and experienced third party expert (the "Expert"). The Parties shall, within 30 Days and in good faith, jointly appoint the Expert, who shall perform any necessary assessment and set out its findings in a written report, which shall be delivered to and be binding on the Parties. If the Parties fail to agree on the Expert, CERN shall be entitled to appoint the Expert. The Expert shall perform the assessment and submit its report within two Months from its appointment, or any other time period agreed between the Parties. All related costs shall be borne by the Contractor except if, and to the extent that, it has been established on the basis of the Expert's report that the Contractor is not responsible for the Non-conformity.
- 26.8. The Contractor shall be liable for all costs, including the cost of transport, insurance, removal, dismantling and/or reinstallation, arising from or related to its warranty obligations pursuant to this clause 26.

27. Force Majeure

- 27.1. If a Party is subject to Force Majeure it shall promptly notify the other Party in writing thereof, giving details, including the expected duration of the Force Majeure. It shall promptly notify the other Party in writing when the Force Majeure ceases.
- 27.2. The Party that is subject to Force Majeure shall, for the duration of the Force Majeure and subject to clause 27.1, be released from the performance of its obligations to the extent that such performance is prevented 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.
- 27.3. 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.
- 27.4. 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. Neither Party shall be entitled to any financial compensation from the other Party in relation to such termination. This is without prejudice to a Party's obligation to pay any amount that has become due under the Contract prior to the date on which the termination takes effect.

28. Liability

- 28.1. Each Party shall be liable for and 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 loss and damage resulting from personal injury and death.
- 28.2. 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.
- 28.3. Except in the event of:
- liability pursuant to clauses 10.1, 14.4 or 20.6;
 - liability resulting from a failure to remedy a non-conformity in accordance with the Contract;
 - liability resulting from personal injury or death;
 - 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;
 - one million Swiss francs (1.000.000 CHF);
 - the amount of the insurance cover under the liable Party's applicable insurance policy.
- 28.4. The Contractor shall take out insurance in accordance with standard practice in its industry, which shall in any event include cover of its liability under the Contract, and cover required by Laws. If so requested by CERN, the Contractor shall provide evidence of this insurance cover, in English or French.

29. Termination by either Party

In addition to the entitlement to terminate the Contract pursuant to clause 27.4, 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;
- 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 liquidated 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.

30. 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, 20.6 and 22.4, CERN may at any time terminate the Contract at will in whole or in part with immediate effect.

31. Consequences of termination

- 31.1. In the event that the Contract is terminated in whole or in part by the Contractor pursuant to clause 29, or at will by CERN pursuant to clause 30, CERN shall compensate the Contractor for justified 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 Supply, the total amount of such compensation shall not exceed the related 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 monthly of the Contract Price paid by CERN prior to the date on which the termination takes effect.

- 31.2. 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, 20.6, 22.4 or 29, the Contractor shall compensate CERN for justified 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.
- 31.3. The liability defined in clauses 31.1 and 31.2 shall be without prejudice to any other liability that may arise pursuant to the Contract, which shall be calculated independently.

32. No-waiver

A failure or delay by a Party in exercising a right or remedy, does not amount to a waiver of that right or remedy. Furthermore, a waiver of a particular right or remedy in one circumstance will not prevent a Party from subsequently prevailing itself of such right or remedy on other occasions.

33. 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, 16, 25, 26, 28, 33, 35 and 36 shall in any event survive the end of the Contract.

34. Communication and information technology security

- 34.1. 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 correctly 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 communication by the receiving Party. Risk related to electronic communications shall be borne by the sending Party. Any communication by or to any person other than the person designated in the Contract shall not be valid.
- 34.2. The Contractor shall ensure an adequate level of security in its information technology and processes used in the performance of the Contract. In particular and without limiting the Contractor's duty of care in this respect, the Contractor shall report to CERN promptly in writing any of the following events and provide to CERN all necessary information and supporting documents that CERN may request related to such event:
- loss of integrity or confidentiality of CERN data, including Personal Data ("CERN Data");
 - unauthorised access to, use of, or interference with CERN Data by any person or organisation;
 - unauthorised access to the Contractor's network elements, buildings and tools;
 - use of the Contractor's information technology system or services by any third party in order to gain unauthorised access to any computer resource or CERN Data, or threat thereof;
 - loss of availability of CERN Data due to any failure or compromise of the Contractor's security.

35. Governing law

35.1. 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.

35.2. 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.

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

36. Arbitration

36.1. Without prejudice to CERN's international legal status, if any dispute under the Contract fails to be settled amicably, such dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce of Paris. Unless agreed otherwise in writing by the Parties, the ICC Expedited Procedure Provisions shall not apply, any dispute shall be settled by three arbitrators, in English and take place in Geneva. Notwithstanding the reference of any dispute to arbitration, the Parties shall continue to perform their obligations under the Contract.

36.2. The arbitral tribunal shall interpret the provisions of the Contract in accordance with clause 35.

36.3. Neither the arbitral award nor any procedural order made in the arbitration shall be published or its contents made known to any third without the prior written approval of each Party.

36.4. Any deadline or timeline falling in or incorporating CERN's end-of-year closure in whole or in part shall be deferred or suspended by a period equal to such period of closure.

37. Amendments

Any modification of the Contract shall be formalised by a written amendment and shall enter into force on the date of signature of the authorised representative of the last Party to sign.

38. Languages

The English-language version and the French-language version of the General Conditions of CERN Contracts 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 signature of Contract] _____ with the European Organization for Nuclear Research ("CERN").

By virtue of its international legal status, CERN enjoys certain privileges and immunities in its Member States², and nothing in the Contract shall constitute or be construed as a waiver by it of these privileges and immunities. 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): _____

² <http://home.cern/about/member-states>