



idm@F4E UID / VERSION

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EXTERNAL REFERENCE

## Template

# Model Direct Supply Contract - 2016 Revision

On 2 December 2015, the Governing Board adopted a new F4E Financial Regulation ("new FR") and Implementing Rules ("new IR"). The model direct supply contract has been updated to implement the modifications introduced by the new rules. The modifications concern the following: 1. Modification of the Time-limits for payment: from 45 Days to 30 Days (pre-financing) and 60 Days (other payments) 2. Modification of the general provision on payments and acceptance: new process for approval of ADP, single deadline for approval of ADP and payment ; clarification of F4E's means of action in case of inadmissibility of request for payment; additional rights of the contractor 3. Late payment interest: Contractor's automatic entitlement to late payment interests at ECB Rate (except if the amount does not exceed 200 EUR) and increase of the margin from 7 to 8 percentage points 4. Adaptation of the articles on Conflict of Interest to align with the new definitions of Conflict of Interest and the new notions of Professional Conflicting Interest 5. Modification of the list of ground for termination for cause essentially to reflect the new exclusions grounds set out in article 106 of the new FR. 6. Adaptation and introduction of definitions Track Change versions are attached for the user's convenience.





ANNEX 1

MODEL CONTRACT

**SUPPLY CONTRACT**

between

**THE EUROPEAN JOINT UNDERTAKING FOR ITER AND THE  
DEVELOPMENT OF FUSION ENERGY**

and

[•]

**F4E-[•]**

CONTRACT NUMBER – *[complete]*

The European Joint Undertaking for ITER and the Development of Fusion Energy ("**Fusion for Energy**"), represented for the purposes of the signature of this contract (the "**Contract**") by [•] *[name in full, function, department]*,

of the one part,

and

*[official name in full]*

*[official legal form]*

*[statutory registration number]*

*[official address in full]*

*[VAT registration number]*

(the "**Contractor**"), represented for the purposes of the signature of this contract by *[name in full, function]*

of the other part,

hereinafter referred to individually as the "Party" and collectively as the "Parties";

HAVING REGARD to Council Decision 2007/198/EURATOM of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it<sup>1</sup> (the "**Fusion for Energy Council Decision**"),

HAVING REGARD to the Agreement on the Establishment of the ITER International Fusion Energy Organisation for the Joint Implementation of the ITER Project<sup>2</sup> (the "**ITER Agreement**"),

HAVE AGREED

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<sup>1</sup> OJ L 90 of 30.3.2007, p. 58

<sup>2</sup> OJ L 358 of 16.12.2006, p. 62

the Special Conditions and the General Conditions below and the following Annexes and Applicable Documents:

#### Annexes

Annex A – Management Specifications (IDM reference [\*])

Annex B – Technical Specifications (IDM reference [\*])

Annex C – Declaration of the Contractor’s Background

Annex D – Intellectual Property Provisions

Annex E – Excerpt of Contractor’s Tender

Annex F – [...]

#### Applicable documents

The following documents, all not attached hereto but known to both parties, constitute an integral part of this Contract:

AD	Document title	Ref.	Version/Date
AD01	Supplier Quality Requirements	[xxx]	[xxx]
AD02	Agreement on the Privileges and Immunities of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project	INFCIRC/703	2006-11-21
AD03	Pre-Financing Guarantee Form	[check version vs. contractor]	[xxx]
AD04	Template of the Declaration Regarding Nuclear Liability of the ITER IO	[xxx]	[xxx]
AD05	Insurance Certificates	[xxx]	[xxx]
AD06	Signed Power of Attorney	[xxx]	[xxx]
AD07	Contractor’s Tender	[xxx]	[xxx]
AD08	Form for declaration of Foreground Intellectual Property	[xxx]	[xxx]
AD09	Terms of Reference for the Use of the Designated Carrier	[xxx]	[xxx]
AD10	[...]	[xxx]	[xxx]

which form an integral part of this supply contract (the “Contract”).

The terms set out in the Special Conditions shall take precedence over those in the other parts of this Contract. The terms set out in the General Conditions shall take precedence over those in the Annexes except those of Annex D (*Intellectual Property Provisions*) which shall take precedence over the terms

set out in the General Conditions. The terms set out in the Annexes shall take precedence over those in Applicable Documents. The terms set out in the Supplier Quality Requirements (AD-01) shall take precedence over those in the other Applicable Documents.

Subject to the above, the several instruments forming part of this Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by Fusion for Energy, subject to the rights of the Contractor under Article I.23 (*Applicable law and settlement of disputes*) should it dispute any such instruction.

## I. SPECIAL CONDITIONS

### I.1. DEFINITIONS

I.1.1. The following capitalised terms shall have the meanings set forth below.

<b>Acceptance</b>	shall have the meaning set forth in Article II.11 ( <i>Acceptance</i> )
<b>Acceptance Data Package</b>	shall have the meaning given to it in Applicable Document AD-01 ( <i>Supplier Quality Requirements</i> ).
<b>Acceptance Note</b>	shall have the meaning set forth in Article II.11 ( <i>Acceptance</i> )
<b>Amendment</b>	shall have the meaning set forth in Article II.24 ( <i>Amendments</i> ).
<b>Background</b>	shall have the meaning set forth in Article 1.4 of Annex D ( <i>Intellectual Property Provisions</i> ).
<b>[Claims Officer]</b>	<i>shall mean the contact person mentioned in the Claims Protocol Summary.</i>
<b>[Claims Protocol Summary]</b>	<i>shall mean the protocol clarifying the claim handling agreement for the enforcement of the construction erection all risks policy which was attached to the final tender specifications and may evolve in the future.</i>
<b>Commencement Date</b>	shall have the meaning set forth in Article I.4.1 ( <i>Entry into force and duration</i> ).
<b>Confidential Information</b>	shall have the meaning set forth in Article II.23 ( <i>Confidentiality</i> ).
<b>Conflict of Interest</b>	Shall mean a situation where the impartial and objective performance of the Contract by the Contractor is compromised for reasons involving family, emotional life, political or national affinity, economic interest, or any other shared interest with Fusion for Energy or any third party related to the subject matter of the Contract
<b>Contract</b>	shall mean this contract, its Annexes and the Applicable Documents.
<b>Cost</b>	shall mean all expenditure reasonably incurred (or to be incurred) by the Contractor, including overhead and similar charges, but does not include profit.
<b>Days</b>	shall mean calendar days unless otherwise defined.
<b>Logistic Service Provider</b>	Shall mean "DAHER INTERNATIONAL", a company incorporated under the laws of France, registered in Marseille under no. 068 803 005, having its registered office at 10 place la Joliette 13667 Marseille



<b>Deviation Notice</b>	Cedex 2 (France) shall have the meaning given to it in section II.2 of Applicable Document AD-01 ( <i>Supplier Quality Requirements</i> ).
<b>Deviation Order</b>	shall have the meaning given to it in section II.2 of Applicable Document AD-01 ( <i>Supplier Quality Requirements</i> ).
<b>Deviation Request</b>	shall have the meaning given to it in section II.2 of Applicable Document AD-01 ( <i>Supplier Quality Requirements</i> ).
<b>Dispute</b>	shall mean any dispute, difference or controversy of whatsoever nature arising under, out of, relating to or in connection with the Contract, a breach, termination or validity thereof, during its implementation or after its completion (including without limitation during the Warranty Period) and whether before or after suspension or termination of the Contract.
<b>Dissemination</b>	shall have the meaning set forth in Article 1.6 of Annex D (Intellectual Property provisions).
<b>Domestic Agency</b>	shall mean a legal entity through which a Member of the ITER IO provide its contributions to the ITER IO as referred to in Article 8(4) of the ITER Agreement.
<b>Dual-use Goods</b>	shall have the meaning set forth in the Council Regulation (EC/428/2009) of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items and be governed by Article II.25.1 ( <i>Export control requirements</i> ).
<b>Exporter</b>	shall have for the purpose of Article 56, the meaning set forth in Article 2.3 of the Council Regulation (EC/428/2009) of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items.
<b>Fair and Reasonable Conditions</b>	shall have the meaning set forth in Article 1.3 of Annex D ( <i>Intellectual Property Provisions</i> ).
<b>Final Acceptance</b>	shall have the meaning set forth in section [•] of Annex B ( <i>Technical Specifications</i> ).
<b>Force Majeure</b>	shall mean any unforeseeable and exceptional situation or event beyond the control of the Parties which prevents any of them from performing any of their obligations under the Contract, and which (i) was not due to error or negligence on their part or on the part of a Subcontractor, and (ii) could not have been avoided or overcome by the exercise of due diligence. Defects in, or delays in availability of, equipment or material, labour disputes, strikes or financial problems cannot be

	invoked as Force Majeure, unless they stem directly from a relevant case of Force Majeure.
<b>Foreground</b>	shall have the meaning set forth in Article 1.5 of Annex D.
<b>Fraud</b>	Shall mean any intentional act or omission affecting the Union's financial interests relating to the use or presentation of false, incorrect or incomplete statements or documents or to non-disclosure of information in violation of a specific obligation
<b>[Free-Issue Items</b>	<i>shall have the meaning set forth in Article I.18 (Free-issue items delivered to the Contractor).]</i>
<b>Information</b>	shall have the meaning set forth in Article 1.2 of Annex D ( <i>Intellectual Property Provisions</i> )
<b>Initial Items</b>	shall have the meaning set forth in Article 1.2.1 ( <i>Subject matter</i> ).
<b>Initial Contract Price</b>	shall have the meaning set forth in Article 1.6.1 ( <i>Initial Contract Price</i> ).
<b>[Insuring Party</b>	<i>shall mean, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the Contract.]</i>
<b>Intellectual Property</b>	shall have the meaning set forth in Article 1.1 of Annex D ( <i>Intellectual Property Provisions</i> )
<b>Inventory</b>	shall have the meaning set forth in Article I.19.2 ( <i>Inventory and identification</i> ).
<b>Irregularity</b>	Shall mean any infringement of a provision of Union law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the Union's budget.
<b>Items</b>	shall mean the Initial Items and the Optional Items.
<b>ITER Agreement</b>	shall have the meaning set forth in the recitals.
<b>ITER Annex on Information and Intellectual Property</b>	shall have the meaning set forth in article 2.3 of Annex D ( <i>Intellectual Property Provisions</i> ).
<b>ITER Immunities and Privileges Agreement</b>	shall have the meaning set forth in Article I.14 ( <i>Packing, transport, insurance and importation for the goods to be delivered by the Contractor</i> ).
<b>Margin</b>	shall have the meaning set forth in Article II.3.5 ( <i>General provisions concerning payments</i> ).
<b>Notice of Referral</b>	Shall have the meaning set forth in I.23.3 ( <i>Applicable Law and Settlement of Dispute</i> )
<b>Optional Items</b>	<i>[Opt shall have the meaning set forth in Article I.3.1 (Options)].</i>
<b>Optional Services</b>	<i>[Opt shall have the meaning set forth in Article I.3.1 (Options).]</i>

<b>Options</b>	<i>[Opt shall have the meaning set forth in Article I.3 (Options).]</i>
<b>Party</b>	shall mean either contracting party to the Contract.
<b>Performance Guarantee</b>	<i>[Per shall have the meaning set forth in Article I.10]</i>
<b>Personal Data Officer</b>	the Fusion for Energy officer responsible for processing the personal data with respect to the Contract in accordance with Article II.9 ( <i>Personal data protection</i> ).
<b>[Pre-financing Payment]</b>	<i>shall have the meaning set forth in Article I.7.3 (Payment periods and formalities).]</i>
<b>Professional Conflicting Interest</b>	Shall mean a situation in which the Contractor's previous or ongoing professional activities affect its capacity to perform the contract to an appropriate quality standard.
<b>Project Manager</b>	shall have the meaning set forth in Article I.12 ( <i>Representatives</i> ).
<b>Reference Rate</b>	shall have the meaning set forth in Article II.3.5 ( <i>General provisions concerning payments</i> ).
<b>Release Note</b>	shall have the meaning given to in section II.6 of Applicable Document AD-01 ( <i>Supplier Quality Requirements</i> ).
<b>Repair</b>	shall mean, in the event of lack of conformity, bringing the Items into conformity with the Contract.
<b>Representatives of Fusion for Energy</b>	shall have the meaning set forth in Article II.6.2 ( <i>Access</i> ).
<b>Review Period</b>	Shall have the meaning set forth in Article II.10.1 and <i>[shall not exceed [1/2/3 months] calculated from the Commencement Date/shall not exceed the Commencement date]</i> .
<b>Senior Representative</b>	shall mean a representative of either Party at a senior executive level, appointed by that Party to attempt to resolve any Dispute in accordance with Article I.23.3 ( <i>Applicable Law and settlement of Disputes</i> ).
<b>Significant Organisational Change</b>	shall mean any of the following events: (i) the sale of more than 50% (fifty percent) of the Contractor's authorized or issued capital stock or any equivalent thereof, (ii) the sale, lease, exchange or other disposition of all or substantially all of the Contractor's assets, (iii) the merger, consolidation or reorganization of the Contractor with or into another entity, (iv) the change of a Subcontractor [ <i>or Qualified Provider</i> ]; (v) a change in the Contractor's legal, financial, technical or organisational situation which could adversely affect, alter or impair the rights and/or interests of Fusion for Energy under or pursuant to the Contract and (vi)

	where the Contractor is a consortium, also any of the following: (i) a change in the lead firm representing the consortium, or (ii) a change in the composition of the consortium. Where the Contractor is a consortium, all events under (i) to (v) refer to any of its members.
<b>Special Purpose Tooling</b>	shall have the meaning set forth in Article I.19 ( <i>Special Purpose Tooling supplied by the Contractor and paid by Fusion for Energy</i> ).
<b>[Safety Important Class (SIC) Components</b>	<i>shall mean a subclass (i.e. important for nuclear safety) of the Protection Important Components as set forth in the French Order of 7 February 2012 relating to the General technical regulations applicable to Basic Nuclear Installation.]</i>
<b>Staff</b>	shall refer to individuals involved in the performance of this Contract.
<b>[Stages</b>	<i>shall have the meaning set forth in Article I.2.2 (Subject matter).]</i>
<b>Subcontractor</b>	shall mean any economic operator, who is not Party to this Contract and who enters into a legal commitment with the Contractor in order to perform a part of the Contract.
<b>Substantial error</b>	<b>Sub</b> Shall mean any infringement of a contract provision resulting from an act or omission, which causes or might cause a loss to the Union's budget.
<b>[Qualified Provider]</b>	<i>shall mean any economic operator other than Subcontractor, who does not perform part of the Contract but who enters into a legal commitment with the Contractor to provide resources that will be used for the performance of the Contract [as follows: insert criteria (volume, amount, type of material/ or list of Qualified Providers) ].</i>
<b>Responsible Officer</b>	shall have the meaning set forth in Article I.12.1 ( <i>Representatives</i> ).
<b>Total Contract Price</b>	shall have the meaning set forth in Article I.6.4.
<b>Warranty</b>	shall mean, as set out in Article II.12 (Warranty) any undertaking by the Contractor to Fusion for Energy, given without extra charge, to reimburse the respective part of the Total Contract Price paid or to bring the items into conformity, by Repair or replacement if they do not meet the specifications set out in the Contract.
<b>Warranty Period</b>	shall have the meaning set forth in Article II.12 ( <i>Warranty</i> ).

- I.1.2. For the purposes of the Contract, except as otherwise expressly provided or unless the context otherwise requires:
- (a) The terms defined in the Contract have the meanings assigned to them in the Contract and include the plural as well as the singular, and the use of any gender herein shall include the other gender.
  - (b) The captions used in the Contract are inserted for convenience only and are in no way intended to describe, interpret, define or limit the scope or content of the Contract or any provision hereof.
  - (c) The words "herein", "hereof", "hereunder" and other words of similar import refer to the Contract as a whole and not to any particular provision.
  - (d) The terms "include" or "including" shall mean, without limitation, by reason of enumeration and shall not be interpreted restrictively.
  - (e) Each reference to an "Annex" of the Contract shall include all sections of such Annex and each reference to an "Article" of the Contract or to a "section" of its Annex shall include all subsections/points of such Article or section.
  - (f) Any terms used in the Contract and not otherwise defined herein shall have the meaning ascribed thereto pursuant to any of its Annexes, in the Fusion for Energy Council Decision and/or the ITER Agreement.
  - (g) References to any element of the legislation, statute, act, law, regulation or any provision thereof shall, where applicable, be deemed to be references to that element of the legislation, as amended or re-enacted.

## I.2. SUBJECT MATTER

- I.2.1. The subject matter of the Contract is the supply of [•] (the "**Initial Items**") as described in Annex B (*Technical specifications*).
- I.2.2. The Contractor shall supply the Initial Items and related goods and services in accordance with the provisions of the Contract. [*The subject matter of the Contract is divided into [•] stages (the "**Stages**"):*
- (a) *Stage 1: [description of scope]*
  - (b) *Stage 2: [description of scope]*
- I.2.3. [*Pursuant to the Contract, the Contractor shall exclusively undertake the work concerning Stage 1, the only Stage coming into force on the Commencement Date.*]

## I.3. [OPTIONS

- I.3.1. *Fusion for Energy may request the Contractor to supply the following optional items (the "**Optional Items**") and/or to perform optional services (the "**Optional Services**") (the **Optional Items** and the **Optional Services**: together the "**Options**"):*
- (a) *Option 1 – Storage of the Items/Initial Items/Optional Items [...] in accordance with Article I.3.8;*
  - (b) [•].
- I.3.2. *The exercise of each of the Options shall be subject to a written instruction by Fusion for Energy. Such written instruction shall:*
- (a) *explicitly inform the Contractor that Fusion for Energy has decided to exercise one (1) or several of the Option(s);*

- (b) indicate the date on which exercise of the Option(s) shall enter into force;
  - (c) indicate the date on which performance of the Option is to commence or to be agreed by the Parties; and
  - (d) be sent by registered letter.
- I.3.3. *Performance of the Options may under no circumstances start before the date indicated in the instruction. The Contractor shall perform the exercised Options in accordance with the provisions of the Contract.*
- I.3.4. *Fusion for Energy shall be entitled to exercise the Options within the time frame specified below [or as specified in Annex [\*]]:*
- (a) *With respect to Option [\*], within [\*] months of [the Commencement Date or [\*]];*
  - (b) *With respect to Option [\*], within [\*] months of [the Commencement Date or [\*]].]*
- I.3.5. *The duration of the Options [\*]-[\*] shall be [as follows/or as specified in Annex [\*] (•)]:*
- (a) *Option [\*]: [\*] months from the Commencement Date/from the date on which performance of the Option is to commence ;*
  - (b) *Option [\*]: [\*] months from the Commencement Date/from the date on which performance of the Option is to commence.]*
- I.3.6. *The exercise of any of the Options is subject to Fusion for Energy's sole discretion. The Contractor shall not be entitled to any compensation, should Fusion for Energy decide not to exercise one or several of the Options.*
- I.3.7. *Should Fusion for Energy exercise any Option, requests for payments of such Options shall be admissible together with any of the payment periods referred to in Article I.7.1 (Payment periods and formalities), after completion of the work under the option and reception by Fusion for Energy of the Acceptance Data Package for that Option unless otherwise indicated in Article I.8 of the Contract or otherwise indicated by Fusion for Energy in the written instruction.*
- I.3.8. *Should Fusion for Energy release Option 1 and request postponement of delivery of the whole or part of the Items, the Contractor shall provide storage and appropriate maintenance of the Items concerned under its own responsibility for a period of maximum [number in figures and words] months dating from the date of delivery. During such storage period the Items shall be at the Contractor's risk.*
- I.3.9. *Should Fusion for Energy exercise the Option 1, payment periods, payment modalities and Final Acceptance of the Items shall be modified and agreed in good faith by the Parties by means of an amendment to the Contract. It is understood that the payment periods modification shall reflect the proportion of task achieved and accepted by Fusion for Energy in accordance with the requirements of Annex B (Technical Specifications), and the proportion of tasks still to be completed such as transportation.]*

#### **I.4. ENTRY INTO FORCE AND DURATION**

- I.4.1. The Contract shall enter into force on the date on which it is signed by the last Party (the "**Commencement Date**").

- I.4.2. Performance of the Contract may under no circumstances begin before the Commencement Date.
- I.4.3. Performance of the Contract shall last until completion of the obligations of the Parties under the Contract without prejudice to Article I.24 (*Survival of Obligations*). Performance of the Contract shall be consistent with the milestones set out in section [★] of Annex B (*Technical Specifications*).
- I.4.4. [*Performance of the Stages shall be as follows:*
- (a) *Stage 1: performance shall start on the Commencement Date and shall last for up to [•](★) months;*
  - (b) *Stage 2: performance shall start no later than [•] months after [Commencement Date or [•]] and last for [•] (★) months.*

## **I.5. DELIVERY**

- I.5.1. Delivery of the Items shall take place in accordance with the schedule and milestones referred to in section [★] of Annex B (*Technical Specifications*).
- I.5.2. The Contractor shall notify Fusion for Energy of the exact date of delivery at least [*number in figures and words*] Days in advance, together with the Release Note to be approved by Fusion for Energy before shipment of the Items. The Contractor shall bear the financial consequences of any delivery executed without Fusion for Energy's prior approval.
- I.5.3. The Items shall be delivered [*DDP (INCOTERMS 2010)*] at [*named place of destination*]. Deliveries shall be made on any working day between [★] AM and [★] PM. Fusion for Energy reserves the right to change the delivery address [*to another location in Europe*] no later than six (6) months before the scheduled delivery of the Items. The Contractor will be entitled to the payment of any such duly documented costs that are directly caused by the change of delivery address communicated less than six (6) months before the scheduled delivery of the Items.. [*In the event Option [.] is released, Optional Items shall be delivered [appropriate INCOTERMS reference] at [named place of destination].*]
- I.5.4. Each delivery of Items shall be accompanied by a consignment note in duplicate, duly signed and dated by the Contractor or its carrier.

One copy of the consignment note shall be countersigned by Fusion for Energy and returned to the Contractor or to its carrier. The consignment note shall mention at least the following:

- (a) the Contract reference number;
  - (b) the destination of each delivery by sub-assembly;
  - (c) the dispatching date;
  - (d) a detailed list of Items indicating the number of packages, their gross and net weight and, if applicable the TARIC or HSIS Code;
  - (e) the Contractor's name;
  - (f) the reference numbers of the parts and of the corresponding drawings;
  - (g) indications about hazardous products and materials;
  - (h) indications about Dual-Use Goods.
- I.5.5. The Contractor shall not dispatch or put at disposal for dispatch any Items until it has reached a prior agreement with Fusion for Energy on the planned date for the commencement of the shipment.

- I.5.6. A copy of the consignment note shall be sent in good time to arrive at its destination before the delivery of the Items.
- I.5.7. *[The Contractor shall use the Logistic Service Provider [DAHER] for the execution of the shipment and comply with the provisions of [the Terms of Reference for the Use of the Designated Carrier [AD09]].]*

## I.6. PRICES

- I.6.1. The amount to be paid by Fusion for Energy shall be EUR *[amount in figures and in words]* covering the supply of all Initial Items and execution of all related obligations in accordance with the conditions of the Contract (the "**Initial Contract Price**").
- I.6.2. *[The amount corresponding to each Stage is the following:*
- (a) Stage 1: EUR [amount in figures and words] covering the execution of all obligations relating to Stage 1 (Contract Price relating to Stage 1);;*
  - (b) Stage 2: EUR [amount in figures and words] covering the execution of all obligations relating to Stage 2 (Contract Price relating to Stage 2);.]*
- I.6.3. *[The amount to be paid by Fusion for Energy for the Options, if exercised, shall be as follows:*
- (a) Option 1: EUR [amount in figures and words] [per month/week/Day];*
  - Option 2: EUR [amount in figures and words] [per month/week/Day].*
- I.6.4. The Total Contract Price shall be the sum of the Initial Contract Price, plus the price corresponding to any exercised Options ("**Total Contract Price**").
- I.6.5. All prices shall be expressed in EUROS.
- I.6.6. All prices shall be fixed and firm, not subject to revision during the lifetime of the Contract, regardless of any variations in the price of materials, equipment or labour, except as otherwise stipulated in the Contract. Prices shall be deemed to include all expenses related to the execution of the Contract. [Revision of prices

*After [one (1) year] from the Commencement Date, all remaining payments may be revised upwards or downwards, once a year, where such revision is requested by one of the Parties by registered letter no later than three (3) months before the anniversary of the Commencement Date.*

*This revision shall be determined by [to use appropriate index as defined in Indexation Policy] published by [see Indexation Policy: e.g. the Office for Official Publications of the European Union in the EUROSTAT monthly bulletin at <http://www.ec.europa.eu/eurostat/> or any other official publication in relation with the structure of costs.]*

*Revision shall be calculated in accordance with the following formula:*

*[Add formula as per Indexation Policy: e.g.  $Pr = Po (0,2+0,8 Ir/Io)$  / [Pr =....*

*where:*

*Pr = revised amount of the remaining payments;*

*Po = original amount of the remaining payments;*

*Io = index for the month corresponding to the final date for submission of tenders;*



*Ir = index for the month corresponding to the date of receipt of the letter requesting a revision of prices.]*

*[No indexation shall take place where the variation of price leads to a variation lower or equal to EUR 25.000 (twenty-five thousands Euro) ]*

## **I.7. PAYMENT PERIODS AND FORMALITIES**

I.7.1. Payments shall be made only if the Contractor has fulfilled all its contractual obligations by the date on which the request for payment is submitted.

I.7.2. Should the Contractor fail to perform his obligations under the Contract, Fusion for Energy may – without prejudice to its right to terminate the Contract and any other remedies it may have at law– suspend, reduce or recover payments in proportion to the scale of the non-performance.

### **[STAGE 1 – if applicable]**

#### **I.7.3. [Pre-financing Payment]**

*[Pre-financing payment is not applicable to this Contract.]*

*[Fusion for Energy shall pay the Contractor a pre-financing payment of EUR [amount in figures and words] [corresponding to 10/20/30% (ten/twenty/thirty percent)] of the amount referred to in Article [I.6.1 (Initial Contract Price)/ I.6.2(a)(Contract Price relating to Stage 1)] (the "**Pre-financing Payment**") within thirty (30) Days of receiving the request for a pre-financing payment accompanied by a corresponding invoice indicating the reference number of the Contract.]*

*[Fusion for Energy will pay only if it has received a duly constituted financial guarantee in the form provided in the Applicable Documents (AD03-Pre-financing Guarantee Form) equal to the amount of the Pre-financing Payment].]*

#### **I.7.4. Interim payment(s)**

*[Interim payment is not applicable to this Contract.]*

*[Fusion for Energy shall pay the Contractor an interim payment of EUR [amount in figures and words] [corresponding to [★] % ([★] percent) of the amount referred to in Article [I.6.1/I.6.2(a)] [minus the Pre-financing Payment [if applicable]/minus [a percentage] of the Pre-financing Payment.*

*The Contractor must send a request for interim payment accompanied by the relevant invoice indicating the reference number of the Contract and the Acceptance Data Package (ADP) related to milestone [★] referred to in section [★] of Annex B (Technical Specifications).*

*Fusion for Energy must approve any submitted Acceptance Data Package and pay within sixty (60) days from receipt of the request for payment.]*

#### **I.7.5. Payment of the balance**

*Fusion for Energy shall pay the Contractor the balance payment of EUR [amount in figures and words] [corresponding to [★] % ([★] percent) of the amount referred to in Article [I.6.1/I.6.2(a)].*

*The Contractor must send a request for the payment of the balance accompanied by the relevant invoice indicating the reference number of the Contract and the*

Acceptance Data Package (ADP) related to milestone [□] referred to in section [□] of Annex B (*Technical Specifications*).

Fusion for Energy must approve any submitted Acceptance Data Package and pay within sixty (60) days from receipt of the request for payment.

**[STAGE 2-if applicable]**

**I.7.6. [Pre-financing Payment]**

*[Pre-financing payment is not applicable to this Contract.]*

*[Fusion for Energy shall pay the Contractor an Pre-financing Payment of EUR [amount in figures and words] [equal to 10/20/30]% (ten/twenty/thirty percent) of the amount referred to in Article I.6.1/ I.6.2(b) within thirty (30) Days of receiving the request for a pre-financing payment accompanied by a corresponding invoice indicating the reference number of the Contract.]*

*[Fusion for Energy will pay only if it has received a duly constituted financial guarantee in the form provided in the Applicable Documents (AD03-Pre-financing Guarantee Form) equal to the amount of the Pre-financing Payment.]*

**I.7.7. Interim payment(s)**

*Fusion for Energy shall pay the Contractor an interim payment of EUR [amount in figures and words] [corresponding to [\*]% ([\*] percent) of the amount referred to in Article I.6.2 (b) minus [.]% ([.] percent) of the Pre-financing Payment [for Stage 2].*

*The Contractor must send a request for interim payment accompanied by the relevant invoice indicating the reference number of the Contract and the Acceptance Data Package (ADP) related to milestone [\*] referred to in section [\*] of Annex B (*Technical Specifications*).*

*Fusion for Energy must approve any submitted Acceptance Data Package and pay within sixty (60) days from receipt of the request for payment.*

**I.7.8. Payment of the balance**

*Fusion for Energy shall pay the Contractor the balance of EUR [amount in figures and words] [corresponding to [\*]% percent of the amount referred to in Article I.6.2(b)].*

*The Contractor must send a request for payment of the balance accompanied by the relevant invoice indicating the reference number of the Contract and the Acceptance Data Package (ADP) related to milestone [□] referred to in section [□] of Annex B (*Technical Specifications*).*

*Fusion for Energy must approve any submitted Acceptance Data Package and pay within sixty (60) days from receipt of the request for payment.*

**I.8. [PAYMENT OF THE OPTIONS]**

*[In case specific payment modalities for Option are necessary, please indicate them here.]*

**I.9. PRE-FINANCING GUARANTEE**

**I.9.1.** *[Where the amount of the Pre-financing Payment equals or exceeds EUR 300.000 (Three Hundreds Thousand euros), the Contractor shall provide a Pre-financing*

*guarantee covering the amount of the Pre-financing Payment issued in favour of Fusion for Energy by an authorized bank or other financial institution established in the EU or Switzerland having a public credit rating of not less than “BBB” by Standard and Poors or equivalent credit rating from a reputable ratings agency acceptable to Fusion for Energy, in accordance with the template set out in the Applicable Documents (AD03 - Pre-financing Guarantee Form). The Guarantee will be released by Fusion for Energy within one (1) month after the clearing of the Pre-financing Payment against the [interim payments/payment of the balance].*

- I.9.2. *The guarantor shall stand as first-call guarantor and shall not require Fusion for Energy to have recourse against the principal debtor, being the Contractor. The guarantee shall specify that it enters into force at the latest on the date on which the Pre-financing Payment is received by the Contractor and expire within one (1) month after the clearing of the Pre-financing Payment against the [interim payments/payment of the balance].*
- I.9.3. *The cost of providing such Pre-financing guarantee and any extension thereof shall be borne by the Contractor].*

#### **I.10. PERFORMANCE GUARANTEE**

*[Not applicable in principle for contracts with no obligations after the final payment or for contracts with surviving obligations whose value is below EUR 10.000.000 (ten million). The Performance Guarantee shall be compulsory for contracts with surviving obligations whose Total Contract Price is equal or above EUR 10.000.000 (ten million).]*

#### **I.11. BANK ACCOUNT**

- I.11.1. Payments shall be made to the Contractor’s bank account denominated in EUR, identified as follows.

Name of bank: *[complete]*

Address of branch in full: *[complete]*

Exact designation of account holder: *[complete]*

Full account number including codes: *[complete]*

IBAN<sup>3</sup> code: *[complete]*

- I.11.2. The same bank account and the value added tax (VAT) registration number must be indicated on each invoice.
- I.11.3. Any request for modification of the Contractor’s bank account shall be made by letter duly accompanied by all the supporting documents. Any modification of the Contractor’s bank account shall be approved by letter from Fusion for Energy’s Responsible Officer.

#### **I.12. REPRESENTATIVES**

##### **I.12.1. Fusion for Energy’s Responsible Officer**

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<sup>3</sup> BIC code for countries with no IBAN code

Fusion for Energy appoints [name] as Responsible Officer for the Contract. Subject to Article II.24 (*Amendments*) the acts and decisions of the Responsible Officer of Fusion for Energy shall only bind Fusion for Energy within the limits set out in the Contract if made in writing and duly signed by such officer.

#### I.12.2. Contractor's Project Manager

The Contractor nominates [name] as Project Manager responsible for coordinating the tasks under the Contract and Contract follow-up.

The Contractor nominates the following key technical officers:

Technical responsible for [★]: [name];  
*[Technical responsible for [★]: [name]].*

The Project Manager shall be the main contact point regarding any issue raised in connection with the performance of the Contract and shall also coordinate the performance of the Contractor's obligations under the Contract. The Project Manager shall be and shall be deemed to be vested by the Contractor with sufficient power and authority to perform such tasks and represent the Contractor under the Contract.

*[The Project Manager and the key technical officers listed above shall be dedicated full time to the execution of the Contract.]*

I.12.3. The Parties shall give prior written notice of any modification of their Representatives listed in this Article at least 15 (fifteen) Days prior to any modification.

I.12.4. *[Any modification of the Contractor's Project Manager and/or key Technical Officer shall be subject to prior approval by Fusion for Energy.]*

### I.13. COMMUNICATION

I.13.1. All communications from the Contractor to Fusion for Energy shall be sent by the Project Manager or its office. Fusion for Energy shall send or copy all communication to the Project Manager of the Contractor.

I.13.2. Any communication relating to the Contract shall be made in writing, in English and shall bear the Contract number. All communications shall be made by mail or electronic mail, as well as by any other means, provided always that in these cases there is evidence of due receipt by the addressee(s), save as otherwise provided in the Contract.

I.13.3. Ordinary mail shall be deemed to have been received by Fusion for Energy on the date on which it is registered by the department responsible indicated below.

I.13.4. Communications shall be sent to the following addresses:

For Fusion for Energy:

*[name of the Responsible Officer]*

Contract number: [★]

The European Joint Undertaking for the Development of ITER and Fusion Energy ('Fusion for Energy')

c/ Josep Pla 2

Torres Diagonal Litoral  
 Building B3  
 08019 Barcelona  
 Spain

**I.14. PACKING, TRANSPORT AND IMPORTATION FOR THE ITEMS TO BE DELIVERED BY THE CONTRACTOR**

I.14.1. Unless otherwise explicitly specified in the Contract all packing materials, including pallets, delivered by the Contractor shall be considered as non-returnable and their cost as having been included in the Total Contract Price.

I.14.2. The Items shall be packaged in an appropriate way that ensures that the contents remain intact and prevents damage or deterioration [*and in accordance with specifications set out in section [★] of Annex B (Technical Specifications)*] [*and in accordance with specifications provided by (name of the global logistics provider or its representatives)*]. Procedure for packaging and transportation shall be subject to prior written approval by Fusion for Energy. This approval shall not release the responsibility of the Contractor.

Each box shall be clearly labelled with the following information:

- Fusion for Energy and address for delivery;
- name of Contractor;
- reference number of the Contract
- description of contents;
- date of delivery;
- EC code number of article, if applicable.

I.14.3. [*The Contractor shall complete or cause to be completed all forms and formalities involved in the transport, in compliance with Articles 5 and 6 of the Agreement on the Privileges and Immunities of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project<sup>4</sup> (the "ITER Immunities and Privileges Agreement") referred to as Applicable Document [AD02], and for their transit through any country.*] The Contractor shall provide any requested documentation to Fusion for Energy. [*The goods shall be clearly labelled and provided with the official documentation stating that export is on behalf of the ITER International Fusion Energy Organization (the "ITER IO"). If required documents are missing and the goods thereby delayed all the resulting additional expenses, such as but not limited to demurrage and warehousing, shall be borne by the Contractor.*]

I.14.4. [*The Contractor shall take out a proper insurance for the Items during transportation. Upon request, the Contractor shall provide to Fusion for Energy copies of the insurance certificate and evidence that the premium payable under its policy has been paid and that the policy is in full force and effect.*]

I.14.5. [*If the transportation costs have not been requested to be quoted in the offer, the transport shall be charged at cost, and paid as and when incurred by the Contractor. Transport shall be arranged by the Contractor at rates obtained competitively (offers from at least three (3) different economic operators shall be requested) and will be subject to the prior written approval by Fusion for Energy. All invoices for transport costs shall be accompanied by supporting evidence of charges incurred. Fusion for Energy shall not reimburse any transport costs unless such costs are (i) approved by*

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<sup>4</sup> OJ L 358, 16.12.2006, p. 62

*Fusion for Energy in writing prior to being incurred by the Contractor, (ii) the relevant invoices are provided, and (iii) evidence of full payment thereof is provided.*

## **I.15. LIABILITY**

### **I.15.1. Contractor's liability**

The Contractor shall be liable to Fusion for Energy for any loss or damage arising directly as a result of the performance or breach of the Contractor's obligations under the Contract. The Contractor's total liability under the Contract shall not exceed [*one time*] the Total Contract Price, subject to the sole exceptions set out in this Article I.15.

Notwithstanding any other provision of the Contract, the Contractor shall remain liable without any limitation as to the amount, for the following:

- (a) damage or loss caused by the gross negligence or wilful misconduct of Contractor, its employees or agents, or of any Subcontractor or its employees or agents;
- (b) personal injuries or death caused by the Contractor, its employees or agents, or of any Subcontractor or its employees or agents ;
- (c) damage or loss directly resulting from non-compliance with any applicable mandatory law or from an infringement of intellectual property rights of a third party.

*[The Contractor shall be responsible, within the limitation laid down in this Article, for loss or damage caused to items and material delivered to him and belonging to Fusion for Energy, ITER IO, a member of the ITER Project or any third parties designated by Fusion for Energy in connection with the Contract [section [. of Annex B (Technical Specifications)]. Compensation shall be effected by replacement or repair or by payment of a sum equivalent to the replacement cost at the date of such loss or damage according to the preference expressed by Fusion for Energy.]*

### **I.15.2. Third party actions**

Notwithstanding any provision to the contrary, the Contractor shall be responsible for and shall indemnify Fusion for Energy, without any limitation as to the amount, in the event of any action, claim or proceeding brought against Fusion for Energy by a third party as a result of damage caused by the Contractor in the execution of the Contract.

The indemnification shall not exceed the amount of damage and costs sustained by F4E as a result of the third party action within the meaning of this Article.

In the event of any action brought by a third party against Fusion for Energy in connection with the performance of the Contract, the Contractor shall, upon request, promptly and fully assist Fusion for Energy.

The ITER IO does not be considered a third party for the purposes of this Article unless the damage or loss suffered by the ITER IO was caused by the Contractor's wilful misconduct or gross negligence.

### **I.15.3. Consortium**

If the Contractor is a group of economic operators or a consortium, the economic operators forming such group or consortium shall be jointly and severally liable to Fusion for Energy for any loss, damage arising as a result of the performance or breach of Contractor's obligations by any of them, under the conditions established in Article I.15.1.

#### I.15.4. **Fusion for Energy's liability**

Fusion for Energy shall not be liable for any loss or damage sustained by the Contractor in performance of the Contract except in case of loss or damage arising directly as a result of wilful misconduct or gross negligence by Fusion for Energy.

#### I.15.5. [**Nuclear liability**]

*The Parties hereby acknowledge that nuclear fusion installations are currently not covered by international nuclear liability conventions and that ITER Organisation assumes by virtue of the declaration in the Applicable Documents (AD04-Declaration regarding Nuclear Liability of ITER) the responsibility of a nuclear operator for indemnifying the Contractor in the event of claims, damage and losses caused by radiological damage arising from a nuclear incident as defined by the Paris Convention 'Third Party Liability in the Field of Nuclear Energy' of 29<sup>th</sup> July 1960, as amended by the Additional Protocol of 28<sup>th</sup> January 1964 and by the Protocol of 16<sup>th</sup> November 1982.]*

### I.16. **INSURANCE**

I.16.1. The Contractor shall effect and maintain suitable insurance from a reputable insurance company against risks and damages relating to performance of the Contract as required by the relevant applicable legislation and reasonably required by standard practice in the industry.

I.16.2. *In any case, the Contractor shall effect and maintain the following insurance:*

- (a) Third party and public liability insurances to cover each and every liability which the Contractor may incur relating to the performance of the Contract with a limit of indemnity of not less than [x euros] for any occurrence and in the yearly aggregate, notwithstanding any termination of the present Contract (i.e. with a validity period of at least two (2) years following any termination of the Contract).*
- (b) Professional indemnity insurance without unusual or onerous conditions or excesses to cover each and every liability which the Contractor may incur relating to the performance of the Contract including joint and several liability of its members and in particular for any act, error, or omission due to negligence in the performance of the obligations and commitments to be undertaken in accordance with the Contract, design of the works and faulty execution, with a limit of indemnity of not less than EUR [x ] for any one occurrence and in the yearly aggregate, notwithstanding any termination of the present Contract (i.e. with a validity period of at least two (2) years following any termination of the Contract).*

I.16.3. The insurance policies listed above shall allow direct payment of the compensation for the insured damage suffered.

I.16.4. Upon request, the Contractor shall provide to Fusion for Energy:

- (a) copies of all relevant insurance certificates; and
- (b) evidence that premiums payable under all insurance policies have been paid and that the policies are in full force and effect.

#### I.16.5. [**Contract implementation in the ITER site in Cadarache**]

*Wherever the Contractor is the Insuring Party, each insurance policy shall be affected in terms and with insurers approved by Fusion for Energy. These terms shall be consistent with any terms agreed by both Parties before the Contract is signed.*

*Each policy insuring against loss or damage shall provide for payments to be made in the currency required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.*

*Each Party shall comply with the conditions stipulated in each of the insurance policies. The Insuring Party shall keep the insurers informed of any relevant changes to the execution of the Contract and ensure that insurance is maintained in accordance with this Article I.16.5.*

*Nothing in this Article limits the obligations, liabilities or responsibilities of the Contractor or the Fusion for Energy, under the other terms of the Contract or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor and/or Fusion for Energy in accordance with these obligations, liabilities or responsibilities.*

**(a) All risk insurance policy taken out by Fusion for Energy**

*Fusion for Energy shall maintain an all-risks insurance policy to cover the risk of physical loss or damage to the works to be carried out onsite in accordance with the Construction and Erection All Risks Policy as attached under Applicable Document [AD-05](The insurance certificate).*

*Insurance indemnification will be processed according to the Claims Protocol Summary and managed through the Claims Officer, to the insured which suffered the loss. The deductible is borne by the insured which suffered the loss, without any determination of the liability for the damage.*

*Reimbursement of the deductible by the economic operator considered liable is the responsibility of the insured having borne the deductible, and depends only on it. This shall not adversely affect the Contract implementation.*

**(b) Third party liability taken out by Fusion for Energy**

*Fusion for Energy shall take out and maintain an insurance policy that covers third-party liability as indicated in the Applicable Documents [•] (The insurance certificate)*

*This shall not affect any of the Contractor's obligations under this Article I.16.5 or any other provision of the Contract.*

**(c) Insurance for Contractor's equipment taken by the Contractor**

*The Contractor shall take out and maintain insurance for its own equipment.*

*This obligation applies as well for Subcontractor's equipment and the Contractor shall, upon request, provide evidence of such insurance on its behalf.*

**(d) Insurance for motor vehicle liability taken by the Contractor**

*Without prejudice to its other obligations under the Contract or otherwise pursuant to the applicable law, the Contractor shall maintain motor vehicle liability with an insurance value limit in accordance with French law.*

*Reimbursement of the deductible by the economic operator considered liable is the responsibility of the insured having borne the deductible, and depends only on it. This shall not adversely affect the Contract implementation.*

**(e) Insurance for Contractor's personnel taken by the Contractor**

*The Contractor shall cover its liability for any claims, damages, losses and expenses arising from injury, sickness or death of any person employed by the Contractor or and of the Contractor's personnel, according to French law.*

*This cover shall be maintained during the whole time that these personnel are assisting in or participating to the execution of the works carried out onsite. This obligation applies to the Subcontractors as well and the Contractor shall be responsible for compliance to this Article I.16.5 by the Subcontractors.*

**(f) Professional indemnity insurance taken by the Contractor**



*The Contractor shall take out and maintain professional indemnity insurance without unusual or onerous conditions or excesses to cover each and every liability which the Contractor may incur relating to the performance of the Contract including joint and several liability of its members and in particular for any act, error, or omission due to negligence in the performance of the obligations and commitments to be undertaken in accordance with the Contract, design of the works and faulty execution, with a limit of indemnity of not less than EUR 10,000,000 (ten million) for any one occurrence and in the yearly aggregate, notwithstanding any termination of the present contract.]*

#### **I.17. LIQUIDATED DAMAGES**

- I.17.1. Where [completion date is not met/any of the milestones dates for milestones [★] defined in section [★] of Annex B (Technical Specifications), as extended if at all, are not met] and the delay is not attributable to an act or omission of Fusion for Energy, Fusion for Energy may impose liquidated damages amounting to [★]% ([★] percent) of the [Total Contract Price at the above date] per [Day/week/month] of delay, up to a maximum of 10% (ten percent) of the [Total Contract Price]. Fusion for Energy may at its sole discretion apply a lower amount.
- I.17.2. Without prejudice to Fusion for Energy's right to terminate the Contract in accordance with Article II.19 (*Termination by Fusion for Energy for Cause*), the liquidated damages payable under this Article shall constitute the sole, full and final remedy available to Fusion for Energy in respect of any delay.
- I.17.3. The Parties expressly agree and acknowledge that any amounts payable under this Article I.17 (*Liquidated damages*) are of the nature of liquidated damages and not penalties and represent a reasonable estimate of fair compensation for the damages and losses that may be reasonably anticipated by Fusion for Energy from any delay of the Contractor.

#### **I.18. [FREE-ISSUE ITEMS DELIVERED TO THE CONTRACTOR]**

- I.18.1. *All supplies delivered to the Contractor by Fusion for Energy or third parties designated by Fusion for Energy in connection with the Contract (section [•] of Annex B (Technical Specifications)) (the "Free-Issue Items"), shall never become the property of the Contractor and shall be used only for the execution of the Contract and for no other purpose whatsoever, without prior approval in writing of Fusion for Energy.*

*Free-Issue Items are delivered in accordance with [DAP (INCOTERMS 2010)] to the Contractor's premises or another place of destination, as the case may be, on behalf of Fusion for Energy, ITER IO or another Domestic Agency and within the following time periods:*

*[•] (section [•] of Annex B (Technical Specifications)) shall be delivered by [•].*

*[•] (section [•] of Annex B (Technical Specifications)) shall be delivered by [•].*

*[•] (section [•] of Annex B (Technical Specifications)) shall be delivered by [•].*

*Free-Issue Items will be clearly labelled and delivered with the official documentation mentioning that export is on behalf of ITER IO. The Articles 5 and 6 of the ITER Immunities and Privileges Agreement shall apply and then Free-Issue Items will be exempt from all duties and taxes.*

*For these Free-Issue Items belonging to Fusion for Energy or to ITER IO or a Domestic Agency, the Contractor shall be responsible for the custom clearance and formalities,*

*the unloading and, as may arise, free-storage on site. The transfer of risks to the Contractor shall happen at the moment the goods are made available to him at the place of destination, in accordance with the INCOTERMS referred to in this article I.18.1.*

*From the moment of the transfer of risks, the Contractor shall bear the risks of any damage, loss or destruction of any or all the supplies delivered on behalf of Fusion for Energy, ITER IO, a Domestic Agency or third parties designated by Fusion for Energy in connection with the Contract (section [•] of Annex B (Technical Specifications)) that it has in its possession for execution of the Contract. The Contractor shall be responsible for providing surveillance and guarding for these Free-Issue Items, including for contracting any suitable insurance, at its expense until Final Acceptance.*

*[In case Free-Issue Items are delivered in advance of the provided time schedule, the Contractor shall provide free storage at its own cost.]*

- I.18.2. *In relation with the technical acceptance of the Free-Issue Items delivered to the Contractor on behalf of Fusion for Energy by a third party designated by Fusion for Energy, provisions in Annex B (section [•] of Annex B (Technical Specifications)) are applicable.*

*[Before starting the assembly work, the Contractor shall be under the strict obligation to carry out the tests stipulated in section [•] of Annex B (Technical Specifications) or any other tests that Fusion for Energy may reasonably deem appropriate. All the tests shall be carried out after prior approval of and in presence of Fusion for Energy and recorded in writing to be delivered to Fusion for Energy for approval.]*

*If the results of the tests are not compliant with the conditions stipulated in section [•] of Annex B (Technical Specifications), the reasons of the refusal by the Contractor shall be explained and detailed by writing.*

*A final series of tests shall be carried out by a third party especially designated for this purpose or by Fusion for Energy under the supervision of this third party. The resulting expenses and delays shall be borne by the Party shown to be wrong by the results of this new series of tests.*

- I.18.3. *The Contractor shall not be responsible to repair or replace non-conformities but may be required by Fusion for Energy to carry out remedial actions. The Parties shall negotiate in good faith a revision of the price in order to take into account the extra work performed by the Contractor.*

*Non-conformities shall be duly proved by the Contractor. Normal wear and tear shall not be considered as a non-conformity.*

*Fusion for Energy or third parties shall have the right to access in order to repair or replace such the Free-Issue Items, as necessary.*

- I.18.4. *Fusion for Energy commits itself to deliver the Free-Issue Items at the latest by the dates indicated in Article I.18.1 (Free-Issue Items delivered to the Contractor).*

*[If Fusion for Energy fails to deliver the Free-Issue Items within said time limits, the Parties shall negotiate in good faith a compensation to be paid by Fusion for Energy for any reasonable and evidenced direct damage incurred by the Contractor, for which the Contractor shall provide duly documented evidence. The negotiations related to the determination of the extra costs shall not constitute a cause of delay on the part of the Contractor for the performance of the Contract. In addition, should the parties fail to reach an agreement on the determination of the costs, this shall not be deemed a cause of termination of the Contract on the part of the Contractor. In the absence of an agreement Article I.23 (Dispute resolution) shall apply.]*

OR

*[Should Fusion for Energy fail to deliver the Free-Issue Items within said time limits, the Contractor may decide to impose liquidated damages on Fusion for Energy for delay as follows:*

- (a) The liquidated damages related to the delivery of [•] are fixed at EUR [to be indicated in euro] per calendar week of delay in the completion of the deliverable to which it is connected.*
- (b) The liquidated damages related to the delivery of [•] are fixed at EUR [to be indicated by in Euro] per calendar week of delay in the completion of the deliverable to which it is connected.*

*The request for liquidated damages from the Contractor to Fusion for Energy shall be admissible only in case the Contractor can demonstrate that the delay in the delivery of the Free-Issue Item has caused a delay in the completion of the deliverable to which it is connected. No liquidated damages shall be imposed for delays which do not exceed of two [2] weeks.*

*The aforementioned liquidated damages shall be payable for each Free-Issue Item, up to [•] weeks of delay. For any delay exceeding [•] weeks, the Parties shall negotiate in good faith to find a suitable solution for both Parties as to the amount of additional costs to be paid to the Contractor by Fusion for Energy with the aim of reducing at a minimum of the costs. In no event, shall failure to reach an agreement constitute a cause of termination on the part of the Contractor.*

*[The compensation foreseen under this Article shall apply in accordance with the following conditions:*

- [.] (section [.] of Annex B (Technical Specifications) Free-Issue Items is subject to a sixty (60) Days grace period.*
- [.] (section [.] of Annex B (Technical Specifications) Free-Issue Items are not subject to any compensation.]*

*Liquidated damages payable under this Article shall constitute the sole, full and final remedy available to the Contractor in respect of delays in delivery of Free-Issue Items.]*

## **I.19. [SPECIAL PURPOSE TOOLING SUPPLIED BY THE CONTRACTOR AND PAID BY FUSION FOR ENERGY**

### **I.19.1. Definition and ownership**

*Special purpose tooling manufactured or purchased by the Contractor for the execution of the Contract, and duly paid by Fusion for Energy shall become or remain the property of Fusion for Energy (the "**Special Purpose Tooling**") from the moment it is purchased or manufactured by the Contractor. [This tooling is further specified in section [•] of Annex B (Technical Specifications)].*

*At any stage during the execution of the Contract and no later than one (1) month following Final Acceptance, Fusion for Energy may request the Contractor to dispose of the Special Purpose Tooling. The costs of such disposal shall be borne by the Contractor.*

*At any stage before Fusion for Energy informs the Contractor if the Special Purpose Tooling shall be disposed of, Fusion for Energy may propose to sell the Special Purpose Tooling or any part thereof to the Contractor. Should the Contractor be interested, the Parties shall determine in good faith the resale value of the Special Purpose Tooling to be transferred to the Contractor. Such value shall be set off against the amount of the next invoice issued by the Contractor.*

*In case Fusion for Energy wishes to take possession of the Specific Purpose Tooling or part of it, the Contractor shall deliver the Specific Purpose Tooling EXW (INCOTERMS 2010) at its premises.*

#### **I.19.2. Inventory and identification**

*The Special Purpose Tooling shall be identified within an inventory list (the "Inventory"). The Contractor shall maintain the Inventory and a up-to-date utilisation account of the Special Purpose Tooling placed under its control until Fusion for Energy has provided the communication on disposal referred to in Article I.19.1.*

*The Inventory shall be regularly updated to include all Special Purpose Tooling during the course of the Contract implementation. The updated Inventory shall be transmitted to Fusion for Energy upon request.*

*The Special Purpose Tooling shall be marked in an unambiguous way as being Fusion for Energy's property.*

#### **I.19.3. Liabilities with regards to the Special Purpose Tooling**

*The Contractor shall be liable for the Special Purpose Tooling, which it has in its possession for execution of the Contract.*

*The Contractor shall be responsible for providing maintenance in good work conditions, surveillance and guarding for them at its expense until Fusion for Energy has provided the communication on disposal referred to in Article I.19.1.*

*If any Special Purpose Tooling is destroyed, lost, or damaged, the Contractor shall, at Fusion for Energy's discretion:*

- (a) replace it with an identical one; or*
- (b) shall repair it; or*
- (c) shall repay its replacement cost.*

#### **I.19.4. Use of the Special Purpose Tooling**

*Special Purpose Tooling shall be used exclusively for tasks stipulated in the Contract. However, Fusion for Energy may authorise in writing its use for other works provided the performance of the Contract is not affected and prior agreement of Fusion for Energy on the procedure is followed.]*

### **I.20. SAFETY OF THE ITEMS**

I.20.1. The design and manufacture of the Items shall be carried out in a manner which ensures that the Items comply with any current safety legislation and standards applicable at the place of manufacture and [at the place of delivery].

I.20.2. [The design and manufacture of the Items constituting Protection Important Components (PIC) shall be carried out in a manner which ensures that the Items comply with any current safety legislation and standards applicable at the place of manufacture and, for Safety Important Class (SIC) Components only, at the place where the Items will be installed. In particular, the Items shall be designed and manufactured according to the safety requirements and codes specified in Annex B [and designed in conformity with specific requirements of the French Order 12 December 2005 concerning Nuclear Pressure Equipment. As such the procurement will be controlled by an agreed notified body (ANB)]. The Contractor commits itself to apply all rules and implement all necessary actions imposed by the above legislation and standards. Notwithstanding any provision to the contrary, the Contractor shall not subcontract any part of the work involving PIC without prior written authorization from Fusion for Energy. The

*Contractor shall communicate all the requested information on the subcontractors used for the design and manufacture of PIC which shall include its name, address and reference number of the Contract. [It is understood that the Contractor shall not be responsible for the preliminary and detailed design].*

- I.20.3. Where applicable, the Contractor shall be responsible for the implementation of the CE Markings requirements.

## **I.21. TRANSFER OF OWNERSHIP AND TRANSFER OF RISKS,**

### **I.21.1. Transfer of ownership**

Unless otherwise provided in the Contract, all Items, goods or material to be delivered by the Contractor in connection with the Contract shall become the property of Fusion for Energy upon Final Acceptance in accordance with the Contract.

In case Fusion for Energy decides [*not to release any of the Stages or*] to exercise its rights under Article II.19 (*Termination by Fusion for Energy for cause*) and Article II.20 (*Termination by Fusion for Energy for convenience*), any Item, goods, material or unfinished work purchased or manufactured up to the point in time of the receipt by the Contractor of the written notice related to the intention [*not to release a Stage or*] to early terminate the Contract, shall become property of Fusion for Energy as from the receipt of said communication unless otherwise stated in said communication.

### **I.21.2. Transfer of risks**

Unless otherwise provided in the Contract, the Contractor shall bear all risks of loss or damage to the Items in accordance with the provisions of the INCOTERMS referred to in Article I.5 (*Delivery*).

It shall effect insurance to the extent necessary to cover the risk of such loss or damage in accordance with the specific conditions of article I.16 (*Insurance*).

## **I.22. INTELLECTUAL PROPERTY**

- I.22.1. The provisions of Annex D (*Intellectual Property Provisions*) shall be applicable.

## **I.23. APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

- I.23.1. The Contract shall be governed by the Community and European Union Law, complemented by national substantive law of *Spain* other than its rules of private international law (conflict of law/*renvoi* rules). The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods (CISG) adopted in Vienna on 11 April 1980 does not apply to the Contract.

- I.23.2. The Parties agree that all Disputes shall be resolved in good faith in accordance with the following provisions.

- I.23.3. Any Dispute shall in the first instance be referred for resolution by the Senior Representatives of the Parties by service of a notice of referral (the "**Notice of Referral**").

The Notice of Referral shall be duly accompanied by:

- (a) Full written particulars of the matters that are the subject of the Dispute;

- (b) Full details of the factual and legal basis of the referring Party's claim;
- (c) Full details of the remedy sought by the referring Party together with full particulars in support of that remedy; and
- (d) Copies of all documents relied upon by the referring Party in support of his claim.

Following service of a Notice of Referral and the accompanying information specified above, the Senior Representatives shall meet in person and endeavour in good faith to reach agreement to resolve the Dispute. Notwithstanding the reference of any Dispute to the Parties' Senior Representatives, the Parties shall continue to perform their duties and obligations hereunder.

- I.23.4. If the Senior Representatives fail to reach agreement to resolve the Dispute within thirty (30) working days of the date of the Notice of Referral (or such other period as may be agreed in writing by the Senior Representatives) then the Dispute shall be resolved in accordance with Article I.23.5. In this case, if the dispute is not referred to the Court of Justice of the European Union (the "ECJ") within three hundred sixty five (365) days as from the date of the Notice of Referral no reference in respect thereof may be commenced.
- I.23.5. Any Dispute between the Parties which cannot be settled amicably or by way of an agreement of the Senior Representatives shall be exclusively decided by the ECJ in accordance with its own rules of procedure. The language of the proceedings shall be English. Notwithstanding the foregoing, neither Party shall be entitled to refer any Dispute for resolution pursuant to this Article I.23.5 unless the Dispute has been first referred to the Senior Representatives pursuant to Article I.23.3. Notwithstanding the reference of any Dispute to the ECJ, the Parties shall continue to perform their duties, obligations and liabilities hereunder.
- I.23.6. At any stage after the failure to reach an agreement on any Dispute referred to the senior representatives of the Parties under Article I.23.3 and without prejudice to Article I.23.3 and Article I.23.5, the Parties may at any time agree to submit the Dispute to mediation, in which case the following procedure shall apply:
- (a) If any Party to the Dispute gives written notice to the other Party of its desire to commence mediation, and the other Party agrees in writing, the Parties shall jointly appoint a mutually acceptable mediator within two (2) weeks of the date of the said written agreement. If the Parties are unable to agree upon the appointment of a mediator within that time period, then the Parties agree to submit the Dispute in question to administered expertise proceedings in accordance with the Rules for Expertise of the International Chamber of Commerce (being in force as from 1 January 2003).
  - (b) Within two (2) months of his appointment, the mediator shall produce a non-binding written proposal resolving the Dispute or a statement that no proposal can be made. The mediator's proposal shall not be binding on the Parties, who reserve the right to bring the Dispute before the ECJ, as per Article I.23.5 as the case may be.
  - (c) Within two (2) weeks of the date of notification of the proposal of the mediator, the Parties can conclude a written agreement, duly signed by the Parties, based on the proposal. In case such agreement is reached, the Parties are precluded from initiating proceedings before the ECJ. If such proceedings have already commenced, the Party who brought the dispute before the ECJ shall withdraw the claim, or the part of it which has been settled by mediation.

- (d) The Parties further agree to share equally the costs of mediation and, if necessary, the fees and the costs of the International Centre for Expertise of the International Chamber of Commerce, provided, however, that such fees and costs will not include any fees or costs incurred by a Party in connection with the mediation.

#### **I.24. SURVIVAL OF OBLIGATIONS**

- I.24.1. Obligations under the Contract, which by their nature would continue beyond the termination or expiration hereof, including, by way of illustration only and not limitation, those in the Article I.15 (*Liability*), Annex D (*Intellectual Property Provisions*), Article II.12 (*Warranty*), Article II.22 (*Checks and audits*), Article II.23 (*Confidentiality*) shall survive the termination or expiration of the Contract.

#### **I.25. [OTHER SPECIFIC PROVISIONS]**

##### **I.25.1. [*Warranty for limited occurrences*]**

*[Without prejudice to Article II.12.1 (Warranty), the Contractor shall repair or replace the Items for [•] years from the acceptance of the Items by Fusion for Energy and for the following occurrences:*

- (a) [•] as defined in Annex B (Technical Specifications);*
- (b) [•] as defined in Annex B (Technical Specifications).]*

##### **I.25.2. [*Qualified Providers*]**

*Article II.13 (Subcontracting) applies to Qualified Providers.]*

## II. GENERAL CONDITIONS

### II.1. PERFORMANCE OF THE CONTRACT

#### II.1.1. General provisions on performance of the Contract

- (a) The Contractor shall perform the Contract with due skill, care and diligence, in accordance with the high professional standards expected from an experienced contractor in the field of the Contract.
- (b) The Contractor must comply with the minimum requirements provided for in the tender specifications. This includes compliance with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU<sup>5</sup>.
- (c) The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required to perform this Contract under the laws and regulations in force at the place where this Contract is to be executed.
- (d) The Contractor shall be obliged to follow the instructions of Fusion for Energy given in writing by the Responsible Officer for this Contract. If the Contractor receives instructions that jeopardize the economical, expeditious, and safe performance of this Contract, it shall immediately call the attention of Fusion for Energy in writing thereto. However, if the Responsible officer for this Contract repeats the instructions in writing, the Contractor shall execute them at the risk and expense of Fusion for Energy.
- (e) Contractor shall neither represent Fusion for Energy nor behave in any way that would give such an impression. The Contractor shall inform third parties that it and its employees do not belong to the European public service.

#### II.1.2. General provisions regarding the Contractor's Staff

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<sup>5</sup> OJ L 94 of 28.03.2014, p. 65



- (a) The Contractor must ensure that any Staff performing the Contract (including that of Subcontractors) has the professional qualifications and experience required for execution of the Contract.
- (b) Upon request of Fusion for Energy, the Contractor shall justify the deployment of the human resources, regarding the number and the professional qualification of the personnel involved for the execution of the Contract.
- (c) The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him with respect to its Staff, notably those resulting from employment, tax, social security, health and safety legislation. The Contractor shall indemnify and hold harmless Fusion for Energy from any claim in that respect including those claims related to salary, remuneration, tax, social security and health and safety obligations of the Contractor. If requested by Fusion for Energy, the Contractor shall submit copies of forms evidencing compliance with the aforementioned obligations.
- (d) The Contractor shall be responsible for the submission of any information required by the labor or tax authorities, or other authority, having jurisdiction over the work in respect of the employees working or from time to time employed or hired by the Contractor and its subcontractors to carry out any work under this Contract. The Contractor shall also be responsible to submit copies of that documentation to Fusion for Energy. The Contractor shall keep at all times in the site the legally required books and records containing information on its employees and those of its subcontractors working on the site. Fusion for Energy shall have access to the information contained in such registry book.
- (e) The Contractor shall have sole responsibility for the Staff executing the tasks under the Contract. The Contractor has the duty to manage the team in charge of the execution of this Contract.
- (f) The Contractor shall make provision for the following employment or service relationships with its Staff: (1) Staff executing the tasks assigned to the Contractor may not be given orders directly by Fusion for Energy; and (2) Fusion for Energy may not under any circumstances be considered to be the Staff's employer and the said Staff shall undertake not to invoke in respect of Fusion for Energy any right arising from the contractual relationship between Fusion for Energy and the Contractor.
- (g) The Contractor shall use reasonable efforts to minimize the risk of labor-related delays or disruption of the progress of the work. The Contractor shall promptly take any and all reasonable steps that may be available in connection with the resolution of violations of collective bargaining agreements or labor jurisdictional disputes. The Contractor shall advise Fusion for Energy promptly in writing of any actual or threatened labor dispute of which the Contractor has knowledge that might materially affect the performance of this Contract by the Contractor or by any of its subcontractors. Notwithstanding the foregoing, the settlement of strikes, walkouts, lockouts or other labor disputes shall be at the discretion of the Party having the difficulty.

- (h) In the event of disruption resulting from the action or omission of a member of the Contractor's Staff or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by this Contract, the Contractor shall replace him without delay.
- (i) Fusion for Energy shall have the right to request the replacement of any such member of Staff, stating its reasons for so doing. Replacement Staff must have the necessary qualifications and be capable of performing this Contract under the same contractual conditions. The Contractor shall ensure the continuity of the service and the transfer of knowledge from the replaced Staff to the replacement Staff. The Contractor shall be responsible for any delay in the execution of this Contract resulting from the replacement of Staff.

### II.1.3. Quality management and safety

- (a) The Contractor shall comply during the performance of this Contract with the quality and management requirements laid down in the Annexes and Applicable Documents of this Contract.
- (b) The Contractor shall have the responsibility for ensuring compliance with the safety regulations and standards applicable in the places where the Contract is executed.

## II.2. APPROVAL OF THE ACCEPTANCE DATA PACKAGES LINKED TO PAYMENTS

II.2.1. Where the Contractor must submit an Acceptance Data Package (ADP) linked to a payment, Fusion for Energy has sixty (60) Days from receipt of the relevant request for payment :

- (a) to approve it and make the payment; or
- (b) to reject it and to require the Contractor to submit another ADP; or
- (c) to make observations, suspend the time-limit for payment and require the Contractor to take corrective actions.

II.2.2. Any rejection by Fusion for Energy must be based on objective reasons in accordance with the provisions of the Contract and be transmitted in writing to the Contractor.

If Fusion for Energy rejects the ADP, the Contractor shall submit a new ADP which shall likewise be subject to the above provisions.

The deadline for submission of any other ADP and other deadlines set out in the Contract shall not be affected or deferred due to Fusion for Energy's rejection of a given ADP.

## II.3. GENERAL PROVISIONS CONCERNING PAYMENTS

- II.3.1. Payments shall be deemed to have been made on the date on which Fusion for Energy's account is debited.
- II.3.2. Fusion for Energy may suspend the payment periods referred to in Article I.7 (*Payments period and formalities*) at any time if it informs the Contractor that its payment request is not admissible. The reasons Fusion for Energy may cite for the inadmissibility of a payment request are:

- (a) the payment is not due in accordance with the Contract;
- (b) the Contractor has not produced the appropriate supporting documents or deliverables; or
- (c) Fusion for Energy has observations on the documents or deliverables submitted with the invoice.

II.3.3. In the event of doubt on the admissibility of the payment request, Fusion for Energy may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the request is admissible.

II.3.4. Fusion for Energy shall notify the Contractor as soon as possible of the suspension and set out the reasons for it. Suspension takes effect on the date Fusion for Energy sends the notification. The remaining payment period resumes from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension of payment exceeds two months, the Contractor may request Fusion for Energy's decision on whether the suspension must be continued.

II.3.5. In the event of late payment, Contractor shall be entitled to interest calculated at the rate applied by the European Central Bank to its most recent main refinancing operations (the "**Reference Rate**") plus eight (8) percentage points (the "**Margin**"). The Reference Rate in force on the first Day of the month in which the payment is due shall apply. Interest shall be payable for the period elapsing from the Day following expiry of the time limit for payment up to the Day of payment. Suspension of payment by Fusion for Energy does not constitute late payment. When the calculated interest is lower or equal to EUR 200, it must be paid only if the Contractor requests it within two months of receiving late payment.

#### II.4. RECOVERY

II.4.1. If total payments made exceed the amount actually due under the Contract or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the appropriate amount in EUR on receipt of the debit note, in the manner and within the time limits set by Fusion for Energy.

II.4.2. In the event of failure to pay by the deadline specified in the request for reimbursement, the sum due shall bear interest at the rate indicated in Article II.3.5. Interest shall be payable from the Day following the expiry of the due date up to the Day on which the debt is repaid in full.

II.4.3. In the event of failure to pay by the deadline specified in the request for reimbursement, Fusion for Energy may, after informing the Contractor in writing, recover amounts established as certain, of a fixed amount and due by offsetting them against any amount owed to the Contractor by Fusion for Energy that is certain, of a fixed amount and due. Fusion for Energy may also claim against the Pre-financing guarantee or the Performance guarantee depending on which payment is impacted by the debt to be recovered.

#### II.5. TAXATION

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<sup>6</sup> OJ C 321 E of 29.12.2006 p. 0318-0324

- II.5.1. The Contractor recognises that Fusion for Energy is, as a rule, exempt from all taxes and duties, including VAT, pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union<sup>6</sup>.
- II.5.2. The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the Items and services required for performance of the Contract are exempt from taxes and duties, including VAT. The Contractor shall remain responsible for the proper application of the rules on VAT at the place where is taxable. Fusion for Energy reserves the right to communicate information on the Contract to the Member State in which the contractor is liable to VAT.
- II.5.3. Invoices presented by the Contractor shall indicate its place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

## II.6. CHECKS AND ACCESS RIGHTS

- II.6.1. For the purposes of checking the performance of the Contract and subject to prior notification (which in any case shall not be less than 5 (five) days), Fusion for Energy or any entity it designates shall have the right to carry out onsite checks in the premises of, and access to the facilities (including documentation) of the Contractor and its Subcontractors as set out in detail in Applicable Document AD-01 (*Supplier Quality Requirements*).
- II.6.2. Fusion for Energy shall notify in writing to the Contractor the names of the persons entitled or designated to execute the checks (the "**Representatives of Fusion for Energy**"). The Contractor shall grant access to its facilities for the above purposes and shall ensure that any contracts entered into with Subcontractors also provide such unlimited and unrestricted access.
- II.6.3. In carrying out the checks, the Representatives of Fusion for Energy shall comply with the internal rules of procedure, safety and security of the Contractor and Subcontractors as well as with any restriction imposed by any applicable safety and security law.
- II.6.4. In addition to the rights of Fusion for Energy set out in Applicable Document AD-01 (*Supplier Quality Requirements*), Fusion for Energy shall be entitled to a reasonable number of copies (and unless otherwise indicated by Fusion for Energy, not less than three (3)) in paper and electronic form of the documents required in accordance with Applicable Document AD-01 (*Supplier Quality Requirements*) at any time at no cost for Fusion for Energy.
- II.6.5. The Contractor shall provide at no cost for Fusion for Energy (also in the case of permanent Representatives of Fusion for Energy) suitable office accommodation and facilities as may be required for the use of the Representative(s) of Fusion for Energy for the purpose mentioned in this Article II.6 and also all appliances, materials and labour required for inspection or test purposes for the purpose mentioned in this Article II.6.
- II.6.6. Nothing under this Article II.6 shall relieve the Contractor of any of its obligations and responsibilities under the Contract.

## II.7. REPORTING AND TESTING

- II.7.1. The Contractor shall provide Fusion for Energy with reports providing details about the progress of the performance of the Contract, Acceptance Data Packages and Final

Report, all of which shall be in accordance with the requirements set out in Annex A (*Management Specification*) and Annex B (*Technical Specifications*).

- II.7.2. Should any unforeseen event, action or omission directly or indirectly negatively impact execution of the Contract, either partially or totally, the Contractor shall immediately and at its own initiative record it and report it to Fusion for Energy. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with its obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.
- II.7.3. The Contractor shall give Fusion for Energy at least two (2) weeks' notice in writing of any tests that are to be carried out in accordance with the Contract in the presence of Representatives of Fusion for Energy, unless otherwise indicated in the Annex A (*Management Specification*) or Annex B (*Technical specifications*).
- II.7.4. The expense of visits of Representatives of Fusion for Energy connected with such tests will be borne by Fusion for Energy. If one (1) or more of the tests has to be repeated for reasons attributable to the Contractor, the Contractor shall pay the additional costs attributable to extended participation or for any extra visit(s).
- II.7.5. If during the course of a test the Representatives of Fusion for Energy present at the test wish to make minor modifications to the test procedures or programmes which has no impact on the schedule, i.e. modifications involving little extra work or expense, the Contractor shall not unreasonably withhold its consent. Substantial modifications to test procedures or programmes shall be agreed in good faith by the Parties in advance.
- II.7.6. Each test procedure has to be approved by Fusion for Energy prior to the test. Each test report has to be approved by Fusion for Energy. One copy of the test report shall be delivered to Fusion for Energy within ten (10) Days from the end date of each test.
- II.7.7. If the Parties disagree on the results of the tests, a final series of tests shall be carried out by or under the supervision of a third party especially designated for this purpose by Fusion for Energy. The resulting expenses and delays shall be borne by the Party shown to be wrong by the results of this new series of tests.

## **II.8. CONFLICT OF INTERESTS**

- II.8.1. The Contractor shall take all necessary measures in order to prevent any situation of Conflict of Interest or Professional Conflicting Interest. Any Conflict of Interest or Professional Conflicting Interest which could arise during performance of the Contract must be notified to Fusion for Energy in writing without delay. The Contractor shall immediately take all necessary steps to rectify it.
- II.8.2. Fusion for Energy reserves the right to verify that such measures are adequate and may require that additional measures be taken, if necessary, within a time limit which it shall set. The Contractor shall ensure that its staff, board and directors are not placed in a situation which could give rise to conflict of interest. Without prejudice to Article II.1.2 (*General provisions regarding the Contractor's staff*) the Contractor shall replace, immediately and without compensation from Fusion for Energy, any member of its staff exposed to such a situation.
- II.8.3. The Contractor shall abstain from any contact likely to compromise its independence.
- II.8.4. The Contractor declares:

- (a) that it has not made, and will not make, any offer of any type whatsoever, from which an advantage can be derived under the Contract;
- (b) that it has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, in as much as it is an incentive or reward relating to the performance of the Contract.

## II.9. PERSONAL DATA PROTECTION

- II.9.1. Any personal data of natural persons (the « Data Subject ») included in or relating to the Contract, including its execution shall be processed by Fusion for Energy pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movements of such data. It shall be processed solely for the purposes of the performance, management and follow-up of the Contract by Fusion for Energy, without prejudice to possible transmission to its internal audit services, to the European Court of Auditors, to the Financial Irregularities Panel and/or to the European Anti-Fraud Office (OLAF) for the purposes of safeguarding the financial interests of the European Union.
- II.9.2. The Data Subject shall have the right of access to its personal data and the right to rectify any such data that is inaccurate or incomplete. Should the Data Subject have any queries concerning the processing of its personal data, it shall address them the Personal Data Controller. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.
- II.9.3. Fusion for Energy shall inform the Contractor of the name of the Personal Data Controller upon request.

## II.10. ERRORS IN FUSION FOR ENERGY'S REQUIREMENTS

- II.10.1. The Contractor hereby expressly declares and warrants that it shall carefully review the Contract and its Annexes within the Review Period and that it shall notify without delay and in any case, no later than the end of the Review Period, any errors, faults, omissions, discrepancies or ambiguities in any drawings, documents or data contained therein.
- II.10.2. Subject to Article II.10.3, Fusion for Energy hereby expressly agrees that if the Contractor suffers a delay or incurs additional costs as a result of an error, fault or omission regarding any drawings, documents or data contained in the Contract or in its Annexes, the Contractor will be entitled to an extension of time and/or payment of any Cost only in case the Contractor proves that such an error, fault or omission would not have been discovered by an experienced contractor exercising due care during the Review Period.
- II.10.3. If the Contractor considers itself to be entitled to an extension of time and/or any additional payment under Article II.10.2, it shall give notice to Fusion for Energy as soon as practicable within the Review Period, providing details in support for the claim. The Parties shall agree in good faith whether and to what extent the possible extension of time and determination of additional costs. Article II.24 (*Amendments*) shall apply to determine the extension of time or the additional costs. In case the Parties do not agree on the existence of the error, fault or omission, or on the extent of the extension of time and/or the determination of the additional costs, the provision of settlement of Dispute set forth in Article I.23.3 (*Applicable Law and settlement of Disputes*) shall apply.

## II.11. ACCEPTANCE

### II.11.1. General

In this Contract, Acceptance shall mean acknowledgment that the Items delivered are in conformity with the contractual requirements.

Signing of the consignment note by Fusion for Energy, as provided for in Article I.5 (*Delivery*) is simply an acknowledgment of the fact that the delivery took place and in no way implies conformity of the Items with the Contract.

Conformity of the Items delivered shall be evidenced by a written communication to this effect or, in the case of a deliverable linked to a payment, by the payment.

Conformity shall be declared only where the conditions for acceptance laid down in Article II.11.2 of the Contract are satisfied.

Where, for reasons attributable to the Contractor, Fusion for Energy is unable to accept the Items, the Contractor shall be notified in writing.

Approval of any deliverable or document by any means other than those set out in this Article II.11 shall not constitute an Acceptance within the meaning of this Contract. Likewise, no obligation and/or responsibility of the Contractor under this Contract shall be released until Final Acceptance.

### II.11.2. Conditions for acceptance: conformity of the Items delivered

- (a) The Items delivered by the Contractor to Fusion for Energy must be in conformity in quantity, quality, price and packaging with the Contract.
- (b) The Items delivered shall:
  - correspond to the specifications given in Annex A (*Management specification*) and Annex B (*Technical Specifications*) and appendixes;
  - be packaged in accordance with the provision of Article I.14 (*Packing, transport, insurance and importation for the goods to be delivered by the Contractor*).

### II.11.3. Remedy

- (a) The Contractor shall be liable to Fusion for Energy for any lack of conformity which exists at the time the Items are verified.
- (b) In case of lack of conformity, without prejudice to Article I.17 (*Liquidated Damages*) regarding liquidated damages applicable to the total price of the goods concerned, Fusion for Energy shall be entitled, at its own discretion:
  - to have the Items brought into conformity, free of charge, by repair or replacement; or
  - to have an appropriate reduction made in the price.
- (c) Any repair or replacement shall be completed within a reasonable time and without any significant inconvenience to Fusion for Energy, taking account of the nature of the goods and the purpose for which they are required by Fusion for Energy.
- (d) The term 'free of charge' in paragraph (b) refers to the costs incurred to bring the goods into conformity, particularly the cost of postage, labour and materials.

### II.11.4. Assembly

If required by Annex B (*Technical Specifications*), the Contractor shall assemble the Items delivered within a period of one (1) month unless otherwise specified in the Contract or in Annex B (*Technical Specifications*).

The Contractor shall be responsible for any loss or damage during assembly of the Items and shall affect insurance as may be necessary to cover the risk of such loss or damage from any cause.

Any lack of conformity resulting from incorrect installation of the Items delivered shall be deemed to be equivalent to lack of conformity of the Items if installation forms part of the Contract and the Items were installed by the Contractor or under its responsibility. This shall apply equally if the Items were to be installed by Fusion for Energy and were incorrectly installed owing to a shortcoming in the installation instructions.

## II.12. WARRANTY

### II.12.1. Scope and Duration

The Items shall be warranted by the Contractor against all defects falling under the responsibility of the Contractor as a result of the performance of the Contract for two (2) years from the date of the Final Acceptance (the “**Warranty Period**”). The Contractor does not warrant the Items against normal wear and tear and does not cover defects resulting from lack of maintenance by Fusion for Energy or third parties.

The Contractor shall only be exempted from the above obligations during the Warranty Period if it is able to prove that the defect was exclusively caused after Final Acceptance by a third party, Fusion for Energy or a Force Majeure. Notwithstanding, the Contractor shall start to execute the necessary actions to remedy the defect rather than determine liability, without prejudice to the Contractor’s right to have its documented Costs reimbursed where it proves that the defect did not fall under the Warranty.

The Contractor is responsible for any defect which exists at the time of delivery, even if this defect does not appear until a later date within the Warranty Period.

If a defect is found to originate in a systematic flaw in design for which the Contractor shall be deemed responsible, the Contractor shall replace or modify all identical parts incorporated in other Items that are part of the Contract, even though they may not have been the cause of any incident. In this case, the parts replaced or modified shall be guaranteed under the same terms and conditions for a further period of the same duration as that specified above.

Any defect resulting from incorrect installation of the Items shall be deemed to be equivalent to defect of the Items if the Items were installed by the Contractor or under its responsibility. This shall apply equally if the Items are installed by Fusion for Energy and the incorrect installation is due to a shortcoming in the installation instructions provided by the Contractor.

### II.12.2. Remedies

In the case of defect, Fusion for Energy shall be entitled, to have the Items brought into conformity free of charge by Repair or replacement, or to have an appropriate reduction made in the Total Contract Price or the Contract terminated with regard to those Items.

In the first place, Fusion for Energy may require the Contractor to Repair the Items or to replace them, in either case free of charge, unless this is impossible or disproportionate.

A remedy shall be deemed to be disproportionate if it imposes costs on the Contractor which, in comparison with the alternative remedy, are unreasonable, taking into account:

- the value the Items would have if there were no lack of conformity,



- the significance of the lack of conformity, and
- whether the alternative remedy could be completed without significant inconvenience to the Contractor.

In the case of the replacement of an Item or the termination of the Contract within the Warranty Period, Fusion for Energy shall not be required to make reimbursement for any depreciation in the value of the Items resulting from proper use.

Any and all of the expenses incurred in relation to performance of an obligation based on a Warranty shall be borne by the Contractor. Therefore, the term ‘free of charge’ in this Article refers to any and all costs incurred to bring the Items into conformity, particularly the cost of transportation, labour, accommodation, travel and materials.

### II.12.3. Repair and replacement

Any Repair or replacement shall be completed within a reasonable time and without any significant inconvenience to Fusion for Energy, taking account of the nature of the Items and the purpose for which Fusion for Energy required the Items.

If the Contractor fails to undertake or carry out repair of the Items or to replace them by an reasonable deadline, Fusion for Energy shall be entitled to Repair or replace the Items himself or have them Repaired or replaced by another person at the Contractor’s expense.

In the case of Repair, the Warranty Period shall be extended by the time commencing from notification of the defect during which Fusion for Energy could not use the Items properly because of the defect. In the case of replacing the Items or one of its major components, the Warranty Period provided for enforcement of the Warranty rights shall recommence in respect of the replaced Items (components).

### II.12.4. Reduction of Price and Termination

Fusion for Energy may require an appropriate reduction of the Total Contract Price or have the Contract terminated in accordance with article II.19 (*Termination by Fusion for Energy for cause*):

- if Fusion for Energy is entitled to neither Repair nor replacement, or
- if the Contractor has not completed the remedy within a reasonable time, or
- if the Contractor has not completed the remedy without significant inconvenience to Fusion of Energy.

Fusion for Energy is not entitled to have the Contract terminated if the defect is minor.

### II.12.5. Services

The provisions regarding Warranty shall be duly applied even if an obligation is not aimed at the provision of an Item; in such cases, replacement shall be construed as repeated performance of the related service.

## II.13. SUBCONTRACTING

II.13.1. The Contractor shall not subcontract any part of the work to any Subcontractor without prior written authorisation from Fusion for Energy nor cause or allow the Contract to be performed in fact by third parties. Fusion for Energy may waive its right for prior authorization by registered letter for specific parts of the Contract and subject to the conditions it defines.

II.13.2. The request for authorization mentioned in article II.13.1 shall be made in writing to Fusion for Energy, accompanied by references of the proposed Subcontractor’s

qualifications and experience, its place of establishment, the part of the service/supply to be subcontracted, the total amount estimated to be paid for such service/supply and whether the Subcontractor qualifies as small and medium-sized enterprise. Together with the invoice for payment of the balance, the Contractor shall declare the total amount paid or to be paid to each Subcontractor for the part of the service/supply which was subcontracted.

- II.13.3. Even where Fusion for Energy authorises the Contractor to subcontract to third parties, it shall nonetheless remain bound by its obligations to Fusion for Energy under the Contract and shall bear exclusive liability for proper performance of the Contract. The Contractor shall at all times be responsible towards Fusion for Energy for the acts and omissions of Subcontractors. Fusion for Energy does not undertake any obligation to pay or be responsible for the payment of any sums to any Subcontractor or their employees.
- II.13.4. If required by Fusion for Energy, the Contractor shall list all the legal commitments it enters into for the purpose of executing the Contract and the amounts paid to Subcontractors. The Contractor and/or the Subcontractor shall promptly (and except if otherwise indicated, no later than thirty (30) Days from the receipt of Fusion for Energy's request) submit copies of forms evidencing payment of salaries and social security contributions, as well as the labour benefits of its employees and the Subcontractor's employees, as the case may be, and provide evidence that the Contractor and the Subcontractor comply with all their legal obligations (of any nature) in respect to their employees.
- II.13.5. The Contractor shall make sure that the legal commitment with the Subcontractor does not affect rights and guarantees to which Fusion for Energy is entitled by virtue of the Contract.
- II.13.6. All contracts between the Contractor and Subcontractors shall be made in writing, shall be consistent with the terms and conditions of this Contract (including imposing any relevant obligations under this Contract to the Subcontractor) and shall include any provisions which are necessary to guarantee the rights of Fusion for Energy under the Contract.

#### **II.14. SIGNIFICANT ORGANISATIONAL CHANGE**

- II.14.1. The Contractor shall notify Fusion for Energy without delay of any contemplated Significant Organisational Change by registered letter. This notice shall clearly state (i) the reasons for the contemplated Significant Organisational Change, and (ii) the impact thereof on the performance of the Contract, including with respect to the technical requirements, the quality assurance requirements, the progress requirements and the delivery requirements of the Contract. In addition, the notice shall be accompanied by the following supporting information:
- (a) legal entity form (if applicable);
  - (b) bank account form (if applicable);
  - (c) evidence that the Contractor and/or its Subcontractors, after the Significant Organizational Change has been effected, do or will not fall within any of the exclusion criteria according to Articles 126, 127 or 128 of the Implementing Rules of Fusion for Energy; and
  - (d) evidence of professional and financial capacity.
- II.14.2. Fusion for Energy shall be entitled to object to the proposed Significant Organisational Change if it adversely affects the performance of the Contract and/or the ITER Project as a whole and/or whether it would amount to a substantial modification of the Contract. Fusion for Energy shall notify the Contractor of its decision on the proposed

Significant Organisational Change no later than thirty (30) Days of receipt of notice thereof.

II.14.3. In case of failure to comply with Fusion for Energy's decision mentioned in Article II.14.2, Fusion for Energy shall be entitled to terminate the Contract pursuant to Article II.19 *Termination by Fusion for Energy for cause*).

II.14.4. Fusion for Energy may waive its rights under this article with respect to a change of Subcontractor by registered letter and subject to the conditions it defines.

## II.15. CHANGE IN LEGISLATION

II.15.1. If, as a result of a change in the applicable law or in the judicial or governmental interpretation of such applicable law (but not related to employment, tax or social legislation) occurring after the Commencement Date and directly affecting the performance of the Contract, and, the Contractor will be forced to delay and/or incur additional costs in performing its obligations hereunder, the Contractor shall give written substantiated notice to Fusion for Energy of any such delay and/or additional costs within thirty (30) Days from the date of the change. Should Fusion for Energy decide not to terminate the Contract pursuant to Article II.20 (*Termination by Fusion for Energy for convenience*) and to continue with its execution, the Contractor shall be entitled to:

- (a) an extension of time for any such delay, if completion is or will be delayed; and
- (b) payment from Fusion for Energy of any such duly documented direct Costs, which shall be added to the Total Contract Price.

Article II.24 (*Amendments*) shall apply for the remainder.

II.15.2. The Contractor is not entitled to any compensation or extension in case of failure to timely provide the Notice or in case the impact of the change on the Contract implementation is already covered by the application of another provision of the Contract.

## II.16. FORCE MAJEURE

II.16.1. No Party shall be held in breach of its obligations under the Contract if it has been prevented from performing them by Force Majeure, provided that notice has been given pursuant to Article II.16.2 and for so long as the notified case of Force Majeure prevents the Party from performing its obligations.

II.16.2. Without prejudice to the provisions of Article II.7 (*Reporting and Testing*), if either Party is faced with a case of Force Majeure, it shall notify by registered letter the other Party without delay, but in any case within fourteen (14) Days after the Party became aware, or should have become aware of the applicable Force Majeure. Such notice shall state the nature, likely duration and foreseeable effects of the case of Force Majeure, including specifying the obligations whose performance is or will be prevented by the case of Force Majeure.

II.16.3. In the event of Force Majeure, the Parties shall promptly take all necessary measures to minimize any delay in the performance of the Contract and to reduce damages to a minimum.

II.16.4. The Party invoking Force Majeure shall give notice to the other Party when it ceases to be affected by the case of Force Majeure.

II.16.5. Where the Contractor is unable to perform its obligations under the Contract owing to Force Majeure, it shall have the right to remuneration only for the Items actually delivered.

II.16.6. In case of Force Majeure exceeding six (6) months, notified in accordance with this Article either Party may terminate the Contract with immediate effect, where performance thereof cannot be resumed before a period of minimum six (6) months. Article II.19 (*Termination by Fusion for Energy for cause*) shall apply *mutatis mutandis* to the effects of such termination.

## II.17. ASSIGNMENT

II.17.1. The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from Fusion for Energy.

II.17.2. In the absence of the written authorisation referred to in Article II.17.1, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on Fusion for Energy.

II.17.3. Fusion for Energy may assign the rights and obligations arising from the Contract, in whole or in part, without prior authorisation from the Contractor, to the ITER IO, any other entity which may have taken over all or a substantial part of the ITER IO's/Fusion for Energy's role in respect of the ITER project, another Domestic Agency or the European Commission.

## II.18. SUSPENSION OF THE CONTRACT

II.18.1. Fusion for Energy may at any time and for duly justified reasons suspend performance of the Contract or any part thereof. The suspension shall take effect on the day the Contractor receives notification of the suspension by registered letter with acknowledgment of receipt or equivalent, or at a later date where the notification so provides. Fusion for Energy may at any time following suspension give notice to the Contractor to resume performance of the Contract.

II.18.2. Should Fusion for Energy decide to suspend the Contract for a period of over twelve (12) months, the Contractor is entitled to ask for the Contract to be terminated, on condition that it does so by registered letter with acknowledgment of receipt or equivalent within one (1) month of the date of notification of the suspension. The same shall apply in the event of a series of suspensions totalling a period of over eighteen (18) months. The one (1) month's deadline mentioned above for the request to terminate shall commence on the date of the reception of the decision resulting in the suspension of the Contract for over twelve (12) months or for eighteen (18) months respectively.

II.18.3. In case of termination by the Contractor in the conditions mentioned in this Article, the provisions regarding termination for convenience established in Articles II.20.3 to II.20.7 (*Termination by Fusion for Energy for convenience*) shall apply.

II.18.4. In case the Contract is suspended for more than three (3) months, the Contractor is entitled to request, upon submission of relevant proof, an indemnity corresponding to any certain and direct damage it sustained as a result of the suspension. The Contractor's claim shall be deemed acceptable only if submitted to Fusion for Energy by registered letter with acknowledgment of receipt or equivalent after the end of the suspension and together with the proof of the precise nature and extent of the damage, including a detailed breakdown of the Costs caused by the suspension. The Contractor shall take all necessary measures to prevent and minimize damage.

II.18.5. The indemnity under this Article II.18 shall be the Contractor's exclusive remedy on this ground. The conditions of this Article II.18 shall also apply to the contracts with Subcontractors.

II.18.6. It is agreed that within fifteen (15) Days from the date on which performance of the Contract is resumed by Fusion for Energy the Parties shall convene to re-negotiate in good faith an adequate updated schedule of performance of the Contract. Article II.24 (*Amendments*) shall apply.

## II.19. TERMINATION BY FUSION FOR ENERGY FOR CAUSE

II.19.1. Fusion for Energy may terminate the Contract in the following circumstances:

- (a) where the Contractor or any person that assumes unlimited liability for the debts of the Contractor is in one of the situations provided for in points (a) and (b) of Article 106(1) of the Financial Regulation<sup>7</sup> ;
- (b) where the Contractor or any related person is subject to any of the situations provided for in points (c) to (f) of Article 106(1) or to Article 106(2) of the Financial Regulation;;
- (c) where the procedure for awarding the contract or the performance of the contract prove to have been subject to substantial errors, irregularities or fraud;
- (d) where the Contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
- (e) where the Contractor is in a situation that could constitute a Conflict of Interest or a Professional Conflicting interest as referred to in Article II.8 (*Conflict of interest*);
- (f) where, for reasons due to the Contractor, the performance of the Contract has not actually commenced 15 (fifteen) Days after the date of entry into force of the Contract or any agreed date for the start of the execution of the Contract,
- (g) where the Contractor is unable, through its own fault, to obtain any permit or licence required for performance of the Contract;
- (h) where the amount of liquidated damages exceeds the maximum amount established in Article I.17 (*Liquidated damages*); or
- (i) where the Contractor does not perform the Contract in accordance with the tender specifications or is in material breach of one another of its substantial contractual obligations and has received formal notice from Fusion for Energy in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period, indicated by Fusion for Energy, following receipt of the formal notice, and remains in breach of its contractual obligations.
- (j) where the Contractor commits a material breach of his obligations under this Contract as set out in Article II.19.5 (Covenants). For the avoidance of doubt, under this Article II.19.5 (Covenants), Fusion for Energy is entitled to terminate the Contract, in the case of a group of companies or consortium, with effect to the group of companies or consortium;
- (k) where the Contractor has failed to comply with Fusion for Energy's decision on the proposed Significant Organisational Change or has failed to notify Fusion for Energy in accordance with Article II.14 (*Significant Organisational Change*);

<sup>7</sup> Regulation (EU, EURATOM) No 966/2012 on the financial rules applicable to the general budget of the Union, as amended (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32012R0966>), to which article 85 of F4E Financial Regulation refer ([http://fusionforenergy.europa.eu/downloads/procurements/F4E\\_Financial\\_Regulation.pdf](http://fusionforenergy.europa.eu/downloads/procurements/F4E_Financial_Regulation.pdf)) .

- (l) where the Contractor is in breach of its obligations under Article II.25 (*Export Control Requirements*).

II.19.2. Prior to termination under point (a) and (f) to (l) , above, the Contractor shall be given the opportunity to submit its observations within a reasonable time but in no event later than five (5) Days upon receipt of the letter of termination of Fusion for Energy sent by a registered letter with acknowledgment of receipt.

II.19.3. Fusion for Energy shall notify the Contractor of the said termination by registered letter with acknowledgment of receipt. This letter shall specify the extent of termination. Termination shall take effect on the date on which the letter is received by the Contractor, or any other date indicated in the letter. Such termination shall be effective *ipso iure* without any further legal formalities.

#### II.19.4. **Consequences of termination**

Upon termination of the Contract or any portion thereof in accordance with this Article, the following shall apply:

- (a) The Contractor shall take immediate steps to bring to an end its activities forming the subject matter of this Contract and take all appropriate measures to prevent and minimise damage, and cancel or reduce its commitments. It shall draw up the documents required by the Contract for the goods delivered and accepted, in accordance with the provisions of the Contract, up to the date on which termination takes effect, within a period not exceeding 60 (sixty) Days from that date. In addition, the Contractor shall, at Fusion for Energy's request, deliver all documents, data, Foreground, Information and/or goods produced pursuant to the Contract.
- (b) Without prejudice to Fusion for Energy's right to seek compensation, the Contractor is entitled to be paid for the part of the work done in compliance with the Contract provisions and its Annexes and accepted by Fusion for Energy in accordance with the provisions of the Contract, up to the effective date of the termination.
- (c) Fusion for Energy may engage any other contractor to replace the Contractor. Fusion for Energy shall be entitled to claim from the Contractor all additional costs incurred in making good, and completing the performance of the Contract, without prejudice to any other rights or guarantees it has under the Contract, except in the case of termination due to Force Majeure in accordance with Article II.16 (*Force Majeure*).
- (d) Subject to the limitation foreseen in Article I.15 (*Liability*), Fusion for Energy may claim from the Contractor compensation for any loss or damage sustained due to the early termination and recover any sums paid to the Contractor under the Contract. This shall not apply in the case of termination due to Force Majeure in accordance with Article II.16 (*Force Majeure*).
- (e) The Contractor shall not be entitled to any compensation whatsoever from Fusion for Energy, including but not limited to losses and damages effectively suffered or loss of profit for any uncompleted work.
- (f) In the case of joint tenders, the contracting authority may terminate the contract with each member of the group separately on the basis of points (a), (b) or (d) of Article II.19.1.

### II.19.5. Covenants :

In addition and without prejudice to those covenants, undertakings, commitments and obligations made by or in respect of the Contractor herein and/or in the Contractor's Tender (AD07), the Contractor hereby covenants that, so long as this Contract shall be in force, it shall:

- (a) not take or omit to take any action the taking or omission of which might result in the alteration or impairment of any rights of Fusion for Energy under this Contract or which might adversely affect the implementation of this Contract;
- (b) immediately but not later than four (4) Days notify Fusion for Energy of any event or circumstance, which might adversely affect, alter or impair the rights and/or interests of Fusion for Energy under or pursuant to this Contract, including (without limitation) the filing of a petition for the bankruptcy or insolvency of the Contractor (in case of a group of companies or a consortium, of any member of the same), or the initiation of any similar proceedings, the termination of the Contractor's commercial activities or the winding-up of the Contractor (in the case of a group of companies or a consortium, the termination of the commercial activities or the winding up of any member of the group or consortium);
- (c) not pass any resolution, according to the applicable law to the Contractor (and in case of a group of companies or a consortium, of any member of the same), (i) to dissolve and/or liquidate the Contractor or to authorise an application for the bankruptcy or insolvency of the Contractor (in case of a group of companies or a consortium, of any member of the same), or (ii) to reduce the authorized or issued capital stock or any equivalent thereof of the Contractor, save for a decrease of such to be made in accordance with a mandatory statutory requirements set out in applicable law to the Contractor (in case of a group of companies or a consortium, of any member of the same);
- (d) promptly provide Fusion for Energy, upon its request, with statements on such other matters and information relating to this Contract as Fusion for Energy may from time to time request.

The Parties agree that the breach of the covenants and/or the obligation of the Contractor made under Articles II.19.5 (b) and (c) (Covenants), and the obligation in relation to their due notification as stated above shall qualify as material breach of this Contract.

## II.20. TERMINATION BY FUSION FOR ENERGY FOR CONVENIENCE

- II.20.1. Fusion for Energy may, at any time, at its discretion terminate the Contract or any part thereof in accordance with this Article.
- II.20.2. Any such termination shall be effected by delivery to the Contractor of a written notice sent by registered letter with acknowledgement of receipt. This notice shall specify the extent to which performance under the Contract is to be terminated and the effective date of termination.
- II.20.3. Upon receipt of a notice under this Article, the Contractor shall discontinue performance of the Contract in accordance with the notice and shall take any reasonable steps which are necessary or desirable to terminate performance in a safe and timely manner and minimise the costs associated with the termination.
- II.20.4. Fusion for Energy shall reimburse the Contractor for those Costs actually incurred, including demobilisation costs, and claimed in accordance with Article II.20.5

*(Termination by Fusion for Energy for convenience)* by the Contractor as a direct result of termination of the Contract or of any portion thereof, as well as a cancellation fee corresponding to 3% (three percent) of the remaining payments of any released Stages. However, no cancellation fee shall be paid if termination is made pursuant to Article II.15 (*Change in Legislation*).

II.20.5. As promptly as possible and in no event later than 30 (thirty) Days after the effective date of termination, the Contractor shall submit to Fusion for Energy its claim for reimbursement in writing by registered letter with acknowledgement of receipt. Such claim for reimbursement shall include a cost breakdown of unavoidable costs actually incurred as a result of termination which it is seeking to recover from Fusion for Energy with supporting evidence.

II.20.6. The amount of reimbursement payable under Article II.20.4 (*Termination by Fusion for Energy for convenience*) shall be fixed on the basis of the evidence produced by the Contractor and accepted by the Fusion for Energy. It shall take account of the proportion of the Contract completed and accepted by Fusion for Energy in accordance with the provisions of the Contract, and shall be consistent with Article II.20.7 (*Termination by Fusion for Energy for convenience*). The Contractor hereby expressly waives the right to claim any loss of profit in respect of the uncompleted or outstanding works which were to be performed after the termination date.

II.20.7. Fusion for Energy shall in no circumstances be liable to pay any sum which, when added to the other sums paid, due or becoming due to the Contractor under the Contract, exceeds the Total Contract Price.

## **II.21. SUBSTANTIAL ERRORS, IRREGULARITIES AND FRAUD ATTRIBUTABLE TO THE CONTRACTOR**

II.21.1. Where, after the award of the Contract, the award procedure or the performance of the Contract prove to have been subject to substantial errors, irregularities or fraud, and where such errors, irregularities or fraud are attributable to the Contractor, Fusion for Energy may refuse to make payments, may recover amounts already paid and/or may terminate all the contracts concluded with the Contractor, in proportion to the seriousness of the errors, irregularities or fraud. In that case, the consequences described in Article II.19 shall apply.

## **II.22. CHECKS AND AUDITS**

II.22.1. In accordance with Article 5a of Fusion for Energy Council Decision, the Commission or its representatives and the European Court of Auditors shall have the power of audit, on the basis of documents and on-the-spot checks and inspections, over natural or legal persons receiving payments from the budget of Fusion for Energy from Commencement Date of the Contract up to five (5) years after payment of the balance.

II.22.2. Fusion for Energy or an outside body of its choice shall have the same rights as the European Court of Auditors for the purpose of checks and audits on performance of the Contract from Commencement Date of the Contract up to five (5) years after payment of the balance.

II.22.3. In accordance with Article 5a of Fusion for Energy Council Decision, the European Anti-Fraud Office may carry out investigations including on-the-spot checks and inspections in accordance with Parliament and Council Regulation (EURATOM, EU) No 883/2013 and Council Regulation (Euratom, EU) No 2185/1996 from Commencement Date of the Contract up to five (5) years after payment of the balance.

## **II.23. CONFIDENTIALITY**



II.23.1. The Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to performance of the Contract (the "**Confidential Information**").

II.23.2. This Article II.23 does not apply where:

- (a) the Confidential Information becomes publicly available by means other than a breach of confidentiality obligations; or
- (b) the disclosing Party subsequently informs the recipient that the Confidential Information is no longer confidential; or
- (c) the Confidential Information is subsequently communicated to the recipient without any obligation of confidence by a third party who is in lawful possession thereof and under no obligation of confidentiality; or
- (d) the disclosure or communication of the Confidential Information is required by law or permitted under other provision of this Agreement, provided that the disclosing Party has given prior written notice of such disclosure to the other Party.

II.23.3. The Contractor shall continue to be bound by this undertaking after execution of the Contract for a period of ten (10) years.

II.23.4. The Contractor shall obtain from each member of its staff, board and directors which will need to know the Confidential Information, an undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to execution of the tasks and that they will not divulge to third parties or use for their own benefit or that of any third party any document or information not available publicly even after execution of the Contract for a period of ten (10) years.

II.23.5. According to Article 17 of Title II 'Rights and Obligations of Officials' of the 'Staff Regulations of Officials read in conjunction with Articles 11 and 81 of the 'Conditions of Employment of Other Servants of the European Union' any Fusion for Energy staff member shall refrain from any unauthorized disclosure of information received in the line of duty, unless that information has already been made public or is accessible to the public. In addition any Fusion for Energy staff member shall continue to be bound by this obligation after leaving the service.

## II.24. AMENDMENTS

II.24.1. Any amendment to the Contract shall be the subject of a written agreement duly dated and signed by the legal representatives of the Parties (the "Amendment"). An oral agreement shall not be binding on the Parties.

II.24.2. An amendment to this Contract shall be required where a Deviation Request or Deviation Order leads to:

- (a) a variation on the price referred to in Article I.6 (*Contract prices*);
- (b) a variation on the payment modalities referred to in Article I.7 (*Payment periods*); and/or
- (c) any other substantial change to the subject matter of the Contract.

In such cases, the provisions of this Article II.24 (*Amendments*) supplement section II.2 of Applicable Document AD-01 (*Supplier Quality Requirements*).

II.24.3. In all cases other than those referred to in Article II.24.2, a Deviation Request or Deviation Notice may be implemented after the approval of the Deviation Request or

after the issue of the Deviation Order by the Responsible Officer in accordance with Annex A (*Management Specification*) and Applicable Document AD-01 (*Supplier Quality Requirements*).

- II.24.4. The impact assessment to be produced by the Contractor upon receipt of a Deviation Notice from Fusion for Energy shall include a detailed breakdown of the costs to be incurred in order to perform the additional work, if any. Unitary prices and productivity rates indicated in the Financial Forms of the Contractor's Tender (AD-07) shall be applicable whenever possible. If not, unitary prices and productivity rates shall be deducted (extrapolation, interpolation or proportionality) from the financial forms of the Contractor'. Fusion for Energy reserves the right to request the Contractor to submit duly documented evidence with respect to any of the proposed cost items.
- II.24.5. The Contractor shall submit the impact assessment within a reasonable time and in no event later than 15 (fifteen) working days after receipt of the Deviation Notice, unless agreed otherwise.
- II.24.6. After reviewing the cost breakdown contained in the impact assessment, Fusion for Energy may agree with the Contractor the final extent of the additional work to be performed, as well as any additional amount to be paid, schedule, payment schedule and modalities, relevant deliverables and issue a Deviation Order. Implementation of the Deviation Order may under no circumstances begin before the date of the entry into force of the Amendment to the Contract and shall not be deemed to be binding on Fusion for Energy prior to the entry into force of the relevant Amendment.
- II.24.7. Any Deviation Request issued by the Contractor shall include a detailed break-down of the costs foreseen including productivity rates to accomplish the work. Unitary prices indicated in the Contractor's Tender (AD-07) shall be applicable whenever possible.
- II.24.8. After reviewing the cost breakdown contained in the Deviation Request, Fusion for Energy may agree in writing with the Contractor the final extent of the work to be performed, as well as any additional amount to be paid, schedule, payment schedule and modalities, relevant deliverables and approve the Deviation Request. However, implementation of the Deviation Request may under no circumstances begin before the date on which the entry into force of an Amendment to the Contract and shall not be deemed to be binding on Fusion for Energy prior to the entry into force of the relevant Amendment.

## II.25. EXPORT CONTROL REQUIREMENTS

- II.25.1. In the implementation of the Contract, the Contractor shall be responsible, including for its Subcontractors, for ensuring compliance with relevant requirements imposed by applicable legislations regarding exportation, re-exportation and transfers (including intra-Community) of the dual-use products, components and technology or any parts thereof subject to the Contract (the "**Dual-use Goods**") to the country of delivery or the ITER site in Cadarache, France.
- II.25.2. Unless otherwise indicated by Fusion for Energy the Contractor shall act as an **Exporter** of the Dual-use Goods and shall provide any requested documentation and information, including evidence of compliance with the relevant exportation or transfer rules and transportation documentation. Should Fusion for Energy decide to act as an Exporter, the Contractor shall assist Fusion for Energy in obtaining any required export, re-export or transfer authorization (including customs) and to provide any necessary information or documentation.

II.25.3. Where the Contractor is unable to obtain any required export, re-export or transfer authorization (including customs) and to provide the requested information or documentation, Fusion for Energy shall be entitled to terminate the contract in accordance with Article II.19 (*Termination by Fusion for Energy for Cause*) unless the Contractor proves that the failure is due to a Force Majeure .

II.25.4. At a date to be defined by Fusion for Energy in accordance with Annex A (*Management Specification*), the Contractor shall produce a list of Dual-use Goods with indication of their category based on applicable international export control lists. It shall also clearly identify any Dual-use Goods to be subcontracted.

**II.26. OTHERS**

II.26.1. The Contract contains the whole agreement between the Parties relating to the subject matter of the Contract as at the date of the Contract to the exclusion of any terms implied by law which may be excluded by contract and supersedes any previous written or oral agreement between the Parties in relation to the matters dealt with in the Contract.

II.26.2. Wherever possible, each provision of the Contract shall be interpreted in such manner as to be effective and valid under Community, European Union and Spanish substantive law, but if any provision of the Contract shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of the Contract, except to the extent that any greater burden is imposed upon any Party in consequence thereof. The Parties agree that they will negotiate in good faith to replace any provision hereof held invalid, illegal or unenforceable with a valid, legal and enforceable provision which is as similar as possible in substance to the invalid, illegal or unenforceable provision.

II.26.3. Unless otherwise provided for herein, the Parties will bear their own expenses (including fees and disbursements of their respective counsel) in connection with the Contract and any services provided under the Contract.

II.26.4. The Contract may be executed in one (1) or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one (1) and the same instrument.

**SIGNATURES**

For the Contractor,  
 [company  
 name/forename/surname/function]

For Fusion for Energy,  
 [forename/surname/function]

signature[s]:  
 \_\_\_\_\_

signature[s]:  
 \_\_\_\_\_

Done at [place], [date]  
 In [•] (•) originals in English.

Done at Barcelona, [date]



ANNEX A  
MANAGEMENT SPECIFICATION



TECHNICAL SPECIFICATIONS

ANNEX C  
DECLARATION OF BACKGROUND INTELLECTUAL PROPERTY



ANNEX D : INTELLECTUAL PROPERTY PROVISIONS