


# CONTRACT<sup>1</sup>

## I. SPECIAL CONDITIONS

THE PARTIES		
 <p>The European Joint Undertaking for ITER and the Development of Fusion for Energy ('FUSION FOR ENERGY')</p> <p>Representative: Address:</p>		<p>[Contractor's Logo]</p> <p><b>CONTRACTOR:</b> [Name, legal form, statutory registration number, address, VAT registration number]</p> <p>Representative Address:</p>
<b>REFERENCES:</b> F4E-[.]	<b>CURRENCY OF PAYMENT:</b> EURO	<b>REFERENCE OF THE OFFER:</b> [.]
<b>RESPONSIBLE OFFICER:</b> Tel. E-mail:		<b>PROJECT MANAGER:</b> Tel.: E-mail:

### 1. ACCEPTANCE OF THE CONDITIONS OF THE CONTRACT BY THE PARTIES

The Contract consists of these Special Conditions including its Annexes and Applicable Documents and the General Conditions published on Fusion for Energy's website (<http://www.fusionforenergy.europa.eu/procurementsgrants/keyreference.aspx>)<sup>2</sup>. In the event of conflicting interpretations, the Special conditions shall take precedence over the General Conditions. The General Conditions shall take precedence over the Annexes [except those of Annex [E] (Intellectual Property Provisions) which shall take precedence over the General Conditions]. The Annexes shall take precedence over the Applicable Documents. The terms set out in the Supplier Quality Requirements (AD-01) shall take precedence over those in the other Applicable Documents. The several instruments shall form an integral part of the Contract and subject to the above, they shall be taken as mutually explanatory. By signing these Special conditions, the Contractor agrees to the terms of the Contract including its annexes and the General Conditions.

2. DESCRIPTION OF THE GOODS TO SUPPLY (THE 'ITEMS')	UNIT	QUANTITY	PRICE IN EUR (€)	
			UNIT PRICE	TOTAL
2.1. Supply of [description] (the 'Items') and related services [as described in Annex B].				
2.2. [Storage of the Items for a duration of [.] in accordance with [.]				
2.3. [Transport]				

<sup>1</sup> This template shall be used for Supply Contracts with value below 50.000 EUR.

<sup>2</sup> At the time of publication of the Invitation to Tender.

<p>2.4. [Options]</p> <p>2.5. [Spares]</p> <p>2.6. [.]</p>				
<p><b>3. OPTIONS</b></p> <p><i>3.1. The exercise of each of the Options shall be subject to a written instruction by Fusion for Energy. Such written instruction shall: (a) 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></p> <p><i>3.2. Performance of the Options may under no circumstances start before the date indicated in the instruction.</i></p> <p><i>3.3. 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></p>				
<p><b>4. PRICE: EUR</b> [amount in figures and words].</p> <p>The Total Price covers all the obligations under the Contract [including any exercised Option] and associated expenses. It shall not be subject to any revision regardless of any variations in the price of materials, equipment or labour.</p>				
<p><b>5. COMMENCEMENT DATE:</b> [not before signature of the last party of the contract?].</p> <p>Performance of the Contract may under no circumstances begin before the Commencement Date.</p>				
<p><b>6. DELIVERY:</b></p> <p><b>6.1. Place of Delivery:</b> [place of destination] [in accordance with Annex B.]</p> <p><b>6.2. Date of Delivery:</b> [Date/Hours]</p> <p><b>6.3. Specific terms on Delivery</b></p> <p>6.3.1. [DDP (Incoterms 2010)]</p> <p>6.3.2. [The Contractor shall use DAHER as Carrier for the execution of the shipment and comply with the provisions of the Terms of Reference for the Use of the Designated Carrier [ADxx].]</p>				
<p><b>7. PAYMENTS</b></p> <p><b>7.1.</b> Fusion for Energy shall pay the Contractor EUR [amount in figures and words] [corresponding to [.] % ([.] percent) of the Price [excluding Options]] within forty-five (45) Days of the later of: (a) the issuance by Fusion for Energy of the [Acceptance Note approving the Acceptance Data Package related to milestone [.] referred to in section [.] of Annex B]; and (b) the receipt of a request for payment is accompanied by the relevant invoice, indicating the reference number of the Contract.</p> <p><b>7.2.</b> [Specific payment formalities for Options if any.]</p>				
<p><b>8. MAINTENANCE AND REPAIR</b></p> <p><i>8.1. The Contractor shall provide maintenance of the Items for a period of [1 (one)] year from the [Delivery/Final Acceptance] Date.</i></p>				

8.2. The Contractor shall make sure the spare parts listed in [...] are available upon request within a reasonable deadline for a period of [5(five)] years from the [Delivery/Final Acceptance] Date. Upon request from Fusion for Energy, it shall substitute the spare parts where the Warranty is applicable. Where the warranty is not applicable, the spare parts shall be delivered at the price set out in article 2.

#### 9. CONTRACTOR'S BANK ACCOUNT<sup>3</sup>: [please insert]

The same bank account and the value added tax (VAT) registration number must be indicated on each invoice. Any modification of the Contractor's bank account must be approved by prior letter from Fusion for Energy's Responsible Officer.

#### 10. SAFETY

*[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].*

#### 11. FREE-ISSUE ITEMS

**11.1.** 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.

**11.2.** 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 [•].

**11.3.** Free-Issue Items shall 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 Free-Issue shall be exempt from all duties and taxes. 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 article 11.2 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 Free-Issue Items. 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.

**11.4.** Technical acceptance of the Free-Issue Items shall be governed by the provisions in Annex B (section [•] of Annex B (Technical Specifications)) are applicable. [Before starting

<sup>3</sup> Including IBAN Code and/or BIC, Full Name of the Bank and Address of Branch

*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.*

**11.5.** *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 an on-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.*

**11.6.** *[If Fusion for Energy fails to deliver the Free-Issue Items within the time limits set out in article 11.2 , 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 nor a cause of termination of the Contract on the part of the Contractor.*

## **12. INTELLECTUAL PROPERTY**

The provisions of Annex [E] (*Intellectual Property Provisions*) shall be applicable.

## **13. EXPORT CONTROL REQUIREMENTS**

**13.1.** *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.*

**13.2.** *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.*

**13.3.** *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.17 (Termination by Fusion for Energy for Cause) unless the Contractor proves that the failure is due to a Force Majeure.*

**13.4.** *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.*

## **14. OTHER SPECIFIC CONDITIONS:**

- A) [Reporting]  
 B) [Testing]  
 C) [Partial Acceptance: In case of minor non-conformities, Fusion for Energy may decide the Acceptance of the items subject to reservations. In that case, the Contractor shall be given [30 (thirty Days)] to correct the non-conformities or offer a proportionate reduction of price].  
 D) [.]

**LIST OF ANNEXES AND APPLICABLE DOCUMENTS** (forming part of the Contract)

**Annexes**

- I. [Annex A – Management Specifications]  
 II. Annex B – Technical Specifications  
 III. [Annex C – Intellectual Property Provisions...]

**Applicable Documents**

<i>AD</i>	<i>Document title</i>	<i>Ref.</i>	<i>Version/Date</i>
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]

**FUSION FOR ENERGY'S SIGNATURE**

Name  
 Position  
 Date of signature

**CONTRACTOR'S SIGNATURE**

Name  
 Position  
 Date of signature

## II. GENERAL CONDITIONS<sup>4</sup>

### 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 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.
- (c) The 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.
- (d) 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.
- (e) 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.
- (f) The Contractor shall have the responsibility for ensuring compliance with the safety regulations and standards applicable in the places where the Contract is executed and the Items are delivered.

#### II.1.2. Packaging and transport

- (a) All packing materials are non-returnable and their cost is included in the Total Price.
- (b) Packaging shall be appropriate and ensure that the content remains intact and prevents damage or deterioration and shall be in accordance with specifications set out in Annex B (*Technical Specifications*). 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.
- (c) The Contractor shall notify Fusion for Energy of the exact date of delivery 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.

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<sup>4</sup> Low-Value Supply Contracts

- (d) 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.
- (e) The consignment note and each box delivered shall be clearly labelled with the following information: Fusion for Energy and address for delivery; name of Contractor; Contract reference; description of contents; date of dispatch and delivery; EC code number of article, if applicable; indications about hazardous products and materials.

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

- II.2.1. The Acceptance Date Package (ADP) shall mean a package of documents linked to each deliverable set out in the Technical Specification (Deliverables) which in case of deliverables related to payment (Contract Deliverable) includes the pro-forma invoice detailing the amount per deliverable to be submitted by the Supplier to F4E for review.
- II.2.2. Fusion for Energy shall have forty-five (45) Days from receipt of an ADP linked to a payment:
  - (a) to approve it, issuing an Acceptance Note; or
  - (b) to reject it and to require the Contractor to take corrective actions.

Any rejection by Fusion for Energy shall 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 Acceptance Data Package, the Contractor shall submit a new Acceptance Data Package which shall likewise be subject to the above provisions.

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

## **II.3. GENERAL PROVISIONS CONCERNING PAYMENTS**

- II.3.1. Payments shall be made only if the Contractor has fulfilled all its contractual obligations related to the relevant payment by the date on which the invoice is submitted. 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 – reduce or recover payments in proportion to the scale of the non-performance.
- II.3.2. Payments shall be deemed to have been made on the date on which Fusion for Energy's account is debited.
- II.3.3. Payments may be suspended by Fusion for Energy at any time if it informs the Contractor that its payment request is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced.
- II.3.4. 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.3.5. Fusion for Energy shall notify the Contractor accordingly and set out the reasons for the suspension. Suspension shall take effect from the date of dispatch of the letter. The remainder of the period referred to in article I.7 (*Payments*) shall begin to run again once the suspension has been lifted.
- II.3.6. In the event of late payment, Contractor shall be entitled to interest. The Contractor may claim interest within two (2) months of receiving the payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations (the "**Reference Rate**") plus seven (7) percentage points. 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.

#### 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.3.6. 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. In that case, 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.

#### II.5. TAXATION

- 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>5</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.

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<sup>5</sup> OJ C 321 E of 29.12.2006 p. 0318-0324



## II.6. COMMUNICATION

II.6.1. Any communication relating to the Contract shall be in writing, in English and shall bear the Contract reference. 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.

## II.7. CONFLICT OF INTERESTS

II.7.1. The Contractor shall take all necessary measures in order to prevent any situation that could compromise the impartial and objective performance of the Contract. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which could arise during performance of the Contract must be notified to Fusion for Energy in writing without delay. In the event of such conflict, the Contractor shall immediately take all necessary steps to resolve it.

II.7.2. 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 **Error! Reference source not found.** (*General provisions regarding the Contractor's personnel*) the Contractor shall replace, immediately and without compensation from Fusion for Energy, any member of its staff exposed to such a situation.

II.7.3. The Contractor shall abstain from any contact likely to compromise its independence.

II.7.4. 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.8. PERSONAL DATA PROTECTION

II.8.1. 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. ACCEPTANCE

### II.9.1. General

Acceptance shall mean acknowledgment that the Items delivered are in conformity with the contractual requirements.

Signing of the consignment note by Fusion for Energy 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 the signing of an Acceptance Note to this effect by Fusion for Energy.

Conformity shall be declared only where the conditions for Acceptance laid down in Article II.9.2 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 the Acceptance Note as set out in this Article II.9 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.9.2. **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 II.1.2 (*Packing and transport*).

### II.9.3. **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 II.13 (*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.9.4. **Transfer of ownership**

All Items, goods or material to be delivered by the Contractor shall become the property of Fusion for Energy upon Acceptance in accordance with the Contract.

## II.10. **WARRANTY**

### II.10.1. **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.

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.

### II.10.2. 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.10.3. 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.10.4. **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.17 (*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.10.5. **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.11. **LIABILITY**

II.11.1. 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 Price, subject to the sole exceptions set out below: 1) 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; 2) personal injuries or death, unless attributable to gross negligence, wilful misconduct or breach of this Contract by Fusion for Energy or its personnel; 3) damage or loss directly resulting from non-compliance with any applicable law or from an infringement of intellectual property rights of a third party.

II.11.2. 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.

II.11.3. 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 II.11.1.

### II.12. **INSURANCE**

II.12.1. 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 at the place of manufacture and reasonably required by standard practice in the industry.

#### II.13. LIQUIDATED DAMAGES

II.13.1. Where Delivery Date is not met, as extended if at all, and the delay is not attributable to an act or omission of Fusion for Energy, Fusion for Energy may impose liquidated damages amounting to 0,3% of the Total Price per Day of delay, up to a maximum of 10% of the Total Price.

II.13.2. The Parties expressly acknowledge and agree that any sums payable under this article 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.

#### II.14. SUBCONTRACTING

II.14.1. The Contractor shall not subcontract any part of the work to any Subcontractor or change a 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 in writing for specific parts of the Contract and subject to the conditions it defines.

II.14.2. The request for authorization mentioned in article II.14.1 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.14.3. 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.14.4. 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.15. FORCE MAJEURE

II.15.1. Force Majeure 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.

- II.15.2. 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.15.3 and for so long as the notified case of Force Majeure prevents the Party from performing its obligations.
- II.15.3. If either Party is faced with a 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 Force Majeure, including specifying the obligations whose performance is or will be prevented by the case of Force Majeure. 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.15.4. 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.15.5. 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.15.6. 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.17 (*Termination by Fusion for Energy for cause*) shall apply *mutatis mutandis* to the effects of such termination.

## II.16. ASSIGNMENT

- II.16.1. 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.16.2. In the absence of the written authorisation referred to in Article II.16.1, 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.16.3. 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 of Energy's role in respect of the ITER project, another Domestic Agency or the European Commission.

## II.17. TERMINATION BY FUSION FOR ENERGY FOR CAUSE

### II.17.1. Grounds for Termination

Fusion for Energy may terminate the Contract in the following circumstances:

- (a) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- (b) where Fusion for Energy has evidence of professional misconduct by the Contractor. For the purposes of this paragraph evidence shall mean a final

- resolution from a public administration, professional association, an arbitrator or a court;
- (c) where Fusion for Energy has evidence regarding the Contractor of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Community's or European Union's financial interests;
  - (d) where Fusion for Energy has evidence of substantial errors, irregularities or fraud in the award procedure or the performance of the Contract by the Contractor;
  - (e) where the Contractor is in breach of its obligations under Article II.7 (*Conflict of interest*);
  - (f) where the Contractor was guilty of misrepresentation in supplying the information required by Fusion for Energy as a condition of participation in the Contract procedure or failed to supply this information;
  - (g) where a change in the Contractor's legal, financial, technical or organisational situation could have an adverse effect on the performance of the Contract;
  - (h) where the performance of the Contract has not actually commenced 30 (thirty) Days after the date of entry into force of the Contract or any agreed date for the start of the execution of the Contract,
  - (i) where the Contractor is unable, through its own fault, to obtain any permit or licence required for performance of the Contract;
  - (j) where the amount of liquidated damages exceeds the maximum amount established in Article II.13 (*Liquidated damages*); or
  - (k) where the Contractor is in material breach of one of its obligation under the Contract 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 serious breach of its contractual obligations.

#### II.17.2. Procedure for Termination

- (a) Prior to termination, 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.
- (b) 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.17.3. 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 ends 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.15 (*Force Majeure*).
- (d) Subject to the limitation foreseen in Article **Error! Reference source not found.** (*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.15 (*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.

#### II.17.4. Covenants

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) 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);
- (c) immediately inform Fusion for Energy of any event or circumstance described in Articles II.17.4 (b) and (c) (Covenants).

The Parties agree that the breach of the covenants and/or the obligation of the Contractor made under Articles II.17.4 (a), (b) and (c) (Covenants) shall qualify as material breach of this Contract.

#### II.18. SUBSTANTIAL ERRORS, IRREGULARITIES AND FRAUD ATTRIBUTABLE TO THE CONTRACTOR



II.18.1. 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.17 shall apply.

## II.19. CHECKS AND AUDITS

II.19.1. 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.19.2. 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.19.3. 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.20. CONFIDENTIALITY

II.20.1. 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.20.2. This Article II.20 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.20.3. The Contractor shall continue to be bound by this undertaking after execution of the Contract for a period of five (5) years.

II.20.4. 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 five (5) years.

II.20.5. 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.21. AMENDMENTS**

II.21.1. 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.21.2. An amendment to this Contract shall be required where a Deviation Request or Deviation Order leads to:

- (a) a variation on the prices;
- (b) a variation on the payment modalities; and/or
- (c) any other substantial change to the subject matter of the Contract.

In such cases, the provisions of this Article II.21 (*Amendments*) supplement section II.2 of Applicable Document AD-01 (*Supplier Quality Requirements*).

II.21.3. In all cases other than those referred to in Article II.21.2, 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.22. APPLICABLE LAW & DISPUTE SETTLEMENT**

II.22.1. 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 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.

II.22.2. Any Dispute which cannot be settled amicably shall be exclusively decided by the European Court of Justice.