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EUROPEAN COMMISSION
JOINT RESEARCH CENTRE

Directorate G Nuclear Safety and Security
Unit G.III.9 Nuclear Decommissioning

CONTRACT FOR SUPPLY AND MAINTENANCE

NUMBER – [*complete*]

The European Atomic Energy Community ('the Community'), represented by the European Commission ('the contracting authority') represented for the purposes of signing this contract by **Maria BETTI, Director, Directorate G Nuclear Safety and Security, Joint Research Centre (JRC)**,

on the one part, and

[*Full official name*]

[*Official legal form*]

[*Statutory registration number or ID or passport number*]

[*Full official address*]

[*VAT registration number*]

[appointed as the leader of the group by the members of the group that submitted the joint tender]

[For joint tenders, repeat these data as many times as there are contractors and continue numbering]

([collectively] 'the contractor'), represented for the purposes of the signature of this contract by [*forename, surname, function of legal representative and name of company in the case of a joint tender],*

on the other part,

HAVE AGREED

to the **special conditions**, the **general conditions for supply contracts** and the following annexes:

Annex I Tender Specifications (reference No JRC/IPR/2018/G.III.9/0013/OC)

Part 1 – Administrative Annex

Annexes to Part 1:

- Part 1.1 – Declaration on honour on exclusion and selection criteria
- Part 1.2 – D.U.V.R.I.

Part 2 – Technical Specifications (NE.45.2301.A.020 / ND.45.1001031.A.0)

Annex II Contractor's Offer (reference No [*complete*] of [*insert date*])

Annex III Acceptance Form

Annex IV Customs Contractual Clauses

Annex V Rules relating to access and presence of external staff on the Ispra site of the Joint Research Centre (JRC)

Annex VI Safety Contractual Clauses

Annex VII Environmental Contractual Clauses

Annex VIII Contractual Clauses on Radioprotection

which form an integral part of this contract ('the contract').

This contract sets out the obligations of the parties during and after the duration of this contract.

All documents issued by the contractor (end-user agreements, general terms and conditions, etc.) except its tender are held inapplicable, unless explicitly mentioned in the special conditions of this contract. In all circumstances, in the event of contradiction between this contract and documents issued by the contractor, this contract prevails, regardless of any provision to the contrary in the contractor's documents.

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I SPECIAL CONDITIONS

I.1. ORDER OF PRIORITY OF PROVISIONS

If there is any conflict between different provisions in this contract, the following rules must be applied:

(a) The provisions set out in the special conditions take precedence over those in the other parts of the contract.
(b) The provisions set out in the general conditions take precedence over those in the other annexes.
(c) The provisions set out in the tender specifications (Annex I) take precedence over those in the tender (Annex II).

I.2. SUBJECT MATTER

The subject matter of the contract is **Supply and maintenance of a High Resolution Multi-collector ICP-MS**.

It comprises **5 (five) phases** as following:

Phase 1 – Delivery of the High Resolution Multi-collector ICP-MS, installation and on-site tests as per technical specifications;

Phase 2 – Training and analytical assistance as per technical specifications;

Phase 3 – Preventive maintenance during warranty as per technical specifications;

Phase 4 – Full-risk maintenance as per technical specifications.

I.3. ENTRY INTO FORCE AND DURATION

I.3.1 The contract enters into force on the date on which the last party signs it.

I.3.2 The *performance of the contract* cannot start before its entry into force.

I.3.3 The duration of the *performance of the contract* must not exceed **60 (sixty) months, including any possible renewals**. *Performance of the contract* starts from the date of entry into force of the contract.

Phase 1 – shall be performed within **12 (twelve) months** from the date on which the contract enters into force, and includes:

a) an initial period of maximum **7 (seven) months** in which JRC-Ispra needs to prepare the installation site,

b) delivery of supply after the installation site is prepared, but not later than **10 (ten) months** from the date on which the contract enters into force;

c) installation and on-site tests within **2 (two) months** after the delivery of all the components;

Phase 2 – shall be performed **at least 10 (ten) working-days** during the 6 (six) months starting from the date of the formal acceptance of Phase 1;

Phase 3 – shall be performed for **24 (twenty-four) months** starting from the date of the formal acceptance of Phase 1, and includes:

Phase 4 – shall be performed for **12 (twelve) months** starting from the date of the formal acceptance of Phase 3. It is possible to be renewed for additional **12 (twelve) months as indicated under article I.3.6.**

The period of *performance of the contract* may be extended only with the express written agreement of the parties before the expiration of such period.

I.3.4 The supplies must be delivered at **JRC-Ispra, DDP (Incoterms 2010)**.

All deliveries must be made on any working day during normal working hours as indicated in Annex IV to the contract.

I.3.5 The performance of the contract is divided in **4 (four) phases**.

The contractor is authorised to start the **Phase 1 at the entry in force of the contract.**

The contractor is authorised to continue the *performance of the contract* **in the Phase 2 based on a formal acceptance of the contracting authority at the end of the Phase 1**, concluded through the Acceptance Form (Annex III) duly signed by both parties.

The contractor is authorised to continue the *performance of the contract* in the **Phase 3 based on a formal acceptance of the contracting authority at the end of the Phase 1**, concluded through the Acceptance Form (Annex III) duly signed by both parties.

The contractor is authorised to continue the *performance of the contract* in the **Phase 4 based on a formal acceptance of the contracting authority at the end of the Phase 3**, concluded through the Acceptance Form (Annex III) duly signed by both parties.

I.3.6 **The Phase 4 of the contract may be renewed automatically one time** for **12 (twelve) months**, unless one of the parties receives *formal notification* to the contrary at least **3 (three) months** before the end of the ongoing duration. Renewal does not change or postpone any existing obligations, and is made on the same provisions as for the initial Phase 4.

I.3.7 Performance of the services

The contractor must perform the services requested under Phase 2 and Phase 3 based on a formal acceptance of the contracting authority at the end of first phase. A consent agreement of the exact day of performance is required.

The contractor must provide services of high quality standards, in accordance with the state of the art in the industry and the provisions of this contract, in particular the tender specifications and the terms of its tender.

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[1].

The contractor must obtain any permit or licence required in the State where the services are to be provided.

The contractor must not present itself as a representative of the contracting authority and must inform third parties that it is not part of the European public service.

The contractor is responsible for the *personnel* who carry out the services and exercises its authority over its *personnel* without interference by the contracting authority. The contractor must inform its *personnel* that:

(a) they may not accept any direct instructions from the contracting authority; and
(b) their participation in providing the services does not result in any employment or contractual relationship with the contracting authority.

At the contracting authority's reasoned request, the contractor must replace any member of *personnel* who:

(a) does not have the expertise required to provide the services; or
(b) has caused disruption at the premises of the contracting authority.

The contractor bears the cost of replacing its *personnel* and is responsible for any delay in providing the services resulting from the replacement of *personnel*.

The contractor must record and report to the contracting authority any problem that affects its ability to provide the services. The report must describe the problem, state when it started and what action the contractor is taking to resolve it.

I.4. PRICE

I.4.1. Price of the contract and maximum amount

The **maximum amount payable under this contract** covering all phases for the maximum duration under the contract, including estimated DUVRI costs and renewal of Phase 4 is EUR [*amount in figures and in words*]. The maximum amount corresponding to the renewal of Phase 4 is EUR [*amount in figures and in words*].

The **maximum amount** to be paid by the contracting authority under each phase is as following:

[1] OJ L 94 of 28.03.2014, p. 65

Phase 1 – EUR [*amount in figures and in words*] covering all the requirements under Phase 1 as detailed in the technical specifications;

Phase 2 – no payments shall be made regarding Phase 2. The amount covering all the requirements under Phase 2 as detailed in the technical specifications is included in the amount corresponding to Phase 1;

Phase 3 – EUR [*amount in figures and in words*] covering all the requirements under Phase 3 as detailed in the technical specifications;

Phase 4 – EUR [*amount in figures and in words*] covering all the requirements under Phase 4 as detailed in the technical specifications;

Renewal of Phase 4 – The renewal is made for same amount and on the same conditions as those for Phase 4.

The prices are expressed in EUR and are all-inclusive as detailed in Annex II to the contract.

I.4.2. Price revision index

Price revision is not applicable to this contract.

I.5. PAYMENT ARRANGEMENTS

I.5.1. Pre-financing

Pre-financing is not applicable to this contract.

I.5.2. Interim payments

1. The contractor (or leader in the case of a joint tender) may claim an **interim payment only for Phase 3**, equal to **50% (fifty) of the corresponding price referred to in Article I.4.1** in accordance with Article II.20.6, **after the execution and acceptance of the first 12 months services required under Phase 3**.

The contractor (or leader in the case of a joint tender) must **send an invoice via *e-PRIOR*** for the interim payment as provided for in the tender specifications, accompanied by the corresponding Acceptance Form (Annex III), duly filled in and signed by both parties.

2. The contracting authority must approve any submitted documents or supplies and pay within **30 (thirty) days** from receipt of the invoice accompanied by the corresponding Acceptance Form (Annex IV) duly signed by both parties.

3. If the contracting authority has observations to make, it must send them to the contractor (or leader in the case of a joint tender) and suspend the time limit for payment in accordance with Article II.20.7.

The contractor (or leader in the case of a joint tender) has **30 (thirty) days** to submit additional information or corrections or new supplies or services if the contracting authority requires it.

4. The contracting authority must give its approval and pay within the remainder of the time-limit indicated in point (2) unless it rejects partially or fully the submitted documents or deliverables.

I.5.3. Payment of the balance

1. The contractor (or leader in the case of a joint tender) may claim the payment of the balance in accordance with Article II.20.6.

The contractor (or leader in the case of a joint tender) must **send an invoice via *e-PRIOR*** for payment of the balance due under the contract, as provided for in the tender specifications and accompanied by the corresponding Acceptance Form (Annex III), duly filled in and signed by both parties.

Payments of the balance are made separately for each of the phases as following:

Phase 1 – **after completion of the phase**, covering all the requirements under Phase 1 as detailed in the technical specifications, **certified by the Acceptance Form (Annex III)** duly signed by both parties;

Phase 2 – **no payments shall be made regarding Phase 2.** The amount covering all the requirements under Phase 2 as detailed in the technical specifications is included in the amount corresponding to Phase 1.

Phase 3 – **after completion of the phase**, covering all the requirements under Phase 3 as detailed in the technical specifications, **certified by the Acceptance Form (Annex III)** duly signed by both parties;

Phase 4 – **after completion of the phase**, covering all the requirements under Phase 4 as detailed in the technical specifications, **certified by the Acceptance Form (Annex III)** duly signed by both parties;

Renewal of Phase 4, if the case, – **after completion of the phase**, covering all the requirements under renewal of Phase 4 as detailed in the technical specifications, **certified by the Acceptance Form (Annex III)** duly signed by both parties.

2. The contracting authority must approve the submitted documents or supplies and pay within **30 (thirty) days** from receipt of the invoice, accompanied by the corresponding Acceptance Form (Annex III) duly signed by both parties.

3. If the contracting authority has observations to make, it must send them to the contractor (or leader in the case of a joint tender) and suspend the time limit for payment in accordance with Article II.20.7.

The contractor (or leader in the case of a joint tender) has **30 (thirty) days** to submit additional information or corrections or new supplies or services if the contracting authority requires it.

4. The contracting authority must give its approval and pay within the remainder of the time-limit indicated in point (2.) unless it rejects partially or fully the submitted documents or supplies or services.

5. VAT provisions

Pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union, the European Commission is exempt from all taxes and duties, including value added tax. No exemption shall be granted in respect of taxes and dues which amount merely to charges for public utility services.

The contractor is invited to carefully read the **Article II.18.** Invoices, value added tax and e-invoicing of this contract.

Ispra site:

As regards the **transfer of goods** in the performance of its institutional duties the European Commission is totally exempt from duties, levies and taxes pursuant to the provisions of Law No 906 of 1 August 1960, Articles 5, 6 and 7 of Annex F (Official Journal No 212 of 31 August 1960) confirmed by Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.

As regards the **provision of services**, the European Commission is exempt from taxes above a certain threshold pursuant to the provisions of the D.P.R. n° 633 of 26/10/1972 (article 72) and subsequent integrations; this threshold is currently fixed at 300 EUR.

Where the transaction is taxable for VAT purposes in Italy, the provisions of the present contract constitute official request of VAT exemption. The corresponding invoices must be sent, without VAT, with the following sentence:

For the transfer of goods: "Operazione non imponibile ai sensi della Legge 1 Agosto 1960 n° 906, in particolare l'Allegato F, Articoli 5, 6 e 7 (G.U. n° 212 del 31/08/1960), come confermato dall'Articolo 72 del D.P.R. n° 633 del 26/10/1972 e successive integrazioni".

For the provision of services: "Operazione non imponibile ai sensi dell'articolo 72, comma 2) del D.P.R. n° 633 del 26/10/1972 come modificato da ultimo dalla Legge n° 217 del 15/12/2011 (articolo 8, comma 5)."

Where the transaction is taxable for VAT purposes in another Member State of the European Union in which the fiscal legislation allows direct VAT exemption, the corresponding invoices must be sent, without VAT, with the following sentence: "VAT exemption / European Union / Article 151 of Council Directive 2006/112/EC".

or

Where the transaction is taxable for VAT purposes in another EU Member State in which the fiscal legislation does not allow a direct VAT exemption, the corresponding invoice(s) must be sent with VAT, including the following statement: "V.A.T. exemption / European Union / Article 151 of Council Directive 2006/112/EC".

At the request of the contracting authority, the contractor shall make available to it all the supporting documents which the contracting authority might need in order to apply to the tax authorities for the reimbursement pursuant to Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union of any duties and taxes paid in the course of the performance of the contract.

I.6. GUARANTEES

Guarantees are not applicable to this contract.

I.6.1. Performance guarantee

Performance guarantee is not applicable to this contract.

I.6.2. Retention money guarantee

Retention money guarantee is not applicable to this contract.

I.7. BANK ACCOUNT

Payments must be made to the contractor's (or leader's in the case of a joint tender) bank account denominated in **EURO**, identified as follows:

Name of bank:

Full address of branch:

Exact denomination of account holder:

Full account number including bank codes:

[IBAN[2] code:]

I.8. COMMUNICATION DETAILS

For the purpose of this contract, communications must be sent to the following addresses:

Contracting authority:

European Commission

Joint Research Centre, Ispra Site

Via Enrico Fermi 2749

21027 Ispra (VA), Italy

For financial and administrative questions:

Directorate R Resources

Unit R8 Financial and Procurement

2 BIC or SWIFT code for countries with no IBAN code.

To the attention of ……

E-mail: ……@ec.europa.eu

For technical questions:

Directorate G Nuclear Safety and Security

Unit G.III.9 Nuclear Decommissioning

To the attention of ……

E-mail: ……@ec.europa.eu

Contractor (or leader in the case of a joint tender):

[*Full name*]

[*Function*]

[*Company name*]

[*Full official address*]

Email: [*complete*]

I.9. DATA CONTROLLER

For the purpose of Article II.9, the data controller is Director of Directorate G Nuclear Safety and Security, Joint Research Centre (JRC).

I.10. TERMINATION BY EITHER PARTY

Either party may, terminate the contract by sending *formal notification* to the other party with **1 (one) month** written notice.

If the contract is terminated:

(a) neither party is entitled to compensation;

(b) the contractor is entitled to payment only for the supplies and services delivered before termination takes effect.

The second, third and fourth paragraphs of Article II.17.4 apply.

I.11. APPLICABLE LAW AND SETTLEMENT OF DISPUTES

I.11.1 The contract is governed by Community and Union law, complemented, where necessary, by the law of Italy.

I.11.2 The courts of Varese have exclusive jurisdiction over any dispute regarding the interpretation, application or validity of the contract.

I.12. OTHER SPECIAL CONDITIONS

No other special conditions are applicable to this contract.

SIGNATURES

For the contractor,	For the contracting authority,
[*Company name/forename/surname/position*]	**Maria BETTI**
	Director
Signature[s]: _____	**Directorate G Nuclear Safety and Security, Joint Research Centre (JRC)**
	Signature:_____
Done at [*place*], [*date*]	Done at [*place*], [*date*]

In duplicate in English.

II GENERAL CONDITIONS FOR THE SUPPLIES CONTRACT

II.1. DEFINITIONS

For the purpose of this contract, the following definitions (indicated in *italics* in the text) apply:

'Back office': the internal system(s) used by the parties to process electronic invoices;

'Confidential information or document': any information or document received by either party from the other or accessed by either party in the context of the *performance of the contract*, that any of the parties has identified in writing as confidential. It may not include information that is publicly available;

'Conflict of interest': 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 the contracting authority or any third party related to the subject matter of the contract;

'EDI message' (electronic data interchange): a message created and exchanged through the electronic transfer, from computer to computer, of commercial and administrative data using an agreed standard;

'e-PRIOR': the service-oriented communication platform that provides a series of web services and allows the exchange of standardised electronic messages and documents between the parties. This is done either through web services, with a machine-to-machine connection between the parties' *back office* systems (*EDI messages*), or through a web application (the s*upplier portal*). The Platform may be used to exchange electronic documents (e-documents) such as electronic *requests for supplies*, electronic specific contracts, and electronic delivery of the certificate of conformity or electronic invoices between the parties. Technical specifications (i.e. the *interface control document*), details on access and user manuals are available at the following website: https://webgate.ec.europa.eu/fpfis/wikis/display/ePRIOR/I%27m+a+Supplier

'Force majeure': any unforeseeable, exceptional situation or event beyond the control of the parties that prevents either of them from fulfilling any of their obligations under the contract. The situation or event must not be attributable to error or negligence on the part of the parties or on the part of the subcontractors and must prove to be inevitable despite their exercising due diligence. Defaults, defects in equipment or material or delays in making them available, labour disputes, strikes and financial difficulties may not be invoked as *force majeure*, unless they stem directly from a relevant case of *force majeure*;

'Formal notification' (or 'formally notify'): form of communication between the parties made in writing by mail or email, which provides the sender with compelling evidence that the message was delivered to the specified recipient;

'Fraud': any intentional act or omission affecting the Community's or 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;

'Interface control document': the guideline document which lays down the technical specifications, message standards, security standards, checks of syntax and semantics, etc. to facilitate machine-to-machine connection. This document is updated on a regular basis;

'Irregularity': any infringement of a provision of Community or 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.

'Notification' (or 'notify'): form of communication between the parties made in writing including by electronic means;

'Performance of the contract': the execution of tasks and delivery of the purchased supplies by the contractor to the contracting authority;

'Personnel': persons employed directly or indirectly or contracted by the contractor to perform the contract;

'Professional conflicting interest': a situation in which the contractor's previous or ongoing professional activities affect its capacity to perform the contract to an appropriate quality standard.

'Related person': any person who has the power to represent the contractor or to take decisions on its behalf;

'Substantial error': any infringement of a contract provision resulting from an act or omission, which causes or might cause a loss to the Union's budget.

'Supplier portal': the e-PRIOR portal, which allows the contractor to exchange electronic business documents, such as invoices, through a graphical user interface; its main features can be found in the supplier portal overview document available on: https://webgate.ec.europa.eu/fpfis/wikis/display/ePRIOR/I%27m+a+Supplier

II.2. ROLES AND RESPONSIBILITIES IN THE EVENT OF A JOINT TENDER

In the event of a joint tender submitted by a group of economic operators and where the group does not have legal personality or legal capacity, one member of the group is appointed as leader of the group.

II.3. SEVERABILITY

Each provision of this contract is severable and distinct from the others. If a provision is or becomes illegal, invalid or unenforceable to any extent, it must be severed from the remainder of the contract. This does not affect the legality, validity or enforceability of any other provisions of the contract, which continue in full force and effect. The illegal, invalid or unenforceable provision must be replaced by a legal, valid and enforceable substitute provision which corresponds as closely as possible with the actual intent of the parties under the illegal, invalid or unenforceable provision. The replacement of such a provision must be made in accordance with Article II.11. The contract must be interpreted as if it had contained the substitute provision as from its entry into force.

II.4. DELIVERY OF SUPPLIES

II.4.1 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 Community or 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[3].

II.4.2 All periods specified in the contract are calculated in calendar days, unless otherwise specified.

II.4.3 The contractor must not present itself as a representative of the contracting authority and must inform third parties that it is not part of the European public service.

II.4.4 The contractor is responsible for the *personnel* who perform the contract and exercises its authority over its *personnel* without interference by the contracting authority. The contractor must inform its *personnel* that:

(a) they may not accept any direct instructions from the contracting authority; and
(b) their participation in providing the supplies does not result in any employment or contractual relationship with the contracting authority.

II.4.5 The contractor must ensure that the *personnel* performing the contract and any future replacement personnel possess the professional qualifications and experience required to provide the supplies, as the case may be on the basis of the selection criteria set out in the tender specifications.

II.4.6 At the contracting authority's reasoned request, the contractor must replace any member of *personnel* who:

(a) does not have the expertise required to provide the supplies; or
(b) has caused disruption at the premises of the contracting authority.

The contractor bears the cost of replacing its *personnel* and is responsible for any delay in providing the supplies resulting from the replacement of *personnel*.

II.4.7 The contractor must record and report to the contracting authority any problem that affects its ability to deliver the supplies. The report must describe the problem, state when it started and what action the contractor is taking to resolve it.

II.4.8 Delivery

(a) Time allowed for delivery

The time allowed for delivery is calculated in accordance with Article I.3.

(b) Date, time and place of delivery

[3] OJ L 94 of 28.03.2014, p. 65

The Commission must be notified in writing of the exact date of delivery within the period indicated in Article I.3. All deliveries must be made at the agreed place of delivery during the hours indicated in Article I.3.

The contractor must bear all costs and risks involved in delivering the supplies to the place of delivery.

(c) Consignment note

Each delivery must be accompanied by a consignment note in duplicate, duly signed and dated by the contractor or its carrier, giving the contract number and particulars of the supplies delivered. One copy of the consignment note must be countersigned by the contracting authority and returned to the contractor or to its carrier.

II.4.9 Certificate of conformity

Signature of the consignment note by the contracting authority, as provided for in point (c) of Article II.4.10 is simply an acknowledgment of the fact that that the delivery took place and in no way implies conformity of the supplies with the contract.

Conformity of the supplies delivered must be evidenced by the signature of a certificate to this effect by the contracting authority no later than one month after the date of delivery, unless otherwise specified in the special conditions or in the tender specifications.

Conformity must be declared only where the conditions laid down in the contract are satisfied and the supplies conform to the tender specifications.

If, for reasons attributable to the contractor, the contracting authority is unable to accept the supplies, the contractor must be notified in writing at the latest by the deadline for conformity.

II.4.10 Conformity of the supplies delivered with the contract

The supplies delivered by the contractor to the contracting authority must be in conformity in quantity, quality, price and packaging with the contract.

The supplies delivered must:

(a) correspond to the description given in the tender specifications and possess the characteristics of the supplies provided by the contractor to the contracting authority as a sample or model;
(b) be fit for any specific purpose required of them by the contracting authority and made known to the contractor at the time of conclusion of this contract and accepted by the contractor;
(c) be fit for the purposes for which supplies of the same type are normally used;
(d) demonstrate the high quality standards and performance which are normal in supplies of the same type and which the contracting authority can reasonably expect, given the nature of the supplies and taking into account any public statements on the specific characteristics of the supplies made by the contractor, the producer or its representative, particularly in advertising or on labelling; in accordance with the state of the art in the industry and the provisions of this contract, in particular the tender specifications and the terms of its tender.

(e) be packaged according to the usual method for supplies of the same type or, failing this, in a way designed to preserve and protect them.

II.4.11 Remedy

The contractor must be liable to the contracting authority for any lack of conformity which exists at the time the supplies are verified.

In case of lack of conformity, without prejudice to Article II.14 on liquidated damages applicable to the total price of the supplies concerned, the contracting authority is entitled:

(a) either to have the supplies brought into conformity, free of charge, by repair or replacement;
(b) or to have an appropriate reduction made in the price.

Any repair or replacement must be completed within a reasonable time and without any significant inconvenience to the contracting authority, taking account of the nature of the supplies and the purpose for which they are required by the contracting authority.

The term 'free of charge' in paragraph (a) refers to the costs incurred to bring the supplies into conformity, particularly the cost of postage, labour and materials.

II.4.12 Assembly

If required by the tender specifications, the contractor must assemble the supplies delivered within a period of one month unless otherwise specified in the special conditions.

Any lack of conformity resulting from incorrect installation of the supplies must be deemed to be equivalent to lack of conformity of the supplies if installation forms part of the contract and the supplies were installed by the contractor or under its responsibility. This applies equally if the product was to be installed by the contracting authority and was incorrectly installed owing to a shortcoming in the installation instructions.

II.4.13 Services provided to supplies

If required by the tender specifications, services to supplies must be provided accordingly.

II.4.14 General provisions concerning supplies

(a) Packaging

The supplies must be packaged in strong boxes or crates or in any other way that ensures that the contents remain intact and prevents damage or deterioration. Packaging, pallets, etc., including contents, must not weigh more than 500 kg.

Unless otherwise specified in the special conditions or in the tender specifications, pallets must be considered as one-way packaging and must not be returned. Each box must be clearly labelled with the following information:

- name of contracting authority and address for delivery;
- name of contractor;
- description of contents;

- date of delivery;
- number and date of contract;
- EC code number of article.

(b) Guarantee

The supplies must be guaranteed against all defects in manufacture or materials for two years from the date of delivery, unless provision is made for a longer period in the tender specifications.

The contractor must guarantee that any permits and licences required for manufacturing and selling the supplies have been obtained.

The contractor must replace at its own expense, within a reasonable time limit to be determined by agreement between the parties, any items which become damaged or defective in the course of normal use during the guarantee period.

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

The contractor is also responsible for any conformity defect which occurs after delivery and is ascribable to non-compliance with its obligations, including failure to provide a guarantee that, for a certain period, supplies used for the purposes for which they are normally used or for a specific purpose will preserve their qualities or characteristics as specified.

If part of an item is replaced, the replacement part must be guaranteed under the same terms and conditions for a further period of the same duration as that specified above.

If a defect is found to originate in a systematic flaw in design, the contractor must replace or modify all identical parts incorporated in the other supplies that are part of the order, even though they may not have been the cause of any incident. In this case, the guarantee period must be extended as stated above.

II.5. COMMUNICATION BETWEEN THE PARTIES

II.5.1. Form and means of communication

Any communication of information, notices or documents under the contract must:

(a) be made in writing in paper or electronic format in the language of the contract;
(b) bear the contract number;
(c) be made using the relevant communication details set out in Article I.8; and
(d) be sent by mail, email or, for the documents specified in the special conditions, via *e-PRIOR*.

If a party requests written confirmation of an e-mail within a reasonable time, the other party must provide an original signed paper version of the communication as soon as possible.

The parties agree that any communication made by email has full legal effect and is admissible as evidence in judicial proceedings.

II.5.2. Date of communications by mail and email

Any communication is deemed to have been made when the receiving party receives it, unless this contract refers to the date when the communication was sent.

E-mail is deemed to have been received by the receiving party on the day of dispatch of that e-mail, provided that it is sent to the e-mail address indicated in Article I.8. The sending party must be able to prove the date of dispatch. In the event that the sending party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication by email or mail. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.

Mail sent to the contracting authority is deemed to have been received by the contracting authority on the date on which the department responsible referred to in Article I.8 registers it.

Formal notifications are considered to have been received by the receiving party on the date of receipt indicated in the proof received by the sending party that the message was delivered to the specified recipient.

II.5.3. Submission of e-documents via e-PRIOR

If provided for in the special conditions, the exchange of electronic documents (e-documents) such as invoices between the parties is automated through the use of the *e-PRIOR* platform. This platform provides two possibilities for such exchanges: either through web services (machine-to-machine connection) or through a web application (the *supplier portal*).

The contracting authority takes the necessary measures to implement and maintain electronic systems that enable the *supplier portal* to be used effectively.

In the case of machine-to-machine connection, a direct connection is established between the parties' *back offices*. In this case, the parties take the measures necessary on their side to implement and maintain electronic systems that enable the machine-to-machine connection to be used effectively. The electronic systems are specified in the *interface control document*. The contractor (or leader in the case of a joint tender) must take the necessary technical measures to set up a machine-to-machine connection and at its own cost.

If communication via the *supplier portal* or via the web services (machine-to-machine connection) is hindered by factors beyond the control of one party, it must *notify* the other immediately and the parties must take the necessary measures to restore this communication.

If it is impossible to restore the communication within two working days, one party must *notify* the other that alternative means of communication specified in Article II.5.1 will be used until the *supplier portal* or the machine-to-machine connection is restored.

When a change in the *interface control document* requires adaptations, the contractor (or leader in the case of a joint tender) has up to six months from receipt of the *notification* to implement this change. This period can be shortened by mutual agreement of the parties. This period does not apply to urgent measures required by the security policy of the contracting authority to ensure integrity, confidentiality and non-repudiation of information and the availability of *e-PRIOR*, which must be applied immediately.

II.5.4. Validity and date of e-documents

The parties agree that any e-document, including related attachments exchanged via *e-PRIOR*:

(a) is considered as equivalent to a paper document;
(b) is deemed to be the original of the document;
(c) is legally binding on the parties once an *e-PRIOR* authorised person has performed the 'sign' action in *e-PRIOR* and has full legal effect; and
(d) constitutes evidence of the information contained in it and is admissible as evidence in judicial proceedings.

The parties expressly waive any rights to contest the validity of such a document solely on the grounds that communications between the parties occurred through *e-PRIOR* or that the document has been signed through *e-PRIOR*. If a direct connection is established between the parties' *back offices* to allow electronic transfer of documents, the parties agree that an e-document, sent as mentioned in the *interface control document*, qualifies as an *EDI message*.

If the e-document is dispatched through the *supplier portal*, it is deemed to have been legally issued or sent when the contractor (or leader in the case of a joint tender) is able to successfully submit the e-document without any error messages. The generated PDF and XML document for the e-document are considered as a proof of receipt by the contracting authority.

In the event that an e-document is dispatched using a direct connection established between the parties' *back offices*, the e-document is deemed to have been legally issued or sent when its status is 'received' as defined in the *interface control document*.

When using the *supplier portal*, the contractor (or leader in the case of a joint tender) can download the PDF or XML message for each e-document for one year after submission. After this period, copies of the e-documents are no longer available for automatic download from the *supplier portal*.

II.5.5. Authorised persons in e-PRIOR

The contractor submits a request for each person who needs to be assigned the role of 'user' in *e-PRIOR*. These persons are identified by means of the European Communication Authentication Service (ECAS) and authorised to access and perform actions in *e-PRIOR* within the permissions of the user roles that the contracting authority has assigned to them.

User roles enabling these *e-PRIOR* authorised persons to sign legally binding documents such as specific tenders or specific contracts are granted only upon submission of supporting documents proving that the authorised person is empowered to act as a legal representative of the contractor.

II.6. LIABILITY

II.6.1 The contracting authority is not liable for any damage or loss caused by the contractor, including any damage or loss to third parties during or as a consequence of performance of the contract.

II.6.2 If required by the relevant applicable legislation, the contractor must take out an insurance policy against risks and damage or loss relating to the performance of the contract. It must also take out supplementary insurance as reasonably required by standard practice in the industry. Upon request, the contractor must provide evidence of insurance coverage to the contracting authority.

II.6.3 The contractor is liable for any loss or damage caused to the contracting authority during or as a consequence of performance of the contract, including in the event of subcontracting, but only to an amount not exceeding three times the total amount of the contract. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its *personnel* or subcontractors, the contractor is liable for the whole amount of the damage or loss.

II.6.4 If a third party brings any action against the contracting authority in connection with the *performance of the contract*, the contractor must assist the contracting authority in the legal proceedings, including by intervening in support of the contracting authority upon request.

If the contracting authority's liability towards the third party is established and that such liability is caused by the contractor during or as a consequence of the *performance of the contract*, Article II.6.3 applies.

II.6.5 If the contractor is composed of two or more economic operators (i.e. who submitted a joint tender), they are all jointly and severally liable to the contracting authority for the *performance of the contract*.

II.6.6 The contracting authority is not liable for any loss or damage caused to the contractor during or as a consequence of *performance of the contract*, unless the loss or damage was caused by wilful misconduct or gross negligence of the contracting authority.

II.7. CONFLICT OF INTERESTS AND PROFESSIONAL CONFLICTING INTERESTS

II.7.1 The contractor must take all the necessary measures to prevent any situation of *conflict of interest or professional conflicting interest*.

II.7.2 The contractor must *notify* the contracting authority in writing as soon as possible of any situation that could constitute a *conflict of interest* or a *professional conflicting interest* during the *performance of the contract*. The contractor must immediately take action to rectify the situation.

The contracting authority may do any of the following:

(a) verify that the contractor's action is appropriate;
(b) require the contractor to take further action within a specified deadline;

II.7.3 The contractor must pass on all the relevant obligations in writing to:

(a) its *personnel*;
(b) any natural person with the power to represent it or take decisions on its behalf;
(c) third parties involved in the *performance of the contract*, including subcontractors.

The contractor must also ensure that the persons referred to above are not placed in a situation which could give rise to conflicts of interest.

II.8. CONFIDENTIALITY

II.8.1 The contracting authority and the contractor must treat with confidentiality any information or documents, in any format, disclosed in writing or orally relating to the *performance of the contract* and identified in writing as confidential.

II.8.2 Each party must:

(a) not use *confidential information or documents* for any purpose other than to perform its obligations under the contract without the prior written agreement of the other party;

(b) ensure the protection of such *confidential information or documents* with the same level of protection as its own confidential information or documents, and in any case with due diligence;

(c) not disclose directly or indirectly *confidential information or documents* to third parties without the prior written agreement of the other party.

II.8.3 The confidentiality obligation set out in this Article are binding on the contracting authority and the contractor during the performance of the contract and for as long as the information or documents remain confidential unless:

(a) the disclosing party agrees to release the receiving party from the confidentiality obligation earlier;

(b) the *confidential information or documents* become public through other means than in breach of the confidentiality obligation

(c) the applicable law requires the disclosure of the *confidential information or documents*.

II.8.4 The contractor must obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the performance of the contract, a commitment that they will comply with this Article .At the request of the contracting authority, the contractor must provide a document providing evidence of this commitment.

II.9. PROCESSING OF PERSONAL DATA

II.9.1 Any personal data included in the contract must be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Such data must be processed by the data controller solely for the purposes of the performance, management and monitoring of the contract. This does not affect its possible transmission to the bodies entrusted with monitoring or inspection tasks in application of Community or Union law.

II.9.2 The contractor has the right to access its personal data and the right to rectify any such data. The contractor should address any queries concerning the processing of its personal data to the data controller.

II.9.3 The contractor has right of recourse at any time to the European Data Protection Supervisor.

II.9.4 If the contract requires the contractor to process any personal data, the contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights.

II.9.5 The contractor must grant *personnel* access to the data to the extent strictly necessary for the performance, management and monitoring of the contract.

II.9.6 The contractor must adopt appropriate technical and organisational security measures giving due regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:

(a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:

(i) unauthorised reading, copying, alteration or removal of storage media;

(ii) unauthorised data inputting, as well as any unauthorised disclosure, alteration or erasure of stored personal data;

(iii) unauthorised use of data-processing systems by means of data transmission facilities;

(b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;

(c) record which personal data have been communicated, when and to whom;

(d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting authority;

(e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;

(f) design its organisational structure in such a way that it meets data protection requirements.

II.10. SUBCONTRACTING

II.10.1 The contractor must not subcontract and have the contract performed by third parties beyond the third parties already mentioned in its tender without prior written authorisation from the contracting authority.

II.10.2 Even if the contracting authority authorises subcontracting, the contractor remains bound by its contractual obligations and is solely responsible for the *performance of this contract.*

II.10.3 The contractor must ensure that the subcontract does not affect the rights of the contracting authority under this contract, particularly those under Article II.8 and II.22.

II.10.4 The contracting authority may request the contractor to replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article II.17.1.

II.11. AMENDMENTS

II.11.1 Any amendment to the contract must be made in writing before all contractual obligations have been fulfilled.

II.11.2 Any amendment must not make changes to the contract that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers.

II.12. ASSIGNMENT

II.9.1 The contractor must not assign any of the rights and obligations arising from the contract, including claims for payments or factoring, without prior written authorisation from the contracting authority. In such cases, the contractor must provide the contracting authority with the identity of the intended assignee.

II.9.2 Any right or obligation assigned by the contractor without authorisation is not enforceable against the contracting authority.

II.13. FORCE MAJEURE

II.13.1 If a party is affected by *force majeure,* it must immediately *notify* the other party, stating the nature of the circumstances, their likely duration and foreseeable effects.

II.10.3 A party is not liable for any delay or failure to perform its obligations under the contract if that delay or failure is a result of *force majeure*. If the contractor is unable to fulfil its contractual obligations owing to *force majeure*, it has the right to remuneration only for the supplies actually delivered and which obtain a certificate of conformity.

II.13.3 The parties must take all necessary measures to limit any damage due to *force majeure*.

II.14. LIQUIDATED DAMAGES

II.14.1. Delay in delivery

If the contractor fails to perform its contractual obligations within the applicable time limits set out in this contract, the contracting authority may claim liquidated damages for each day of delay using the following formula:

0.3 x (V/d)

where

V is the price of the relevant purchase or supply;

d is the duration specified in the contract for delivery of the relevant purchase or supply or, failing that, the duration of performance of the contract specified in Article I.3 expressed in days.

Liquidated damages may be imposed together with a reduction in price under the conditions laid down in Article II.15.

II.14.2. Procedure

The contracting authority must *formally notify* the contractor of its intention to apply liquidated damages and the corresponding calculated amount.

The contractor has 30 days following the date of receipt to submit observations. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

If the contractor submits observations, the contracting authority, taking into account the relevant observations, must *notify* the contractor:

(a) of the withdrawal of its intention to apply liquidated damages; or

(b) of its final decision to apply liquidated damages and the corresponding amount.

II.14.3. Nature of liquidated damages

The parties expressly acknowledge and agree that any amount payable under this Article is not a penalty and represents a reasonable estimate of fair compensation for the damage incurred due to failure to provide the supplies within the applicable time limits set out in this contract.

II.14.4. Claims and liability

Any claim for liquidated damages does not affect the contractor's actual or potential liability or the contracting authority's rights under Article II.17.

II.15. REDUCTION IN PRICE

II.15.1. Quality standards

If the contractor fails to deliver the supply in accordance with the contract ('unperformed obligations') or if it fails to deliver the supply in accordance with the expected quality levels specified in the tender specifications ('low quality delivery'), the contracting authority may reduce or recover payments proportionally to the seriousness of the unperformed obligations or low quality delivery. This includes in particular cases where the contracting authority cannot approve a document or deliver a certificate of conformity for supply as defined in

Article I.5 after the contractor has submitted the required additional information, correction or new supply.

A reduction in price may be imposed together with liquidated damages under the conditions of Article II.14.

II.15.2. Procedure

The contracting authority must *formally notify* the contractor of its intention to reduce payment and the corresponding calculated amount.

The contractor has 30 days following the date of receipt to submit observations. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

If the contractor submits observations, the contracting authority, taking into account the relevant observations, must *notify* the contractor:

(a) of the withdrawal of its intention to reduce payment; or

(b) of its final decision to reduce payment and the corresponding amount.

II.15.3. Claims and liability

Any reduction in price does not affect the contractor's actual or potential liability or the contracting authority's rights under Article II.17.

II.16. SUSPENSION OF THE PERFORMANCE OF THE CONTRACT

II.16.1. Suspension by the contractor

If the contractor is affected by *force majeure*, it may suspend the *performance of the contract*.

The contractor must immediately notify the contracting authority about the suspension. The notification must include a description of the force majeure and state when the contractor expects to resume the performance of the contract.

The contractor must *notify* the contracting authority as soon as it is able to resume performance of the contract, unless the contracting authority has already terminated the contract.

II.16.2. Suspension by the contracting authority

The contracting authority may suspend the *performance of the contrac*t or any part of it:

(a) if the procedure for awarding the contract or the *performance of the contract* proves to have been subject to *substantial errors, irregularities or fraud*;

(b) in order to verify whether the presumed *substantial errors, irregularities or fraud* actually occurred.

The contracting authority must *formally notify* the contractor of the suspension. Suspension takes effect on the date of *formal notification*, or at a later date if the *formal notification* so provides.

The contracting authority must *notify* the contractor as soon as possible whether:

(a) it is lifting the suspension; or

(b) it intends to terminate the contract under Article II.17.1(f) or (j).

The contractor is not entitled to compensation for suspension of any part of the contract.

II.17. TERMINATION OF THE CONTRACT

II.17.1. Grounds for termination by the contracting authority

The contracting authority may terminate the contract in the following circumstances:

(a) if provision of the supplies under the contract has not actually started within 15 days of the scheduled date and the contracting authority considers the new date proposed, if any, unacceptable, taking into account Article II.11.2;

(b) if the contractor is unable, through its own fault, to obtain any permit or licence required for *performance of the contract*;

(c) if the contractor does not perform the contract in accordance with the tender specifications or is in breach of another substantial contractual obligation.

(d) if 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 ;

(e) if 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.

(f) if the procedure for awarding the contract or the *performance of the contract* prove to have been subject to *substantial errors, irregularities or fraud*;

(g) if the contractor does not comply with applicable obligations under environmental, social and labour law established by Community or 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;

(h) if the contractor is in a situation that could constitute a *conflict of interest* or a *professional conflicting interest* as referred to in Article II.7;

(i) if a change to the contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the *performance of the contract* or substantially modify the conditions under which the contract was initially awarded;

(j) in the event of *force majeure*, where either resuming implementation is impossible or the necessary ensuing amendments to the contract would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors;

II.17.2. Grounds for termination by the contractor

The contractor may terminate the contract if:

(a) it has evidence that the contracting authority has committed *substantial errors, irregularities or fraud* in the procedure for awarding the contract or the *performance of the contract;*

(b) the contracting authority fails to comply with its obligations, in particular the obligation to provide the information needed for the contractor to perform the contract as provided for in the tender specifications.

II.17.3. Procedure for termination

A party must *formally notify* the other party of its intention to terminate the contract and the grounds for termination.

The other party has 30 days following the date of receipt to submit observations, including the measures it has taken to continue fulfilling its contractual obligations. Failing that, the decision to terminate becomes enforceable the day after the time limit for submitting observations has elapsed.

If the other party submits observations, the party intending to terminate must *formally notify* it either of the withdrawal of its intention to terminate or of its final decision to terminate.

In the cases referred to in points (a) to (d) and (g) to (i) of Article II.17.1 and in Article II.17.2, the date on which the termination takes effect must be specified in the *formal notification*.

In the cases referred to in points (e), (f) and (j) of Article II.17.1, the termination takes effect on the day following the date on which the contractor receives *notification* of termination.

In addition, at the request of the contracting authority and regardless of the grounds for termination, the contractor must provide all necessary assistance, including information, documents and files, to allow the contracting authority to complete, continue or transfer the delivery of the supplies to a new contractor or internally, without interruption or adverse effect on the quality or continuity of the delivery of the supplies. The parties may agree to draw up a transition plan detailing the contractor's assistance unless such plan is already detailed in other contractual documents or in the tender specifications. The contractor must provide such assistance at no additional cost, except if it can demonstrate that it requires substantial additional resources or means, in which case it must provide an estimate of the costs involved and the parties will negotiate an arrangement in good faith.

II.17.4. Effects of termination

The contractor is liable for damage incurred by the contracting authority as a result of the termination of the contract including the cost of appointing another contractor to provide or complete the supplies, unless the damage was caused by the situation specified in Article II.17.1 (j) or in Article II.17.2. The contracting authority may claim compensation for such damage.

The contractor is not entitled to compensation for any loss resulting from the termination of the contract, including loss of anticipated profits, unless the loss was caused by the situation specified in Article II.17.2.

The contractor must take all appropriate measures to minimise costs, prevent damage and cancel or reduce its commitments.

Within 60 days of the date of termination, the contractor must submit any report and any invoice required for supplies that were provided before the date of termination.

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 (d), (e) or (g) of Article II.17.1, under the conditions set out in Article II.11.2.

II.18. INVOICES, VALUE ADDED TAX AND E-INVOICING

II.18.1. Invoices and value added tax

Invoices must contain the contractor's (or leader's in the case of a joint tender) identification data, the amount, the currency and the date, as well as the contract reference.

Invoices must indicate the place of taxation of the contractor (or leader in the case of a joint tender) for value added tax (VAT) purposes and must specify separately amounts not including VAT and amounts including VAT.

The contracting authority is exempt from all taxes and duties, including VAT, in accordance with Articles 3 and 4 of the Protocol on the privileges and immunities of the European Union.

The contractor (or leader in the case of a joint tender) must complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for *performance of the contract* are exempt from taxes and duties, including VAT.

II.18.2. E-invoicing

If provided for in the special conditions, the contractor (or leader in the case of a joint tender) submits invoices in electronic format if the conditions regarding electronic signature specified by Directive 2006/112/EC on VAT are fulfilled, i.e. using a qualified electronic signature or through electronic data interchange.

Reception of invoices by standard format (pdf) or email is not accepted.

II.19. PRICE REVISION

If a price revision index is provided in Article I.4.2, this Article applies to it.

Prices are fixed and not subject to revision during the first year of the contract.

At the beginning of the second and every following year of the contract, each price may be revised upwards or downwards at the request of one of the parties.

A party may request a price revision in writing no later than three months before the anniversary date of entry into force of the contract. The other party must acknowledge the request within 14 days of receipt.

At the anniversary date, the contracting authority must communicate the final index for the month in which the request was received, or failing that, the last provisional index available for that month. The contractor establishes the new price on this basis and communicates it as soon as possible to the contracting authority for verification.

The price revision is calculated using the following formula:

$$Pr = Po \times \left(\frac{Ir}{Io} \right)$$

where: Pr = revised price;

Po = price in the tender;

Io = index for the month in which the contract enters into force;

Ir = index for the month in which the request to revise prices is received.

II.20. PAYMENTS AND GUARANTEES

II.20.1. Date of payment

Payments are deemed to be effected on the date when they are debited to the contracting authority's account.

II.20.2. Currency

Payments are made in euros or in the currency provided for in Article I.7.

II.20.3. Conversion

The contracting authority makes any conversion between the euro and another currency at the daily euro exchange rate published in the Official Journal of the European Union, or failing that, at the monthly accounting exchange rate, as established by the European Commission and published on the website indicated below, applicable on the day when it issues the payment order.

The contractor makes any conversion between the euro and another currency at the monthly accounting exchange rate, established by the Commission and published on the website indicated below, applicable on the date of the invoice.

http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm

II.20.4. Costs of transfer

The costs of the transfer are borne as follows:

(a) the contracting authority bears the costs of dispatch charged by its bank,
(b) the contractor bears the costs of receipt charged by its bank,
(c) the party causing repetition of the transfer bears the costs for repeated transfer.

II.20.5. Pre-financing, performance and money retention guarantees

If, as provided for in Article I.6, a financial guarantee is required for the payment of pre-financing, as performance guarantee or as retention money guarantee, it must fulfil the following conditions:

(a) the financial guarantee is provided by a bank or a financial institution approved by the contracting authority or, at the request of the contractor and with the agreement of the contracting authority, by a third party;
(b) the guarantor stands as first-call guarantor and does not require the contracting authority to have recourse against the principal debtor (the contractor).

The contractor bears the cost of providing such guarantee.

Pre-financing guarantees must remain in force until the pre-financing is cleared against interim payments or payment of the balance. Where the payment of the balance takes the form of a debit note, the pre-financing guarantee must remain in force for three months after the debit note is sent to the contractor. The contracting authority must release the guarantee within the following month.

Performance guarantees cover compliance with substantial contractual obligations until the contracting authority has given its final approval for the supply. The performance guarantee must not exceed 10 % of the total price of the contract. The contracting authority must release the guarantee fully after final approval of the supply, as provided for in the contract.

Retention money guarantees cover full delivery of the supplies in accordance with the contract including during the contract liability period and until their final approval by the contracting authority. The retention money guarantee must not exceed 10 % of the total price of the contract. The contracting authority must release the guarantee after the expiry of the contract liability period as provided for in the contract.

The contracting authority must not request a retention money guarantee where it has requested a performance guarantee.

II.20.6. Interim payments and payment of the balance

The contractor (or leader in the case of a joint tender) must send an invoice for interim payment, as provided for in Article I.5 or in the tender specifications.

The contractor (or leader in the case of a joint tender) must send an invoice for payment of the balance within 60 days of the end of the period of provision of the supplies, as provided for in Article I.5 or in the tender specifications.

Payment of the invoice and approval of documents does not imply recognition of the regularity, authenticity, completeness and correctness of the declarations and information they contain.

Payment of the balance may take the form of recovery.

II.20.7. Suspension of the time allowed for payment

The contracting authority may suspend the payment periods specified in Article I.5 at any time by *notifying* the contractor (or leader in the case of a joint tender) that its invoice cannot be processed. The reasons the contracting authority may cite for not being able to process an invoice are:

(a) because it does not comply with the contract;
(b) because the contractor has not produced the appropriate supplies or documents or
(c) because the contracting authority has observations on the supplies or documents submitted with the invoice.

The contracting authority must *notify* the contractor (or leader in the case of a joint tender) as soon as possible of any such suspension, giving the reasons for it.

Suspension takes effect on the date the contracting authority 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 period exceeds two months, the contractor (or leader in the case of a joint tender) may request the contracting authority to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph of this Article and the new document produced is also rejected, the contracting authority reserves the right to terminate the contract in accordance with Article II.17.1(c).

II.20.8. Interest on late payment

On expiry of the payment periods specified in Article I.5, the contractor (or leader in the case of a joint tender) is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in euros (the reference rate), plus eight points. The reference rate is the rate in force, as published in the C series of the *Official Journal of the European Union* on the first day of the month in which the payment period ends.

Suspension of the payment period as provided for in Article II.20.7 is not considered as a giving rise to late payment.

Interest on late payment covers the period running from the day following the due date for payment up to and including the date of payment as defined in Article II.20.1.

However, when the calculated interest is EUR 200 or less, it must be paid to the contractor (or leader in the case of a joint tender) only if it requests it within two months of receiving late payment.

II.21. RECOVERY

II.21.1. If an amount is to be recovered under the terms of the contract, the contractor must repay the contracting authority the amount in question.

II.21.2. Recovery procedure

Before recovery, the contracting authority must *formally notify* the contractor of its intention to recover the amount it claims, specifying the amount due and the reasons for recovery and inviting the contractor to make any observations within 30 days of receipt.

If no observations have been submitted or if, despite the observations submitted, the contracting authority decides to pursue the recovery procedure, it must confirm recovery by *formally notifying* a debit note to the contractor, specifying the date of payment. The contractor must pay in accordance with the provisions specified in the debit note.

If the contractor does not pay by the due date, the contracting authority may, after informing the contractor in writing, recover the amounts due:

(a) by offsetting them against any amounts owed to the contractor by the Union or by the European Atomic Energy Community;
(b) by calling in a financial guarantee if the contractor has submitted one to the contracting authority;
(c) by taking legal action.

II.21.3 Interest on late payment

If the contractor does not honour the obligation to pay the amount due by the date set by the contracting authority in the debit note, the amount due bears interest at the rate indicated in Article II.20.8. Interest on late payments will cover the period starting on the day after the due date for payment and ending on the date when the contracting authority receives the full amount owed.

Any partial payment is first entered against charges and interest on late payment and then against the principal amount.

II.21.4. Recovery rules in the case of joint tender

If the contract is signed by a group (joint tender), the group is jointly and severally liable under the conditions set out in Article II.6 (liability). The contracting authority first claims the full amount to the leader of the group.

If the leader does not pay by the due date and if the amount cannot be offset in accordance with Article II.21.2 (a), the contracting authority may claim the full amount to any other member of the group by notifying the debit note already sent to the leader under Article II.21.2.

II.22. CHECKS AND AUDITS

II.22.1. The contracting authority and the European Anti-Fraud Office may check or require an audit on the *performance of the contract*. This may be carried out either by OLAF's own staff or by any other outside body authorised to do so on its behalf.

Such checks and audits may be initiated at any moment during the provision of the supplies and up to five years starting from the payment of the balance.

The audit procedure is initiated on the date of receipt of the relevant letter sent by the contracting authority. Audits are carried out on a confidential basis.

II.22.2. The contractor must keep all original documents stored on any appropriate medium, including digitised originals if authorised under national law, for a period of five years starting from the payment of the balance.

II.22.3. The contractor must grant the contracting authority's staff and outside *personnel* authorised by the contracting authority the appropriate right of access to sites and premises where the contract is performed and to all the information, including information in electronic format, needed to conduct such checks and audits. The contractor must ensure that the information is readily available at the moment of the check or audit and, if so requested, that information is handed over in an appropriate format.

II.22.4. On the basis of the findings made during the audit, a provisional report is drawn up. The contracting authority or its authorised representative must send it to the contractor, who has 30 days following the date of receipt to submit observations. The contractor must receive the final report within 60 days following the expiry of the deadline to submit observations.

On the basis of the final audit findings, the contracting authority may recover all or part of the payments made in accordance with Article II.21 and may take any other measure which it considers necessary.

II.22.5. In accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities' financial interests against *fraud* and other *irregularities* and Regulation (EU, Euratom) No 883/2013 of the European Parliament and the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office, the European Anti-Fraud Office may carry out investigations, including on-the-spot checks and inspections, to establish whether there has been *fraud*, corruption or any other illegal activity under the contract affecting the financial interests of the Community or Union. Findings arising from an investigation may lead to criminal prosecution under national law.

The investigations may be carried out at any moment during the performance of the contract and up to five years starting from the payment of the balance.

II.22.6 The Court of Auditors has the same rights as the contracting authority, particularly right of access, for the purpose of checks and audits.

III CLAUSES SUBJECT TO SPECIFIC APPROVAL

Articles 1341 and 1342 of the Italian Civil Code

for the purpose of Articles 1341 and 1342 of the Italian Civil code, the contractor specifically declares that it accepts the following provisions::

Article I.3.6.	Special Conditions (Renewal of the contract)
Article I.10	Special Conditions (Termination by either party)
Article I.11	Special Conditions (Applicable law and settlement of disputes)
Article I.12	Special Conditions (Other special conditions)
Article II.6	General Conditions (Liability)
Article II.10	General Conditions (Subcontracting)
Article II.12	General Conditions (Assignment)
Article II.14	General Conditions (Liquidated damages)
Article II.16	General Conditions (Suspension of the performance of the contract)
Article II.17	General Conditions (Termination of the contract)
Article II.22	General Conditions (Check and audits)

For the Contractor,

Company name

Forename/surname/Function

Done at ……..., [date] ……