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GENERAL CONDITIONS OF CONTRACT

for EBG MedAustron Supply Contracts

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1. GENERAL PROVISIONS

Definitions

" Contract"	means the agreement between the Contracting Authority and the Contractor for the supply of Goods for the MedAustron project
"Contracting Authority's Premises"	means the address of the Contracting Authority as well as the address of CERN
"Contractor's Premises"	means the address of the Contractor as well as the addresses of subcontractors
"Contractual Documents"	means the documents which contain all the provisions and the specifications defining the content of the agreement between the Contracting Authority and the Contractor for the supply of Goods namely the present General Conditions of Contract, the Special Conditions of Contract, together with all the other tender documents, the Contractor's Tender including the related supporting documents, the written request(s) for the delivery of optional items and Variation Form(s), if any, as well as all following amendments
"Contract Price"	means the price (exclusive of any applicable VAT), payable to the Contractor by the Contracting Authority under the Contract, as set out in the Special Conditions of Contract, for the full and proper performance by the Contractor of his obligations under the Contract
"Contractor"	means the person, firm, company with whom the Contracting Authority enters into the Contract as identified in the Special Conditions of Contract
"Goods"	means the goods to be supplied as specified in the Contractual Documents
"Material Fault"	means a breach of any essential term, condition or obligation of the Contract that is so fundamental and continuing that it has the effect of abrogating such Party's performance and the other Party's enjoyment of the benefits under the Contract
"Party"	means the Contractor or the Contracting Authority
"Staff"	means all persons employed by the Contractor to perform his obligations under the Contract together with the Contractor's agents, suppliers and sub-contractors used in the performance of his obligations under the Contract
"Tender"	means all the documents, as listed in the "Cover Letter", submitted by the Contractor to the

"Variation Form"	Contracting Authority in response to the Contracting Authority's Invitation to Tender for the supply of Goods
	means the written request of a variation (with the meaning given to in Clause 5.4) to the Goods submitted by the Contracting Authority to the Contractor

1.1 Applicability

These General Conditions of Contract shall only apply to supply contracts which explicitly invoke them. In this case, any reference made to a clause is a reference to a clause in the General Conditions of Contract.

1.2 Communication

- 1.2.1 Except as otherwise expressly provided in the Contractual Documents, all communication shall be made in writing and shall bear a reference to the Contract. Communication via e-mail is considered as written communication in terms of Clause 1.2.1.
- 1.2.2 The persons responsible for supervising the performance of the Contract on behalf of the Contractor and on behalf of the Contracting Authority are listed in the Contractual Documents. All relevant communication has to be affected among these responsible persons or such persons nominated as contact persons to the other Party by the referred responsible person.
- 1.2.3 Either Party may change its address for service by serving a notice in accordance with this clause.

1.3 Contractor's Status

- 1.3.1 At all times during the Contract period, the Contractor shall remain independent of the Contracting Authority such that nothing in the Contract can be deemed as creating a contract of employment, a relationship of agency or partnership or a joint venture between the Parties.
- 1.3.2 The Contractor may use the Contracting Authority's name and emblem, or indicate that he is a Contracting Authority's supplier. The Contracting Authority reserves anyhow the right to limit, modify or cancel at any time and at its sole discretion the permission granted to the Contractor under this clause 1.3.2.

2. CONTRACT PERFORMANCE

2.1 Delivery

- 2.1.1 The Contractor shall not without prior permission in writing by the Contracting Authority deliver the Goods at any time(s), date(s) or place(s) other than specified in the Contractual Documents.
- 2.1.2 The Contractor shall complete all formalities necessary for the delivery of Goods in accordance with the terms of the Contract, and shall be liable for any costs or delay resulting therefrom.

- 2.1.3 The point of delivery shall be where the Goods are removed from the transporting vehicle at the Contracting Authority's Premises. If the Goods are collected by the Contracting Authority, the point of delivery shall be where the Goods are loaded onto the Contracting Authority's vehicle.
- 2.1.4 Supplies shall be packaged in a manner suitable for safe transportation, handling and storage and which clearly indicates the Contract reference.
- 2.1.5 Any delivery receipt issued by the Contracting Authority shall solely constitute evidence of the number of separate packages delivered and the condition of the external packaging. It shall not constitute evidence that a specific quantity of supplies has been received, or that the supplies are in proper condition or perform properly, or that they are in any other respect in conformity with the Contractual Documents.
- 2.1.6 The Contracting Authority may refuse the delivery of Goods in case of an incorrect number of packages, damaged packaging, manifestly damaged Goods or formalities not having been completed. In case of over-delivered Goods, the risk shall remain with the Contractor unless they are accepted by the Contracting Authority.
- 2.1.7 The Contracting Authority may refuse the delivery of Goods concerned and/or terminate the Contract in whole or in part with immediate effect if:
- the Contracting Authority receives information from the Contractor that he will not be able to deliver the Goods in conformity with the Contractual Documents; or
 - the date of delivery of Goods is not in conformity with the Contractual Documents;
- provided always that, as a result of the non-conformity, the delivery of the Goods loses its purpose for the Contracting Authority.

2.2 Contractor's Responsibility

- 2.2.1 The Contractor shall perform his obligations under the Contract with all due skill, care and diligence and in accordance with the provisions of the Contractual Documents and professional standards.
- 2.2.2 The Contractor shall warrant that the supplied Goods are at the time of delivery, classified as being, at THE state-of-the-art and on the threshold of proven technology.
- 2.2.3 The Contractor shall be responsible for the correct performance of all items supplied, irrespective of whether they have been chosen by the Contractor or suggested by the Contracting Authority. The Contracting Authority's approval of the design and component choice does not release the Contractor from his responsibilities in this respect.
- 2.2.4 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Contracting Authority by the Contractor in connection with the supply of the Goods and shall pay the Contracting Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

- 2.2.5 The Contractor shall always supply new materials, equipment and components, unless otherwise stated in the Contractual Documents and ensure that the Goods are fully compatible with any of the Contracting Authority's equipment, to the extent specified in the Contractual Documents.
- 2.2.6 The Contractor shall be responsible for the safe keeping of all materials, parts, equipment and/or apparatus belonging to the Contracting Authority which are entrusted to him for the performance of the Contract. If such items have been purchased by the Contractor for and on behalf of the Contracting Authority, he shall take all necessary measures and, in particular, retain all documents required to prove the Contracting Authority's ownership.
- 2.2.7 A Contractor whose Contract is cancelled for any reason whatsoever shall immediately return to the Contracting Authority all property belonging to the Contracting Authority, where property shall be deemed to include all copies of documentation as well as all confidential information and any Intellectual Property Rights, belonging to the Contracting Authority, in its possession or which was obtained or produced in the course of providing the supply.
- 2.2.8 Upon termination of the Contract for any reason, the Contractor shall assist and co-operate with the Contracting Authority to ensure an orderly transition of the provision of the supply to the replacement contractor and/or the completion of any work in progress.
- 2.2.9 If, after the Contract is placed, the Contractor discovers that he has misinterpreted the specification, this will not be accepted as an excuse and the Contracting Authority will insist that the Contractor delivers the Goods according to the original specification at no extra cost.
- 2.2.10 The Contractor shall forthwith notify the Contracting Authority in writing of any circumstances that threatens to affect or affects the performance of his obligations under the Contract, failing which he shall in no event be entitled to claim compensation of costs, an extension of time or any other remedy in relation thereto. He shall take such measures as are required to mitigate the consequences of any such circumstance for the Contract.
- 2.2.11 The Contractor shall take reasonable care to ensure that in the performance of his obligations under the Contract he does not disrupt the operations of the Contracting Authority.

2.3 Substantial Errors, Irregularities and Fraud Attributable to the Contractor

Where, after the conclusion of the Contract, the award procedure for the Contract 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, the Contracting Authority may refuse to make payments, may recover amounts already paid or may terminate the Contract, in proportion to the seriousness of the errors, irregularities or fraud.

2.4 Compliance with Law

- 2.4.1 The Contractor shall comply with all laws, technical specifications and norms as set out in the Contractual Documents and shall hold the Contracting Authority free and harmless from, and indemnify the Contracting Authority for any loss or damage, including legal costs, arising from their infringement.

2.4.2 The Contracting Authority may terminate the Contract in whole or in part with immediate effect in the event of infringement of laws, technical specifications and norms as set out in the Contractual Documents by the Contractor.

2.5 Staff

2.5.1 The Staff assigned by the Contractor to the Contract shall at all times remain under the sole discretion and responsibility of the Contractor.

2.5.2 The Contractor shall ensure that authorizations for access to the Contracting Authority's Premises are used by his Staff for the exclusive purpose of the performance of the Contractor's obligations under the Contract.

2.5.3 The Contracting Authority may refuse access to its Premises to any Staff assigned by the Contractor to the Contract who fails to comply with laws or any regulations of the Contracting Authority or CERN or whose presence on the Contracting Authority's Premises is deemed undesirable by the Contracting Authority.

2.5.4 The Contractor shall be liable for the consequences of such refusal of access for the performance of his obligations under the Contract.

2.6 Responsibility of the Contracting Authority

2.6.1 The Contracting Authority assumes responsibility for the specification and performance of materials, equipment and components supplied by the Contracting Authority as well as the performance parameters of systems controlled by sub-systems supplied by the Contracting Authority.

2.6.2 On termination of the Contract, the Contracting Authority shall return to the Contractor all property belonging to the Contractor.

2.6.3 The Contracting Authority undertakes, on its own behalf and on that of its representatives, to observe normal commercial secrecy when exercising its rights of inspection and supervision, and to strive to reduce to a minimum any inconvenience which the exercise of these rights might cause to the Contractor's activities.

2.7 Inspection, Rejection and Guarantee

2.7.1 The Contracting Authority as well as any accredited representative of the Contracting Authority will have free access during normal working hours to the Contractor's Premises, during the Contract period. The place of manufacture, as stated in the Contractual Documents, may only be changed after written approval by the Contracting Authority. The Contracting Authority, or its accredited representative, will give a notice before any visit, as specified in the Contractual Documents.

- 2.7.2 The guarantee period shall be two (2) years from delivery for all supplies furnished by the Contractor if not otherwise stated in the Contractual Documents. The Contractor shall carry out, at his own expense, all work necessary to comply with the terms of the Contract, or replace at his own expense all or any part of the supplies which are found not to comply with these terms during the guarantee period. If the Contractor fails to comply with the above requirements, the Contracting Authority may, after serving due notice on the Contractor, take the necessary action in his stead and at his expense.
- 2.7.3 If supplies are rejected during the guarantee period the Contracting Authority shall decide, after receiving the Contractor's proposals, whether such supplies shall be replaced free of charge by the Contractor, whether their cost shall be reimbursed by him at replacement prices, or whether they shall be repaired or modified by him at his expense. For items that are replaced, the guarantee period shall recommence on the date of replacement. For items that are repaired or modified, the guarantee period shall be prolonged by a period equal to that during which they were unavailable.
- 2.7.4 All defective supplies will be held by the Contracting Authority on the Contractor's behalf, but at the Contractor's risk, for a period of one month following the Contracting Authority's notification thereof to the Contractor in writing, unless otherwise stated in the Contractual Documents. Thereafter, such supplies shall be at the disposition of the Contracting Authority without charge, to use, as it thinks fit.
- 2.7.5 If, during the guarantee period, supplies become unusable for reasons ascribable to the Contractor, the guarantee period for the whole of the supplies concerned shall be extended by the total of all the periods during which the said supplies as a whole were unusable.
- 2.7.6 The Contractor shall meet all costs arising in connection with his obligations under the guarantee, including those of transport. He shall not be responsible for costs resulting from deterioration attributable to the Contracting Authority by reason of negligence, inadequate supervision or maintenance, or mishandling. Similarly, the Contractor shall not be held liable if components have been replaced, modified or repaired by the Contracting Authority without the Contractor's written consent.
- 2.7.7 If the defect observed in the course of the guarantee period is found to be due to a technical error of a systematic nature, the Contractor shall replace or modify at his expense all identical components covered by the Contract which are liable to suffer from this error, even if these components are functioning correctly.

2.8 Provisional Acceptance of Supplies

- 2.8.1 Provisional acceptance shall be granted after all supplies have been delivered and have satisfied the conditions set out in the Contractual Documents and provided that the Contractor has fulfilled all his obligations for this purpose, unless otherwise stated in the Contractual Documents.
- 2.8.2 The supply shall be deemed accepted by the Contracting Authority from the earlier of the following events, if not otherwise stated in the Contractual Documents:
- issue of a certificate of provisional acceptance drawn up jointly;

- payment by the Contracting Authority of their full price.

2.8.3 Ownership of and risk for the Goods shall, without prejudice to any other rights or remedies of the Contracting Authority, pass to the Contracting Authority on the date of the Provisional Acceptance or on such other date as may be agreed between the Contracting Authority and the Contractor.

2.8.4 If the provisional acceptance has not been granted within three (3) months of the date on which the Contractor has notified that he has fulfilled all his obligations, the Contracting Authority shall effect payment and acquire the ownership of the supplies when the Contractor so requests, whilst reserving all rights in respect of the guarantee, if not otherwise stated in the Contractual Documents.

2.9 Final Acceptance

2.9.1 Final Acceptance, in the form of a final acceptance certificate, may be granted with effect from the expiry of the guarantee period, provided that the Contractor has met all his obligations, as defined in the Contractual Documents.

2.9.2 Upon a written request by the Contractor for final acceptance, the Contracting Authority shall give its reply within sixty (60) working days, unless otherwise stated in the Contractual Documents.

2.9.3 In the event of rejection affecting only part of the supplies, final acceptance shall be granted for all supplies not rejected, in so far as they can be utilized independently of the rejected portion, unless otherwise stated in the Contractual Documents.

2.9.4 If during the guarantee period, it is necessary to replace parts of the supply by reason of abnormal wear, breakage or defective functioning, the extension of the guarantee period relating to such parts of the supply shall not preclude the granting by the Contracting Authority of partial final acceptance.

3. PAYMENT AND CONTRACT PRICE

3.1 Payment and VAT

3.1.1 Prices shall be net, firm, inclusive of all costs relating to the performance of the Contractor's obligations under the Contract, as stated in the Contractual Documents and at the conditions set out therein. Prices are not subject to revision, except as provided for in the Special Conditions of Contract or other Contractual Documents. The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable

3.1.2 Where the contract provides for a price revision mechanism, no revision shall apply where supplies are delivered within the period covered by the revision as a result of a delay for which the Contractor is responsible. Any price revision shall in any event be limited to the Contractor in the performance of his obligations under the Contract within the period covered by the price revision.

- 3.1.3 Partial payments shall be effected if so stated in the Special Conditions of Contract or other Contractual Documents and at the conditions defined therein. No partial payments shall be paid unless the Contractor has obtained from a bank approved by the Contracting Authority a banker's guarantee in the Contracting Authority's favour for an amount equal to the sum demanded, unless otherwise stated in the Contractual Documents.
- 3.1.4 No payment shall be effected without receipt of an invoice drawn up in the form prescribed in clause 3.1.5 and accompanied by all relevant supporting documents. Invoices may not be made before the end of the provisional acceptance period (clauses 2.8).
- 3.1.5 The invoices shall be drawn up in compliance with all relevant provisions of Austrian Law. The invoices shall include the reference number of the delivery to which it refers, provided that the delivery has been accepted by the Contracting Authority. A copy of the acceptance note shall be attached to the invoice. All invoices shall be drawn up in Euros (€). The payment shall be made within 30 calendar days after delivery and receipt of the relevant invoice.
- 3.1.6 In the event of delayed payment, interest shall be paid in the amount of 3 % above the base lending rate of the Austrian National Bank.
- 3.1.7 Up to the receipt of the Final Acceptance Certificate, the Contracting Authority may withhold the payment of up to ten per cent (10%) of the Contract price as security; this security may also be provided by banker's guarantee for the same sum and duration issued by an AAA-rated bank with international reputation and registered seat in an EU-member state.
- 3.1.8 The Contractor shall indemnify the Contracting Authority on a continuing basis against any liability, including any interest, penalties or costs incurred which are levied, demanded or assessed on the Contracting Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause 3.1.8 shall be paid by the Contractor to the Contracting Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Contracting Authority. The Contractor shall not suspend the supply of the Goods unless the Contractor is entitled to terminate the Contract under clause 7.1 (Termination) for failure to pay undisputed sums of money.

3.2 Recovery of Sums Due

- 3.2.1 Where any amount is payable by the Contractor to the Contracting Authority under the Contract, the Contracting Authority may unilaterally deduct that amount from any amount payable by it to the Contractor.
- 3.2.2 The Contractor shall make any payments due to the Contracting Authority without any deduction.

4. PROTECTION OF INFORMATION

4.1 Data Protection

The Contractor and all of his Staff shall comply with any notification requirements under the Data Protection Law. Any personal data included in the Contractual Documents or relating to the

Contract, including its execution shall be processed pursuant to Austrian Law on the protection of individuals with regard to the processing of personal data (DSG 2000).

4.2 Confidential Information

- 4.2.1 Each Party shall treat in the strictest confidence and not make use of or disclose to third parties any information or documents which are linked to the performance of the Contract, without the owner's or the Contracting Authority's prior written consent. The Contractor shall not, and shall ensure that his Staff do not, use any of the Contracting Authority's or CERN's confidential information received otherwise than for the purposes of this Contract and shall limit the circle of recipients of confidential information on a need-to-know basis. The Contractor shall continue to comply with these obligations for a period of seven (7) years from the date of disclosure.
- 4.2.2 Notwithstanding clause 4.2.1, the Contractor is entitled to disclose confidential information which he is required by law to disclose. He shall notify the Contracting Authority of such disclosure and shall ensure that the recipients are aware of and comply with the obligations defined in this clause 4.2.
- 4.2.3 Clause 4.2.1 shall not apply to the extent that:
- a. such information was in the possession of the Party making the disclosure and declaring that there is no obligation of confidentiality prior to its disclosure by the information owner;
 - b. such information was obtained, in a lawful manner, from a third party without obligation of confidentiality;
 - c. such information was already in the public domain at the time of disclosure otherwise than by a breach of Contract; or
 - d. such information was generated by the Contractor independently of the Contract.
- 4.2.4 Nothing in the Contract shall prevent the Contracting Authority from disclosing the Contractor's confidential information to any public body or any other legal or natural person having interest, influence or controlling functions on or regarding the Contracting Authority.

4.3 Publicity, Media and Official Enquiries

- 4.3.1 The Contractor shall not make any press announcements or publicise the Contract in any way without the Contracting Authority's prior Approval and shall take reasonable steps to ensure that his employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with this clause.
- 4.3.2 The Contracting Authority shall be entitled to publicise the Contract in accordance with any legal obligation upon the Contracting Authority, including any examination of the Contract by any auditor.
- 4.3.3 The Contractor shall not do anything or cause anything to be done, which may damage the reputation of the Contracting Authority or bring the Contracting Authority into disrepute.

4.4 Security and Contracting Authority's Premises

- 4.4.1 The Contractor shall not perform any activity or establish premises on the Contracting Authority's site other than stipulated in the Contractual Documents.

4.4.2 The Contractor shall comply with all reasonable security requirements of the Contracting Authority while on the Contracting Authority's Premises and shall ensure that all his Staff complies with such requirements, as well as with all relevant Austrian laws and any other relevant regulations.

4.5 Intellectual Property Rights

4.5.1 The disclosure of intellectual property by the Contracting Authority to the Contractor shall not create any right for him in respect of that intellectual property, other than a license to use the intellectual property in so far as necessary for the performance of his obligations under the Contract.

4.5.2 The disclosure of intellectual property by the Contracting Authority to the Contractor is without any warranty, expressly or implied, by the Contracting Authority and the Contracting Authority accepts not liability in relation thereto. The Contractor shall be solely liable for the use by him of any intellectual property disclosed by the Contracting Authority.

4.5.3 Any supplies provided by the Contractor shall be deemed to include a license to all intellectual property necessary for the free and unlimited use of such supplies, including for their repair, modification and replacement by the Contracting Authority or by any third party designated by the Contracting Authority, within the scope of the Contracting Authority's activities.

4.5.4 The Contractor shall ensure that the use of intellectual property within the scope of clause 4.5.3 does not infringe third-party intellectual property rights and shall hold the Contracting Authority free and harmless from, and indemnify it for any loss or damage, including legal costs, arising from any claim related thereto.

4.5.5 Any intellectual property generated in the performance of the Contract shall be vested exclusively in the Contracting Authority and the Contractor shall execute all documents and perform all acts required by the Contracting Authority to ensure such vesting.

4.6 Documents

4.6.1 The Contractor shall keep available until seven (7) years after the date of termination or expiry (whichever is the earlier) of the Contract for inspection by the Contracting Authority and any third party designated by the Contracting Authority all documents prepared by the Contractor and his subcontractor(s) under the Contract, if not otherwise stated in the Contractual Documents. If so required by the Contracting Authority or any designated third party, the Contractor shall provide copies of such documents for the use by the Contracting Authority.

4.6.2 If so requested by the Contracting Authority, the Contractor shall transfer the documents to the Contracting Authority upon termination of the Contract.

5. CONTROL OF THE CONTRACT

5.1 Transfer and or Subcontracting

5.1.1 The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from the Contracting Authority.

- 5.1.2 In the absence of the authorisation referred to in the paragraph above, or in event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on the Contracting Authority. The Contracting Authority reserves anyhow the right to terminate the Contract in whole or in part with immediate effect.
- 5.1.3 Subcontracting shall be allowed if so stated in the Contractual Documents and at the conditions set out therein.
- 5.1.4 If, for any reason, the Contractor wants to change any subcontractor or the scope or the amount of subcontracted work, he shall obtain the Contracting Authority's prior agreement in writing.
- 5.1.5 When the Contractor subcontracts to third parties, he shall none the less remain bound by his obligations to the Contracting Authority under the Contract and shall bear exclusive liability for proper performance of the Contract.
- 5.1.6 The Contracting Authority may terminate the Contract in whole or in part with immediate effect if the Contractor carries out any of these changes without its permission in writing.

5.2 Waiver

- 5.2.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by Contract.
- 5.2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing.
- 5.2.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

5.3 Force Majeure

- 5.3.1 If either Party becomes aware of a force majeure event it shall immediately notify the other Party in writing thereof, giving details, including the expected duration of the force majeure. The Party shall immediately notify the other Party in writing when the force majeure ceases.
- 5.3.2 The Party who is subject to force majeure shall, during the continuance of the force majeure, be released from the performance of its obligations to the extent that such performance is affected by the force majeure. The affected Party shall make all reasonable efforts to minimize the consequences of the force majeure on the Contract.
- 5.3.3 Each Party shall itself be responsible for all direct and indirect financial consequences affecting it as a result of or in connection with the force majeure. The occurrence of the force majeure shall not entitle either Party to any additional payment or compensation.
- 5.3.4 If the force majeure continues for a consecutive period of no less than two (2) months, the other Party shall be entitled to terminate the Contract in whole or in part with immediate effect without any liability for either Party, except in so far as has accrued prior to the date on which the termination of the Contract takes effect.

5.4 Supply Variation and Cancellation

- 5.4.1 The Contracting Authority may at any time change the date(s) and / or place(s) of delivery of the supplies by giving prior notice in writing to the Contractor. Such changes shall only affect the delivery date(s) and / or the place(s) of the supplies concerned.
- 5.4.2 If the Contracting Authority postpones the delivery of supplies, the Contractor shall, during the period of postponement, store, preserve, protect and otherwise secure the supplies. These measures shall be free of charge for the Contracting Authority during a period of three (3) months.
- 5.4.3 Except as provided in clause 5.4.2, the Contracting Authority shall compensate the Contractor for all costs wholly incurred by him as a result of any change requested by the Contracting Authority pursuant to this clause 5.4.
- 5.4.4 The Contracting Authority may request a supply volume variation by completing and sending the Variation Form to the Contractor giving sufficient information for the Contractor to assess the extent of the variation and any additional cost that may be incurred. The Contractor shall respond to a request for a Variation within a reasonable time limit, as specified in the Variation Form.
- 5.4.5 The variation of the supply volume shall have no impact on the unit prices applied for the remuneration of the supply concerned up to a limit of $\pm 10\%$ of variation of the order volume. However, should the volume variation exceed this limit, the Contract Price may be readjusted
- 5.4.6 In the event that the Contractor is unable to provide the variation to the Goods or where the Parties are unable to agree a change to the Contract Price, the Contracting Authority may:
- agree to continue to perform its obligation under the Contract without the variation; or
 - terminate the Contract with immediate effect, except where the Contractor has already delivered part or all of the Order in accordance with the Contractual Documents or where the Contractor can show evidence of substantial work being carried out to fulfil the Order. In such a case the Parties shall agree upon a resolution to the matter.
- 5.4.7 The Contracting Authority shall have the right to cancel any portion of the supply by giving notice to the Contractor in writing within the time set out in the Contractual Documents. In this case no compensation shall be payable to the Contractor.
- 5.4.8 The Contracting Authority shall pay the Contractor for all work in progress at the time of the cancellation, upon delivery of the same to the Contracting Authority, if the cancellation shall occur after the time limit set out in the Contractual Documents pursuant to clause 5.4.7, the Contracting Authority's liability shall be strictly limited to such work in progress.
- 5.4.9 If the Contractor shall be unable to fulfil any part of the supply within the time set out in the Contractual Documents, the Contracting Authority shall have the right to cancel that part of the supply, and shall not be liable for any costs or damages to the Contractor with respect to any work completed or in progress under the Contract.

5.5 Severability

- 5.5.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason, then such provision shall be modified to reflect the parties' intention or shall be replaced by any other valid contract provision applicable by analogy, with all other provisions remaining in full force and effect.
- 5.5.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Contracting Authority and the Contractor shall immediately commence good faith negotiations to remedy such invalidity.

5.6 Suspension of any Part of the Supply

- 5.6.1 Suspension of the supply or any part thereof shall be subject to twenty (20) working days written notice to the Contractor. The Contractor's obligation shall be suspended for the period set out in the notice or such other period notified to the Contractor by the Contracting Authority in writing from time to time. The consequences of the suspension shall be defined in the Contractual Documents. If any compensation is foreseen, the total amount of such compensation shall not exceed 10 % of the total financial volume of the supply concerned.
- 5.6.2 The Contractor shall deliver to the Contracting Authority within ten (10) days after suspension any Goods due to be supplied before suspension.

5.7 Remedies in the Event of Inadequate Performance

- 5.7.1 Without prejudice to any other right or remedy which the Contracting Authority may have, if any Goods are not supplied in accordance with, or the Contractor fails to comply with any of the terms of the Contract, the Contracting Authority shall be entitled to avail itself of any one or more of the following remedies at its discretion whether or not any part of the Goods have been accepted by the Contracting Authority:
- a. to rescind the supply concerned, in accordance with clause 5.4.9;
 - b. to reject the Goods (in whole or in part) in compliance with clause 2.7 and:
 - to return them to the Contractor at the risk and cost of the Contractor on the basis that a full refund for the Goods so returned shall be paid forthwith by the Contractor; or
 - at the Contracting Authority's option to give the Contractor the opportunity at the Contractor's expense to either remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled; if the Contracting Authority instruct the Contractor to remedy the failure, the Contractor shall remedy such failure (and any damage resulting from such failure) at his own cost and expense within ten (10) working days of the Contracting Authority's instructions or such other period of time as the Contracting Authority may direct. In the case of further failure the Contracting Authority may terminate the Contract with immediate effect by giving the Contractor notice in writing.
 - c. to refuse the delivery in accordance to clauses 2.1.6 and 2.1.7;
 - d. to refuse to accept any further deliveries of the Goods but without any liability to the Contracting Authority;

- e. to suspend the Contract or any part thereof, in accordance to clause 5.6; and
- f. to claim such damages as may have been sustained in consequence of the Contractor's breach or breaches of the Contract.

5.8 Bonus/Malus Clauses

Bonuses and penalties shall apply if so stated in the Contractual Documents and at the conditions set out therein.

5.9 Liquidated Damages

- 5.9.1 Should the Contractor fail to perform his contractual duties within the agreed time limits, the Contracting Authority is entitled to apply liquidation damages corresponding to the amount specified and at the conditions set out in the Contractual Documents. These liquidated damages shall apply from the agreed supply date until the real supply date.
- 5.9.2 The cumulative amount of liquidation damages, according to this paragraph, shall be limited to the amount specified in the Contractual Documents.
- 5.9.3 The Contracting Authority shall deduct the amount of the liquidation damages from any payment due to the Contractor or from any bank guarantee submitted by the Contractor.
- 5.9.4 The right to apply liquidation damages exists regardless of negligence or fault of the Contractor. Irrespective of applying liquidation damages, the Contracting Authority is also entitled to file all damages, which exceed these liquidation damages.
- 5.9.5 The Contractor shall not be liable for any liquidation damages in the following specific cases:
 - for those days of delay where the Contracting Authority is responsible for the delay;
 - if the delay is shown by the Contractor to be result of force majeure.

5.10 Cumulative Remedies

Except as otherwise expressly provided for in the Contractual Documents, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

5.11 Monitoring of Contract Performance

- 5.11.1 The Contractor shall comply with the monitoring arrangements set out in the Contractual Documents including, but not limited to, providing such data and information as the Contractor may be required to produce under the Contract until the expiry of the guarantee period for provision of the Goods or, in case of termination of the Contract pursuant to clause 7.1, until the expiry of a period of two (2) years following termination.

5.11.2 If the Contracting Authority requests that it or any party designated by the Contracting Authority witnesses any tests or measurements to be performed by the Contractor or his sub-contractor(s), the Contractor shall give the Contracting Authority reasonable prior notice in writing of the date(s) and place(s) of such tests and measurements. In the event of failure by the Contractor to give such notice, the Contracting Authority shall be entitled to demand at any time that such tests and measurements be repeated at the expense of the Contractor, who shall be liable for any delay resulting therefrom.

6. LIABILITIES

6.1 Liability

- 6.1.1 Each Party shall hold the other Party free and harmless from, and indemnify it for loss and damage, including personal injury and death and related legal costs, resulting from its acts or omissions in relation to the Contract.
- 6.1.2 Except in case of gross negligence or wilful misconduct on its part, a Party shall not be liable to the other for loss of contract, loss of income or revenue, loss of customers or reputation or any other indirect or consequential loss or damage.
- 6.1.3 Nothing in the Contract shall impose any liability on the Contracting Authority in respect of any liability incurred by the Contractor to any other person. The Contractor shall provide compensation in the event of any action, claim or proceeding brought against the Contracting Authority by a third party as a result of damage caused by the Contractor in performance of the Contract.
- 6.1.4 Nothing in the Contract shall impose any liability on the Contracting Authority in respect of any liability incurred by the Contractor to any other person, but this shall not be taken to exclude or limit any liability of the Contracting Authority to the Contractor under clause 6.1.1.
- 6.1.5 In any case neither Party excludes or limits its liability for:
- death or personal injury caused by its negligence, or that of its Staff;
 - fraud or fraudulent misrepresentation by it or its Staff.
- 6.1.6 Each party's total liability in relation to the Contract shall be limited to the highest of the following amounts:
- the Contract Price;
 - the insured amount pursuant to the liable party's applicable insurance policy.

6.2 Performance and warranty Guarantee

- 6.2.1 The Contractor shall submit within 14 days after the written request of the Contracting Authority an independent, unconditional and irrevocable performance and warranty guarantee in form of a bank guarantee, payable on-demand, issued by a first-rate international bank in favour of the Contracting Authority. The performance and warranty guarantee will be released after termination of the guarantee period provided that the Contracting Authority has no reserves. In case of expiry or termination of Contract as well as during the warranty period the performance and/or warranty guarantee can be reduced pro rata to the value of the already performed parts of the Contract on the Contractor's request or to the value and at the conditions set out in the Special Conditions of Contract.
- 6.2.2 The Contracting Authority will claim the performance and warranty guarantee in the event that the Contractor does not deliver the delivery or a part-delivery within a period of one month after the delivery time and in accordance with all conditions of the Contractual Documents or the Contractor does not meet his contractual obligations during a guarantee term, although the Contracting Authority has requested the Contractor to do so by registered letter with acknowledgement of receipt or equivalent. The claim of the performance and warranty guarantee must not be issued before two weeks after the Contractor received the request (or refused its delivery).
- 6.2.3 The Contracting Authority is entitled to cover all expenses with the realisation of the performance and warranty guarantee, which are caused by any lack of performing the Contractor's contractual obligations (including all costs of an eventual execution by substitution).

7. TERMINATION

7.1 Termination

- 7.1.1 In addition to the entitlement to terminate the Contract pursuant to clauses 2.1.7, 2.3.1, 2.4.2, 5.1.2, 5.1.8, 5.3.4, 5.4.6 (b), and 5.7.1 (b), the Contracting Authority may at any time terminate the Contract by serving written notice on the Contractor with effect from the date specified in such notice:
- a. if any facts are disclosed which
 - would have prevented the Contracting Authority from closing Contract, had they be known beforehand or,
 - resulted in substantially different contents of the documents of the procedure which lead to the Contract, had they be known beforehand;
 - b. in cases where a price revision may be applied by the Contractor and the price increase would result in a price increase which is higher than the percentage stated in the specific tender documents;
 - c. in cases where the Contractor commits a Material Fault and:
 - the Contractor has not remedied the Material Fault to the satisfaction of the Contracting Authority within the period specified by the Contracting Authority, after issue of a written notice specifying the Material Fault and requesting it to be remedied; or

- the Material Fault is not, in the reasonable opinion of the Contracting Authority, capable of remedy; or
- d. in cases where the Contracting Authority terminates the Contract as a consequence of breach of contract by the Contractor;
- e. the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- f. the Contractor is guilty of gross negligence or wilful misconduct in relation to the Contract, including fraud, (attempted) corruption and misrepresentation.

7.1.2 Termination shall take effect on the day the Contractor receives notification by registered letter with acknowledgement of receipt or equivalent, or at a later date, where the notification so provides. The Contracting Authority may at any time following termination give notice to the Contractor to resume the work. The Contractor shall not be entitled to claim compensation on account of termination of the Contract or of part thereof.

7.2 Consequences of Expiry or Termination

- 7.2.1 Notwithstanding the service of a notice to terminate the Contract, the Contractor shall continue to fulfil his obligations under the Contract until the date of expiry or termination of Contract or such other date as required under this clause.
- 7.2.2 Termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations of either Party accrued under the Contract prior to termination or expiry.
- 7.2.3 Termination of the Contract shall not affect the continuing rights, remedies or obligations of the Contracting Authority or the Contractor under clauses 2.4 (Compliance with Law), 2.7 (Inspection, Rejection and Guarantee), 4.1 (Data Protection), 4.2 (Confidential Information), 4.3 (Publicity, Media and Official Enquiries), 4.4 (Security and Contracting Authority's Premises), 4.5 (Intellectual Property Rights), 4.6 (Documents), 6.1 (Liability), 6.2 (Performance Guarantee), 8.1 (Governing Law and Jurisdiction) together with any other provision which is either expressed to or by implication is intended to survive termination.
- 7.2.4 Where the Contracting Authority terminates the Contract under clause 7.1 the Contractor shall compensate the Contracting Authority for all costs wholly and necessarily incurred by it as a result of such termination. Such costs shall include the additional costs of having any contractual obligation performed by a third party of Contracting Authority's choice. The Contracting Authority shall take all reasonable steps to mitigate such additional expenditure.
- 7.2.5 The liability defined in this clause 7.2 shall be without prejudice to any other liability which may arise pursuant to the Contract, which shall be calculated independently.

8. DISPUTES AND LAW

8.1 Governing Law and Jurisdiction

- 8.1.1 The Contract shall be governed by the laws of Austria only excluding the Austrian law of conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods.
- 8.1.2 The competent court in Wiener Neustadt shall have exclusive jurisdiction over any disputes resulting from the interpretation or application of the Contract.