

## **II.GENERAL CONDITIONS**

### **ARTICLE II.1 – PERFORMANCE OF THE CONTRACT**

- II.1.1** The Expert shall perform the Contract to the highest professional standards. He/she shall follow any instructions given by Fusion for Energy to this end and deliver constant and high quality work.
- II.1.2** The Expert shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.
- II.1.3** The Expert shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to him are to be executed.
- II.1.4** The Expert shall have the professional qualifications and experience and language skills required for the execution of the tasks assigned to him/her. He/she is deemed to work in a personal capacity and, in performing the work, does not represent any organisation.
- II.1.5** The Expert shall neither represent Fusion for Energy nor behave in any way that would give such an impression.
- II.1.6** The Expert shall have the sole responsibility to execute the tasks assigned to him/her. The Expert shall not subcontract nor cause the Contract to be performed in fact by third parties. The Expert shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from Fusion for Energy.
- II.1.7** Fusion for Energy may not under any circumstances be considered to be the Expert's employer.
- II.1.8** Should any unforeseen event, action or omission directly or indirectly hamper the execution of the tasks, either partially or totally, the Expert shall immediately and on his own initiative record it and report it to Fusion for Energy. The report shall include a description of the problem, an indication of the date on which it started and of the remedial action taken by the Expert to ensure full compliance with his obligations under the Contract. In such event the Expert shall give priority to solving the problem rather than determining liability.
- II.1.9** Should the Expert fail to perform his obligations under the Contract in accordance with the provisions laid down therein, Fusion for Energy may without prejudice to its right to terminate the Contract, reduce or recover payments in proportion to the scale of the failure.

## **ARTICLE II.2 – LIABILITY**

- II.2.1** Fusion for Energy shall not be liable for damage sustained by the Expert in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of Fusion for Energy.
- II.2.2** Fusion for Energy shall not be liable for any act or default on the part of the Expert in performance of the Contract. Fusion for Energy shall not be liable to provide the Expert with any compensation or coverage in the event of injury or illness.
- II.2.3.** Except in case of force majeure, the Expert may be required to indemnify Fusion for Energy for any damage it may sustain due to the Expert's acts or omissions in relation to the performance of the Contract up to the Maximum Amount as defined in Article I.3.1.

## **ARTICLE II.3 - CONFLICTS OF INTEREST**

- II.3.1** The Expert shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of the Contract. Such conflict of interest could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest or any other situation referred to in the Specific Conditions. Any conflict of interest which arises during performance of the Contract must be notified immediately to Fusion for Energy in writing without delay. In the event of such conflict, the Expert shall immediately take all necessary steps to resolve it.

Fusion for Energy reserves the right to verify that such measures are adequate and may require additional measures to be taken, if necessary, within a time limit which it shall set. Fusion for Energy shall have a right to terminate, immediately and without compensation, the Contract of the Expert exposed to a conflict of interest situation.

- II.3.2** The Expert shall abstain from any contact with third parties likely to compromise his independence.
- II.3.3** The Expert declares:
- that he has not made and will not make any offer of any type whatsoever from which an advantage can be derived under the Contract,
  - that he has not submitted, or plans to submit, a proposal or tender, nor, to his knowledge is involved in, or stands to derive benefit from, any proposal or tender which may be related to the tasks laid down in the Contract;
  - that he has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an inventive or reward relating to the performance of the Contract.

## **ARTICLE II.5 – PROVISIONS CONCERNING PAYMENTS**

**II.5.1** Payments shall be deemed to have been made on the date on which Fusion for Energy's account is debited.

**II.5.2** Should a required form and/or supporting document related to a request for payment and reimbursement of the expenses be incomplete or some clarification and additional information be required or the requested amount is not due, Fusion for Energy reserves the right to suspend the time limit of 45 days for payment.

The same shall apply without prejudice to Fusion for Energy's right to terminate the Contract or the right to reduce or recover payments in proportion to the scale of the failure in case the Expert fails to perform his obligations under the Contract including the obligation of confidentiality and of no conflict of interest or where Fusion for Energy requested the Expert to submit observations as laid down in Article II.12.

Fusion for Energy shall notify the Expert accordingly and set out the reasons for the suspension and the conditions to be met for lifting the suspension by registered letter with acknowledgment of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter. The remainder of the period shall begin to run again once the suspension has been lifted.

**II.5.3** Fusion for Energy reserves the right to refuse payment for any report or other deliverable required by the Contract that is submitted beyond the date specified in the Specific Conditions.

**II.5.4** Should a request for payment and reimbursement of the expenses not be supplied after the time limit of 60 days, Fusion for Energy reserves the right to refuse to make payment and reimbursement of the expenses. When Fusion for Energy decides not to proceed with payment and reimbursement of the expenses and subject to 30 days written notice of non-receipt of a request for payment and reimbursement of the expenses, Fusion for Energy shall duly inform the Expert.

**II.5.6** Fusion for Energy reserves the right to recover any payment made and to exclude from further tasks any Expert who has breached any substantial obligations of the Contract, including the obligation of confidentiality and of no conflict of interest.

**II.5.7** Arrangements as regards payment and reimbursement of expenses are between the Expert and Fusion for Energy, even if the Expert is employed by an organisation. It will be for the Expert and his/her employer to come to any particular agreement concerning the final destination of any payments and reimbursement; Fusion for Energy will not intervene in this agreement.

**II.5.8** The Expert commits to respect applicable national legislation with regard to any payment or reimbursement received from Fusion for Energy and with regard in particular to taxation, social security matters and working rights. Upon request by any competent national authorities, Fusion for Energy may inform them about any payment made for the performance of the tasks.

**II.5.9** In the event of late payment by Fusion for Energy, the Expert shall be entitled to interest, provided the calculated interest exceeds EUR 200. In case interest does not exceed EUR 200, the Contractor may claim interest within two months of receiving the payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations (“the reference rate”) plus seven percentage points (“the margin”). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment. Suspension of payment by Fusion for Energy may not be deemed to constitute late payment.

#### **ARTICLE II.6 - RECOVERY**

**II.6.1** If total payments made exceed the amount actually due under the Contract or if recovery is justified in accordance with the terms of the Contract, the Expert shall reimburse the appropriate amount in euro on receipt of the debit note, in the manner and within the time limits set by Fusion for Energy.

**II.6.2** Fusion for Energy may, after informing the Expert, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Expert also has a claim on Fusion for Energy that is certain, of a fixed amount and due.

#### **ARTICLE II.7 – OWNERSHIP OF THE RESULTS – INTELLECTUAL AND INDUSTRIAL PROPERTY**

Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the Contract, shall be owned solely by Fusion for Energy, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where industrial or intellectual property rights exist prior to the Contract being entered into.

#### **ARTICLE II.8 - USE, DISTRIBUTION AND PUBLICATION OF INFORMATION**

**II.8.1** The Expert shall authorise Fusion for Energy to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the Contract, in particular the identity of the Expert, the subject matter, the duration, and the amount paid.

**II.8.2** Unless otherwise provided, Fusion for Energy shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to publish the documents or information supplied, the Expert may not have them distributed or published elsewhere without prior written authorisation from the Fusion for Energy.

**II.8.3** Any distribution or publication of information relating to the Contract by the Expert shall require prior written authorisation from Fusion for Energy. It shall state that the

opinions expressed are those of the Expert only and do not represent Fusion for Energy's official position.

- II.8.4** The use of information obtained by the Expert in the course of the Contract for purposes other than its performance shall be forbidden, unless Fusion for Energy has specifically given prior written authorisation to the contrary.

## **ARTICLE II.9 - CONFIDENTIALITY**

The Expert undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to performance of the Contract. In particular, he/she undertakes not to reveal any detail of the evaluation process and its outcomes or of any proposal or tender submitted for evaluation. The Expert shall be responsible for maintaining the confidentiality of any documents or electronic files sent and for returning, erasing or destroying all confidential documents or files upon completing his/her tasks, unless otherwise instructed. The Expert shall continue to be bound by this undertaking after completion of the tasks.

## **ARTICLE II.10 - TAXATION**

- II.10.1** The Expert shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant requests for payment invalid.
- II.10.2** The Expert acknowledges that Fusion for Energy is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.

## **ARTICLE II.11 - FORCE MAJEURE**

- II.11.1** Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.
- II.11.2** Without prejudice to Article II.1.8, if either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.
- II.11.3** Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Expert is unable to perform his contractual obligations owing to force majeure, he shall have the right to remuneration only for tasks actually executed.

**II.11.4** The contracting parties shall take the necessary measures to reduce damage to a minimum.

## **ARTICLE II.12 - TERMINATION**

**II.12.1** Fusion for Energy may terminate the Contract in the following circumstances:

- (a) where the Expert 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;
- (b) where the Expert has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is resident or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- (c) where Fusion for Energy has evidence or seriously suspects the Expert or any related entity or person, of professional misconduct;
- (d) where Fusion for Energy has evidence or seriously suspects the Expert or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to Fusion for Energy's financial interests;
- (e) where Fusion for Energy has evidence or seriously suspects the Expert or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the Contract;
- (f) where the Expert is in a conflict of interest situation or in a situation in which a conflict of interest may exist;
- (g) where the Expert was guilty of misrepresentation in supplying the information required by Fusion for Energy as a condition of participation in the Contract procedure or failed to supply this information;
- (h) where a change in the Expert's financial and/or technical situation could, in Fusion for Energy's opinion, have a significant effect on the performance of the Contract;
- (i) where execution of the tasks has not actually commenced within delivery or performance period set in the Contract, and the new date proposed, if any, is considered unacceptable by Fusion for Energy;
- (j) where the Expert, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in a breach of his contractual obligations.

(k) in the event of disruption of the execution of the tasks resulting from the action of the Expert or in the event the expertise of the Expert fails to correspond to the profile required by the Contract, stating its reasons for so doing.

**II.12.2** In case of force majeure, notified in accordance with Article II.11, either contracting party may terminate the Contract, where performance thereof cannot be ensured for a period corresponding to at least to one fifth of the period laid down in the Contract.

**II.12.3** Prior to termination under point c), d), e), h) or j) and k) the Expert shall be given the opportunity to submit his observations.

Termination shall take effect on the date on which a registered letter with acknowledgment of receipt terminating the Contract is received by the Expert, or on any other date indicated in the letter of termination.

**II.12.4** Consequences of termination:

In the event of Fusion for Energy terminating the Contract in accordance with this Article and without prejudice to any other measures provided for in the Contract, the Expert shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the letter terminating the Contract, the Expert shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

The Expert shall be responsible for any delay in the execution of the tasks originally assigned to him/her. Fusion for Energy may claim compensation for any damage suffered and recover any sums paid to the Expert under the Contract.

On termination Fusion for Energy may engage any other Expert to complete the tasks. Fusion for Energy shall be entitled to claim from the Expert all extra costs incurred in making good and completing the tasks, without prejudice to any other rights it has under the Contract.

#### **ARTICLE II.13 – SUBSTANTIAL ERRORS, IRREGULARITIES AND FRAUD ATTRIBUTABLE TO THE EXPERT**

Where, after the award of the Contract, the award procedure or the performance of the Contract prove to have been subject to substantial errors, irregularities or fraud, and where such errors, irregularities or fraud are attributable to the Expert, Fusion for Energy may refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with the Expert, in proportion to the seriousness of the errors, irregularities or fraud.

## **ARTICLE II.14 - CHECKS AND AUDITS**

- II.14.1** In accordance with Article 15 of the Statues annexed to the Council decision (Euratom) No 198/2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it, the European Court of Auditors shall be empowered to audit the documents held by the Expert receiving payments from the budget of Fusion for Energy from signature of the Contract up to five years after payment of the balance.
- II.14.2** Fusion for Energy or an outside body of its choice shall have the same rights as the European Court of Auditors for the purpose of checks and audits limited to compliance with contractual obligations from signature of the Contract up to five years after payment of the balance.
- II.14.3** In addition, the European Anti-Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EC) No 1073/1999 from signature of the Contract up to five years after payment of the balance.

## **ARTICLE II.15 - DATA PROTECTION**

- II.15.1.** Any personal data included in the Contract, including its execution, or relating to the Contract or the implementation thereof shall be processed by Fusion for Energy pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. It shall be processed solely for the purposes of the performance, management and follow up of the Contract by Fusion for Energy without prejudice to possible transmission to internal audit services, to the European Court of Auditors, to the Financial Irregularities Panel and/or to the European Anti-Fraud Office (OLAF) for the purposes of safeguarding the financial interests of the Community. The Expert shall have the right of access to his personal data and the right to rectify any such data that is inaccurate or incomplete.

Should the Expert have any queries concerning the processing of his/her personal data, he/she shall address them to the Fusion for Energy controller responsible for processing of the personal data in relation to the Contract (the 'Personal Data Processing Controller'). The Expert shall have right of recourse at any time to the European Data Protection Supervisor.

- II.15.2.** The Fusion for Energy responsible officers identified in Article I.6.3. shall inform the Expert of the name of the Personal Data Processing Controller.
- II.5.3.** In addition to the processing of personal data referred to in Paragraph 1, Fusion for Energy may publish for transparency reasons the name (first name and family name), gender, nationality and the technical area of the Expert under the Contract on its public website at regular intervals.

**ARTICLE II.16- AMENDMENTS**

Any amendment to the Contract shall be subject to a written agreement concluded by the contracting parties. An oral agreement shall not be binding on the contracting parties.

**ARTICLE II.17 - SUSPENSION OF THE CONTRACT**

Without prejudice to Fusion for Energy's right to terminate the Contract, Fusion for Energy may at any time and for any reason suspend execution of the tasks under the Contract or any part thereof. Suspension shall take effect on the day the Expert receives notification by registered letter with acknowledgment of receipt or equivalent, or at a later date where the notification so provides. Fusion for Energy may at any time following suspension give notice to the Expert to resume the work suspended. The Expert shall not be entitled to claim compensation on account of suspension of the Contract or of part thereof.

---