**General Conditions for the Contract (Purchase Order)**

* 1. **performance of the Contract**
  2. **General obligations on performance**

1. The Contractor shall perform the Contract with due skills, care, and diligence, in accordance with the high professional standards which can be expected from an experienced contractor in the field of the Contract.
2. The Contractor must comply with the minimum requirements provided for in the Purchase Order. 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]](#footnote-1) and compliance with data protection obligations resulting from Regulation (EU) 2016/679 and Regulation (EU) 2018/1725.
3. The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required to perform this Contract under the laws and regulations in force at the place where this Contract is to be executed.
4. The Contractor shall neither represent Fusion for Energy, nor behave in any way that would give such an impression. The Contractor shall inform third parties that it and its employees do not belong to the European public service.
5. The Contractor must ensure that the Staff performing the Contract (including that of Subcontractors if any) has the professional qualifications, skills and experience required for execution of the Contract.
6. The Contractor shall make provision for the following employment or service relationships with its Staff: (1) Staff executing the tasks assigned to the Contractor may not be given orders directly by Fusion for Energy and (2) Fusion for Energy may not under any circumstances be considered to be the Staff's employer and the said Staff shall undertake not to invoke in respect of Fusion for Energy any right arising from the contractual relationship between Fusion for Energy and the Contractor.
7. The Contractor must ensure compliance with the health and safety regulations and standards applicable in the places where the Contract is executed and the goods or services delivered.
8. All periods specified in the contract are calculated in calendar days, unless otherwise specified.
   1. **Packaging and transport**
9. All packing materials are non-returnable and their cost is included in the Total Price.
10. Packaging shall be appropriate and ensure that the content remains intact and prevents damage or deterioration.
11. **General Provisions Concerning Payments** 
    1. Payments shall be made only if the Contractor has fulfilled all its contractual obligations by the date on which the invoice is submitted. Should the Contractor fail to perform his obligations under the Contract, Fusion for Energy may – without prejudice to its right to terminate the Contract and any other remedies it may have at law – suspend, reduce, or recover payments in proportion to the scale of the non-performance.
    2. Payments shall be deemed to have been made on the date on which Fusion for Energy’s account is debited.
    3. Fusion for Energy may suspend the payment period at any time, if it informs the Contractor that its payment request is not admissible. A payment request is not admissible for one of the following reasons: (a) the payment is not due in accordance with the Contract; (b) the Contractor has not produced the appropriate supporting documents or deliverables; or (c) Fusion for Energy has observations on the documents or deliverables submitted with the invoice.
    4. In the event of doubt on the admissibility of the payment request, Fusion for Energy may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the request is admissible.
    5. Fusion for Energy shall notify the Contractor as soon as possible of the suspension and set out the reasons for it. Suspension takes effect on the date Fusion for Energy sends the notification. The remaining payment period resumes from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension of payment exceeds 2 (two) months, the Contractor may request F4E’s decision on whether the suspension must be continued.
    6. In the event of late payment, Contractor shall be entitled to interest calculated at the rate applied by the European Central Bank to its most recent main refinancing operations (the "**Reference Rate**") plus 8 (eight) percentage points. The Reference Rate in force on the first Day of the month in which the payment is due shall apply. Interest shall be payable for the period elapsing from the Day following expiry of the time limit for payment up to the Day of payment. Suspension of payment by Fusion for Energy does not constitute late payment. When the calculated interest is lower or equal to EUR 200 (two-hundred euros) it must be paid only if the Contractor requests it within 2 (two) months of receiving late payment.
12. **Recovery**
    1. If the total payments made, exceed the amount actually due under the Contract or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the appropriate amount in EUR on receipt of the debit note, in the manner and within the time limits set by Fusion for Energy.
    2. In the event of failure to pay by the deadline specified in the debit note, Fusion for Energy may, after informing the Contractor in writing, recover the amounts due by: (a) offsetting them against any amount owed to the Contractor by Fusion for Energy; (b) taking legal actions.
    3. In the event of failure to pay by the deadline specified in the debit note, the sum due shall bear interest at the rate indicated in Article 2.6 (*General Provisions Concerning Payments*). Interest shall be payable from the Day following the expiry of the due date up to the Day on which the full debt is repaid in full. Any partial payment is first entered against charges and interest on late payment and then against the principal amount.
13. **Communication**
    1. Any communication related to the Contract shall be in writing, in English, and shall bear the Contract reference. All communications shall be made by mail, electronic mail or, if requested by Fusion for Energy, by the Deviation Amendment and Contract Changes Portal (DACC), save as otherwise provided in the Contract. An ordinary mail is deemed to have been received on the date of its registration by Fusion for Energy.
    2. Deviation Amendment and Contract Changes Portal (DACC) is the Electronic platform developed by F4E for managing deviations, amendments and Contract changes with Contractors and to process commercial operations in accordance with the Contract.
    3. The parties agree that any communication made by email or DACC has full legal effect and is admissible as evidence in judicial proceedings.
14. **Conflict of Interests**
    1. The Contractor shall take all necessary measures in order to prevent any situation of Conflict of Interest or Professional Conflicting Interest. A Conflict of Interest means a situation where the impartial and objective performance of the Contract by the Contractor is compromised for reasons involving family, emotional life, political or national affinity, economic interest, or any other shared interest with Fusion for Energy or any third party related to the subject matter of the Contract. Professional Conflicting Interest means a situation in which the Contractor’s previous or on-going professional activities affect its capacity to perform the contract to an appropriate quality standard. Any Conflict of Interest or Professional Conflicting Interest which could arise during performance of the Contract must be notified to Fusion for Energy in writing without delay. The Contractor shall immediately take all necessary steps to rectify it.
    2. Fusion for Energy reserves the right to verify that such measures are adequate and may require that additional measures be taken, if necessary, within a time limit which it shall set. The Contractor shall ensure that its staff, board and directors are not placed in a situation which could give rise to conflict of interest.
    3. The Contractor declares:
15. that it has not made, and will not make, any offer of any type whatsoever, from which an advantage can be derived under the Contract;
16. that it has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, in as much as it is an incentive or reward relating to the performance of the Contract.
17. **Acceptance**
    1. **General**

Acceptance is the acknowledgement that the goods, service or works delivered are in conformity with the contractual requirements.

Conformity shall be declared only where the conditions laid down in Article 6.2 of the Contract are satisfied.

Conformity of the goods, service or works delivered shall be evidenced by a written communication to this effect or, in the absence of such communication, by the payment.

* 1. **Conditions for Acceptance: conformity**

The goods, services or works delivered by the Contractor to Fusion for Energy must be in conformity in quantity, quality, price, and packaging with the Contract.

The goods, services or works delivered and their packaging must correspond to the specifications.

They must be delivered in accordance with the schedule defined in the Contract.

* 1. **Remedy**

1. The Contractor shall be liable to Fusion for Energy for any nonconformity which exists at the time the goods, services or works are verified.
2. In case of nonconformity, without prejudice to Article 9 (*Liquidated Damages*), Fusion for Energy shall be entitled, at its own discretion: to have the goods, services or works brought into conformity, free of charge, by repair or replacement; or to have an appropriate reduction made in the price.
3. Any repair or replacement shall be completed within a reasonable time and without any significant inconvenience to Fusion for Energy, taking account of the nature of the goods and the purpose for which they are required by Fusion for Energy.
4. The term ‘free of charge’ in paragraph (b) refers to the costs incurred to bring the goods into conformity, particularly the cost of postage, labour, and materials.
   1. **Transfer of ownership**

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

1. **Warranty**
   1. **Scope and Duration**

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

The Contractor shall only be exempted from the above obligations during the Warranty Period, if it is able to prove that the defect was exclusively caused after Acceptance by Fusion for Energy, a third party, or a Force Majeure. Notwithstanding, the Contractor shall start to execute the necessary actions to remedy the defect rather than determine liability.

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

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

* 1. **Remedies**

In the case of defect, Fusion for Energy shall be entitled, to have the goods brought into conformity free of charge by repair or replacement, or to have an appropriate reduction made in the total price or the Contract terminated with regards to those goods.

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

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

* the value the goods would have, if there were no defect;
* the significance of the defect; and
* whether the alternative remedy could be completed without significant inconvenience to the Contractor.

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

* 1. **Repair and Replacement**

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

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

* 1. **Reduction of Price and Termination**

Fusion for Energy may require an appropriate reduction of the Total Contract Price or have the Contract terminated in accordance with Article 14 (*Termination by Fusion for Energy for Cause*), if Fusion for Energy is entitled to neither Repair nor replacement, or if the Contractor has not completed the remedy within a reasonable time, or if the Contractor has not completed the remedy without significant inconvenience to Fusion of Energy, including where completion of the remedy has lost its purpose.

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

1. **Liability**
   1. The Contractor shall be liable to Fusion for Energy for any loss or damage arising directly as a result of the performance or breach of the Contractor's obligations under the Contract. The Contractor’s total liability under the Contract shall not exceed on time the total price (all included), subject to the sole exceptions set out below: 1) damage or loss caused by the gross negligence or wilful misconduct of the Contractor, its employees or agents, or of any Subcontractor or its employees or agents; 2) personal injuries or death, unless attributable to gross negligence, wilful misconduct or breach of this Contract by Fusion for Energy or its personnel; 3) damage or loss resulting from non-compliance with any applicable law or from an infringement of intellectual property rights of a third party.
   2. Notwithstanding anything to the contrary in this Contract, Fusion for Energy shall not be liable for any loss or damage sustained by 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 by Fusion for Energy. Fusion for Energy is not liable for any loss or damage caused by the Contractor, including any damage or loss to a third party during or as a consequence of performance of the Contract.
   3. 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 Fusion for Energy for the performance of the Contract.
2. **Liquidated Damages**
   1. Where the delivery date or the performance date is not met and the delay is not attributable to an act or omission of Fusion for Energy, Fusion for Energy may impose liquidated damages amounting to 0,3% of the total price of the Contract per Day of delay, up to a maximum of 10% of the total price of the Contract.
   2. Fusion for Energy must formally notify the Contractor of its intention to apply liquidated damages and the corresponding calculated amount. The Contractor has 30 (thirty) Days following the date of receipt of the Notification to submit observations or any longer period communicated by Fusion for Energy. Failing that, the decision becomes enforceable the Day after the time limit for submitting observations has elapsed. If the Contractor submits observations, Fusion for Energy, taking into account the relevant observations, shall 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.
   3. The Parties expressly acknowledge and agree that any amounts payable under this article represent a reasonable estimate of fair compensation for the damages and losses that may be reasonably anticipated by Fusion for Energy from the above-mentioned delays of the Contractor.
   4. Liquidated damages may be imposed together with a reduction in price under the conditions laid down in Article 7.
3. **Subcontracting**
   1. The Contractor shall neither subcontract any part of the work to any Subcontractor, nor change a Subcontractor without prior written authorisation from Fusion for Energy, nor cause or allow the Contract to be performed in fact by a third party.
   2. Even where Fusion for Energy authorises the Contractor to subcontract to third parties, it shall nonetheless remain bound by its obligations to Fusion for Energy under the Contract and shall bear exclusive liability for proper performance of the Contract.
   3. The Contractor shall make sure that the legal commitment with the Subcontractor does not affect rights and guarantees to which Fusion for Energy is entitled by virtue of the Contract.
4. **Force Majeure**
   1. Force Majeure is any unforeseeable and exceptional situation or event beyond the control of the Parties which prevents any of them from performing any of their obligations under the Contract, and which (i) was not due to error or negligence on their part or on the part of a Subcontractor, and (ii) could not have been avoided or overcome by the exercise of due diligence. Defects in, or delays in availability of, equipment or material, labour disputes, strikes, or financial problems cannot be invoked as Force Majeure, unless they stem directly from a relevant case of Force Majeure.
   2. If a Party is affected by a Force Majeure, it shall immediately notify the other Party, but in any case within 14 (fourteen) Days after the Party became aware, or should have become aware of the circumstance of Force Majeure. The notification shall state the nature of the circumstance, their likely duration and foreseeable effects of the Force Majeure, including the obligations whose performance is or will be prevented by the Force Majeure.
   3. No Party shall be held in breach of its obligations under the Contract, if it has been prevented from performing them by Force Majeure, provided that notice has been given pursuant to this article and for so long as the notified case of Force Majeure prevents the Party from performing its obligations. If the Contractor is unable to perform its contractual obligations owing to a Force Majeure, it has the right to payment only for the goods, services or works delivered and accepted.
   4. The Parties shall promptly take all necessary measures to minimize any delay and to reduce any damage due to a circumstance of Force Majeure.
   5. In case of Force Majeure exceeding 6 (six) months notified in accordance with this Article, a Party may terminate the Contract with immediate effect, where performance thereof cannot be resumed before an additional period of minimum 6 (six) months. The consequences set out in paragraphs (a), (b) and (c) of Article 14.3 (*Termination by Fusion for Energy for Cause*) shall apply.
5. **Processing of Personal Data**
   1. **Processing of Personal Data by Fusion for Energy**

Any personal data included in or relating to this Contract, including its implementation, shall be processed in accordance with Regulation (EU) No 2018/1725. Such data shall be processed solely for the purposes of the implementation, management and monitoring of this Contract by the data controller.

The Contractor or any other person whose personal data is processed by the data controller in relation to this Contract has specific rights as a data subject under Chapter III (Articles 14-25) of Regulation (EU) No 2018/1725, in particular the right to access, rectify or erase their personal data and the right to restrict or, where applicable, the right to object to processing or the right to data portability.

Should the Contractor or any other person whose personal data is processed in relation to this Contract have any queries concerning the processing of their personal data, they shall address themselves to the data controller. They may also address themselves to the Data Protection Officer of the data controller. They have the right to lodge a complaint at any time to the European Data Protection Supervisor (EDPS).

For the purpose of this article:

1. the data controller is the entity or person that will be communicated to the Contractor upon signature of the contract.
2. the data protection Privacy Notice is referred to in the Purchase Order.
   1. **Processing of Personal Data by the Contractor**

The processing of personal data by the Contractor shall meet the requirements of Regulation (EU) No 2018/1725 and be processed on behalf of Fusion for Energy, as “processor” solely for the purposes set out by the controller.

The Contractor may act only on documented written instructions and under the supervision of the 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. The Contractor shall have measures in place to ensure that the data subjects can exercise their rights in an easy manner.

The Contractor may be asked by F4E to use some ITER Organization IT applications that store information in data centres or similar premises, located on the territory of the European Union Member States (incl. back-up storage).

The Contractor shall assist the controller for the fulfilment of the controller’s obligation to respond to requests for exercising rights of person whose personal data is processed in relation to this Contract as laid down in Chapter III (Articles 14-25) of Regulation (EU) No 2018/1725. The Contractor shall inform without delay the controller about such requests.

The Contractor shall grant its personnel access to the data to the extent strictly necessary for the implementation, management and monitoring of the Contract. The Contractor must ensure that personnel authorised to process personal data has committed itself to confidentiality or is under appropriate statutory obligation of confidentiality in accordance with the provisions of Article 16.

The Contractor shall adopt appropriate technical and organisational security measures, giving due regard to the risks inherent in the processing and to the nature, scope, context and purposes of processing, in order to ensure, in particular, as appropriate:

1. the pseudonymisation and encryption of personal data; Data in transit on public networks (e.g. internet) shall be encrypted. Other security measures than encryption of stored data may be defined during contract implementation
2. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
3. the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
4. a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
5. measures to protect personal data from accidental or unlawful destruction, loss, alteration, erasure, unauthorised disclosure and use of or access to personal data transmitted, stored or otherwise processed.

The Contractor shall, on Fusion for Energy’s written request, inform Fusion for Energy in writing about the implementation of those measures within 30 (thirty) Days following receipt of the request.

In case the Contractor is asked by Fusion for Energy to use systems and IT applications provided by the ITER Organisation the above mentioned technical and organizational security measures apply to the extent falling under the Contractors responsibility.

The Contractor shall notify relevant personal data breaches to the controller without undue delay and at the latest within 48 hours after the Contractor becomes aware of the breach. In such cases, the Contractor shall provide the controller with at least the following information:

1. nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
2. likely consequences of the breach;
3. measures taken or proposed to be taken to address the breach, including, where appropriate, measures to mitigate its possible adverse effects.

The Contractor shall immediately inform the data controller if, in its opinion, an instruction infringes Regulation (EU) 2018/1725, Regulation (EU) 2016/679, or other Union or Member State data protection provisions as referred to in the tender specifications.

The Contractor shall assist the controller for the fulfilment of its obligations pursuant to Article 33 to 39 under Regulation (EU) 2018/1725 to:

1. ensure compliance with its data protection obligations regarding the security of the processing, and the confidentiality of electronic communications and directories of users; In case the Contractor is asked by F4E to use systems and IT applications provided by the ITER Organisation this applies to the extent falling under the Contractors responsibility.
2. notify a personal data breach to the European Data Protection Supervisor;
3. communicate a personal data breach without undue delay to the data subject, where applicable;
4. carry out data protection impact assessments and prior consultations as necessary.

The Contractor shall maintain a record of all data processing operations carried on behalf of the controller, transfers of personal data, security breaches, responses to requests for exercising rights of people whose personal data is processed and requests for access to personal data by third parties.

The Contractor acknowledges that the potential costs with the implementation of its obligations are under its entire responsibility with no right to be reimbursed.

Fusion for Energy is subject to Protocol 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union, particularly as regards the inviolability of archives (including the physical location of data and services) and data security, which includes personal data held on behalf of Fusion for Energy in the premises of the Contractor or Subcontractor.

The Contractor shall notify Fusion for Energy without delay of any legally binding request for disclosure of the personal data processed on behalf of Fusion for Energy made by any national public authority, including an authority from a third country. The Contractor may not give such access without the prior written authorisation of the contracting authority.

The duration of processing of personal data by the Contractor will not exceed the period referred to in Article 15. Upon expiry of this period, the Contractor shall, at the choice of the controller, return, without any undue delay in a commonly agreed format, all personal data processed on behalf of the controller and the copies thereof or shall effectively delete all personal data unless Union or national law requires a longer storage of personal data.

For the purpose of Article 10, if part or all of the processing of personal data is subcontracted to a third party, the Contractor shall pass on the obligations referred to in 12.2 in writing to those parties, including Subcontractors. At the request of Fusion for Energy, the Contractor shall provide a document providing evidence of this commitment.

The localisation of and access to the personal data processed by the Contractor shall comply with the following:

i. the personal data shall only be processed within the territory of the European Union and Switzerland and will not leave that territory;

ii. the data shall only be stored (incl. back-up storage) in data centres or similar premises, located within the territory mentioned above under (i). Every additional data storage and/or treatment location within the European Union Member States or within the territory of a Member of the Joint Undertaking envisaged during the period of implementation of the Contract, must be communicated in advance to Fusion for Energy;

iii. the Contractor may not change the location of data processing without the prior written authorisation of Fusion for Energy;

iv. any transfer of personal data under this Contract to third countries or International Organisations shall fully comply with the requirements laid down in Chapter V of Regulation (EU)2018/1725.

1. **Assignment** 
   1. The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from Fusion for Energy.
   2. In the absence of the written authorisation referred to in Article 13.1, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on Fusion for Energy.
   3. Fusion for Energy may assign the rights and obligations arising from the Contract, in whole or in part, without prior authorisation from the Contractor, to the ITER IO, any other entity which may have taken over all or a substantial part of the ITER IO’s/Fusion of Energy’s role in respect of the ITER project, another Domestic Agency or the European Commission.
2. **Termination by Fusion for Energy for Cause**
   1. **Grounds for Termination**

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

1. where the Contractor or any person that assumes unlimited liability for the debts of the Contractor is in one of the situations provided for in points (a) and (b) of Article 136(1) of the Financial Regulation[[2]](#footnote-2);
2. where the Contractor or any related person is subject to any of the situations provided for in points (c) to (h) of Article 136(1) or to Article 136(2) of the Financial Regulation;
3. where the procedure for awarding the Contract or the performance of the Contract prove to have been subject to substantial errors, irregularities, or fraud;
4. where the Contractor does not comply with applicable obligations under environmental, social, and labour law established by Union law, national law, collective agreements or by the international environmental, social, and labour law provisions listed in Annex X to Directive 2014/24/EU;
5. where the Contractor is in a situation that could constitute a Conflict of Interest or a Professional Conflicting Interest as referred to in Article 5 (*Conflict of Interest*);
6. where the performance of the Contract has not actually commenced 15 (fifteen) Days after the date of entry into force of the Contract or any agreed date for the start of the execution of the Contract;
7. where the Contractor is unable, through its own fault, to obtain any permit or licence required for performance of the Contract;
8. where the amount of liquidated damages due to Fusion for Energy equals or exceeds the maximum amount established in Article 9 (*Liquidated Damages*); or
9. where the Contractor does not perform the Contract in accordance with the tender specifications or is in breach of one of its substantial contractual obligations. For the purpose of this Article, a failure to meet the progress and/or delivery requirements to such an extent as to jeopardize the performance of the Contract or the purpose of the delivery is a breach of a substantial contractual obligation;
10. where the Contractor is in breach of the data protection obligations resulting from Article12 or does not comply with the obligations resulting from Regulation (EU) 2016/679. 
    1. **Procedure for Termination**
11. Fusion for Energy must formally notify (**“Formal Notification”**) the Contractor of its intention to terminate the Contract and the grounds for termination. The Contractor will have the opportunity to submit its observations, including the measures it has taken to continue fulfilling its contractual obligations if any, no later than 10 (ten) Days upon receipt of the letter of termination. Failing that, the decision to terminate is in force the day after the time limit for submitting observations has elapsed, unless otherwise indicated in the Formal Notification.
12. If the Contractor submits observations, Fusion for Energy must formally notify it either of the withdrawal of its intention to terminate or of its final decision to terminate. Termination shall take effect on the date of receipt of this Formal Notification or any other date indicated in the Formal Notification.
    1. **Consequences of Termination**

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

1. The Contractor must take immediate steps to bring to an end its activities under this Contract. It must take all appropriate measures to minimise costs, prevent and minimise damage, and cancel or reduce its commitments.
2. Upon Fusion for Energy’s request, it shall draw up the documents required by the Contract for the goods, services or works accepted, in accordance with the provisions of the Contract, up to the date on which termination takes effect, within a period not exceeding 60 (sixty) Days from that date. In addition, the Contractor shall, at Fusion for Energy’s request, deliver all documents, data, Foreground, Information and/or goods produced pursuant to the Contract.
3. The Contractor is not entitled to any compensation from Fusion for Energy for loss and damages resulting from the termination of the Contract, including loss of anticipated profits.
4. Subject to the limitations foreseen in Article 8 (*Liability*), Fusion for Energy may claim from the Contractor compensation for any loss or damage sustained as a result of the termination and recover any sums paid under the Contract, unless the termination was caused by Force Majeure in accordance with Article 11 (*Force Majeure*).
5. Fusion for Energy may engage one or several other contractor(s) of its choice to replace the Contractor. Subject to the limitations foreseen in Article 8.1 (*Liability*), Fusion for Energy is entitled to claim from the Contractor all additional costs incurred in making good and completing the performance of all or part of the Contract, except in the case of termination due to Force Majeure in accordance with Article 11(*Force Majeure*).
6. The Contractor is entitled to be paid for the goods, services or works delivered and accepted by Fusion for Energy in accordance with Article 6 (*Acceptance*) on the date of receipt of the Formal Notification. Payment will be made by off-setting the amount due or already paid to the Contractor against the amount of loss and damage due by the Contractor to Fusion for Energy pursuant to this Article. Any balance to the Contractor will be paid only after recovery of Fusion for Energy’s loss and damage pursuant to this article.
7. In the case of joint tenders, Fusion for Energy may terminate the contract with each member of the group separately on the basis of points (a), (b) or (d) of Article 14.1.

**15.** **Checks and Audits**

* 1. In accordance with Article 5(a) of Fusion for Energy Council Decision, the Commission or its representatives and the European Court of Auditors shall have the power of audit, on the basis of documents and on-the-spot checks and inspections, over natural or legal persons receiving payments from the budget of Fusion for Energy from Commencement Date of the Contract up to 5 (five) years after payment of the balance.
  2. Fusion for Energy or an outside body of its choice shall have the same rights as the European Court of Auditors for the purpose of checks and audits on performance of the Contract from Commencement Date of the Contract up to 5 (five) years after payment of the balance.
  3. In accordance with Article 5(a) of Fusion for Energy Council Decision, the European Anti-Fraud Office may carry out investigations including on-the-spot checks and inspections in accordance with Parliament and Council Regulation (EURATOM, EU) No 883/2013 and Council Regulation (Euratom, EU) No 2185/1996 from Commencement Date of the Contract up to 5 (five) years after payment of the balance.
  4. The European Public Prosecutor’s Office established by Council Regulation (EU) 2017/1939 (‘the EPPO’) and, for the processing of personal data, the European Data Protection Supervisor have the same rights as Fusion for Energy, particularly right of access, for the purpose of checks, audits and investigations.

1. **Confidentiality**
   1. The Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to performance of the Contract (the "**Confidential Information**").
   2. Article 16.1. does not apply where:
2. the Confidential Information becomes publicly available by means other than a breach of confidentiality obligations; or
3. the disclosing Party subsequently informs the recipient that the Confidential Information is no longer confidential; or
4. the Confidential Information is subsequently communicated to the recipient without any obligation of confidence by a third party who is in lawful possession thereof and under no obligation of confidentiality; or
5. the disclosure or communication of the Confidential Information is required by law or permitted under other provision of this Agreement, provided that the disclosing Party has given prior written notice of such disclosure to the other Party.
   1. The Contractor shall continue to be bound by this undertaking after execution of the Contract for a period of 5 (five) years.
   2. The Contractor shall obtain from each member of its staff, board, and directors which will need to know the Confidential Information, an undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to execution of the tasks and that they will not divulge to third parties or use for their own benefit or that of any third party any document or information not available publicly even after execution of the Contract for a period of 5 (five) years.
   3. According to Article 17 of Title II ‘Rights and Obligations of Officials’ of the ‘Staff Regulations of Officials read in conjunction with Articles 11 and 81 of the ‘Conditions of Employment of Other Servants of the European Union’ any Fusion for Energy staff member shall refrain from any unauthorized disclosure of information received in the line of duty, unless that information has already been made public or is accessible to the public. In addition, any Fusion for Energy staff member shall continue to be bound by this obligation after leaving the service.
6. **Amendments**
   1. Any amendment to the Contract shall be the subject of a written agreement duly dated and signed by the legal representatives of the Parties (the **"Amendment"**). An oral agreement shall not be binding on the Parties.
   2. If instructed by Fusion for Energy, amendments are processed in DACC. An electronic signature provided in DACC, in accordance with the rules defined in the Contract has full legal effect. It is binding and is admissible as evidence in judicial proceedings.
7. **Export Control**
   1. The Contractor shall be responsible for ensuring compliance with relevant requirements imposed by applicable legislations regarding exportation, re-exportation, and transfers (including intra-Community) of the dual-use products, components, and technology, or any parts thereof subject to the Contract (the "Dual-Use Items") to the country of delivery.
   2. Unless otherwise indicated by Fusion for Energy the Contractor shall act as an Exporter of the Dual-Use Items and shall provide any requested documentation and information, including evidence of compliance with the relevant exportation or transfer rules and transportation documentation. Should Fusion for Energy decide to act as an Exporter, the Contractor shall assist Fusion for Energy in obtaining any required export, re-export, or transfer authorisation (including customs) and to provide any necessary information or documentation.
   3. Where the Contractor is unable to obtain any required export, re-export, or transfer authorisation (including customs) and to provide the requested information or documentation, Fusion for Energy shall be entitled to terminate the contract in accordance with Article 14 (*Termination by Fusion for Energy for Cause*) unless the Contractor proves that the failure is due to a Force Majeure.
   4. The Contractor shall produce a list of Dual-Use Items with indication of their category based on applicable international export control lists.
8. **Miscellaneous**
   1. In the event of conflicting interpretations, the terms of Purchase Order shall take precedence over the General Conditions. The General Conditions shall take precedence over the Contractor’s Quotation and any other annexes except Annex C (Intellectual Property Provisions) which shall take precedence over the General Conditions.
   2. Day shall refer to calendar day unless otherwise stipulated by the Contract.
   3. Any reference to Spanish law refers to national Spanish law (e.g. the Spanish Civil code excluding the Catalan civil code).

1. OJ L 94 of 28.03.2014, p. 65. [↑](#footnote-ref-1)
2. Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.07.2018, p. 1 [↑](#footnote-ref-2)