



CTBTO
PREPARATORY COMMISSION

COMPREHENSIVE
NUCLEAR-TEST-BAN
TREATY ORGANIZATION

General Conditions of Contract

1. DEFINITIONS

In these General Conditions of Contract the terms beginning with a capital letter shall have the meaning as defined in the Contract. In particular, the following words and expressions shall have the meanings hereby assigned to them:

‘Commission’ means the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization.

‘Contract’ signifies a purchase order or a contract, as well as any changes or amendments thereto, including all documents, exhibits and attachments referenced therein, to which these General Conditions of Contract apply.

‘Contractor’ means the party with whom the Commission is contracting to supply the goods and/or services and who shall have the sole and full responsibility for the performance of its obligations under the Contract.

‘Goods’ means all goods, equipment, materials and/or other supplies to be provided under the Contract.

‘Services’ means all services to be rendered under the Contract.

‘Taxes’ means all direct and indirect taxes (including value added tax, general sales tax or goods and services tax), assessments, fees, customs duties, liens and charges in as much as they are levied in conclusion or implementation of the Contract, including customs restrictions and charges of similar nature in respect of articles imported or exported for the Commission’s official use.

2. LEGAL STATUS

The Contractor shall be considered as having the legal status of an independent contractor vis-à-vis the Commission. Neither the Contractor and any subcontractor nor their personnel shall be considered to be an employee or an agent of the Commission.

3. ASSIGNMENT

(a) Except as provided in paragraph (b) below, the Contractor may not assign, transfer, pledge or make any other disposition of the Contract, of any part of the Contract, or

of any of the rights, claims or obligations under the Contract except with the prior written authorization of the Commission. Any such unauthorized assignment, transfer, pledge or other disposition, or any attempt to do so, shall not be binding on the Commission. Except as permitted with respect to any approved subcontractors, the Contractor shall not delegate any of its obligations under this Contract, except with the prior written consent of the Commission. Any such unauthorized delegation, or attempt to do so, shall not be binding on the Commission.

(b) The Contractor may assign or otherwise transfer the Contract to the surviving entity resulting from a reorganization of the Contractor’s operations, provided that:

- (i) Such reorganization is not the result of any bankruptcy, receivership or other similar proceedings;
- (ii) Such reorganization arises from a sale, merger, or acquisition of all or substantially all of the Contractor’s assets or ownership interests;
- (iii) The Contractor promptly notifies the Commission about such assignment or transfer at the earliest opportunity;
- (iv) The assignee or transferee agrees in writing to be bound by all of the terms and conditions of the Contract, and such writing and any other supporting documentation are promptly provided to the Commission following the assignment or transfer.

4. SUBCONTRACTING

(a) In the event the Contractor requires to engage the services of a subcontractor or subcontractors, or to change the subcontractor(s) already approved, the Contractor shall obtain the prior written approval of the Commission for such subcontractor(s), by submitting the qualifications of any proposed subcontractor(s) for the Commission’s review.

- (b) The Commission shall be entitled, in its sole discretion, to review the qualifications of any subcontractor(s) and to reject any proposed subcontractor(s) that the Commission reasonably considers is (are) not qualified to perform obligations under the Contract.
- (c) The Commission shall have the right to require any subcontractor's removal from Commission premises without having to give any justification therefor.
- (d) Any such rejection or request for removal shall not, in and of itself, entitle the Contractor to claim any delays in the performance, or to assert any excuses for the non-performance, of any of its obligations under the Contract, and the Contractor shall be solely responsible for all services and obligations performed by its subcontractor(s).
- (e) The Commission's approval of any subcontractor shall not relieve the Contractor of any of its obligations under the Contract, and the terms of any subcontract shall be subject to and in conformity with the provisions of the Contract. The Contractor shall be solely responsible for the performance of its subcontractor(s).

5. SOURCE OF INSTRUCTIONS

- (a) The Contractor shall neither seek nor accept instructions from any authority external to the Commission in connection with the performance of its obligations under the Contract. Should any authority external to the Commission seek to impose any instructions or restrictions on the Contractor's performance under the Contract, the Contractor shall promptly notify the Commission and provide all reasonable assistance required by the Commission.
- (b) The Contractor shall refrain from any action which may adversely affect the Commission and shall fulfil its commitments with the fullest regard to the interests of the Commission.
- (c) While present at the Commission's premises, personnel of the Contractor shall, at all times, obey and conform to all requests and instructions of the Commission's officials and the United Nations Security Staff.

6. CONTRACTOR'S RESPONSIBILITY FOR EMPLOYEES

The Contractor shall be responsible for the professional and technical competence of its employees and will select, for performance of the Contract, reliable individuals who will perform effectively, respect the applicable laws and local customs, and conform to a high standard of moral and ethical conduct.

7. ASSIGNMENT OF PERSONNEL

- (a) The Contractor shall not assign, replace or withdraw from performance of the Contract any personnel referred to in the Contract without the prior written approval of the Commission or unless requested by the Commission.
- (b) Prior to assignment, replacement or withdrawal of personnel referred to in the Contract, the Contractor shall submit to the Commission, for its consideration, a curriculum vitae or detailed justification, to permit evaluation by the Commission of the impact which such assignment, replacement or withdrawal would have on the Contract.
- (c) In the event of such assignment, replacement or withdrawal, all costs and additional expenses resulting for whatever reasons shall be for the account of the Contractor. Such withdrawal shall not be considered as termination in part or in whole of the Contract.

8. CONFLICT OF INTEREST

No employee, officer, advisor, agent and/or subcontractor of the Contractor assigned under the Contract shall engage, directly or indirectly, in any business, profession or occupation connected or related to the Services and/or Goods to be provided under the Contract if this constitutes a conflict of interest.

9. INSURANCE

- (a) The Contractor shall provide and thereafter maintain appropriate insurance, or its equivalent, with respect to its employees to cover claims for personal injury or death in connection with the Contract.
- (b) The Contractor shall provide and thereafter maintain insurance against all risk in respect of its property and any equipment used for the execution of the Contract.
- (c) The Contractor shall also provide and thereafter maintain liability insurance in an adequate amount to cover third party claims for death, bodily injury, loss of and damage to property arising from any operations carried out by the Contractor in performing its obligations in connection with the Contract or from operation of any vehicles, boats, airplanes and other equipment owned or leased by the Contractor or its agents, servants, employees or subcontractors.
- (d) Except for insurance mentioned in paragraph (a) above, the insurance policies under this Clause shall:
 - (i) Name the Commission as additional beneficiary;
 - (ii) Include a waiver of subrogation of the Contractor's rights to the insurance carrier against the Commission.

- (e) The Contractor shall, upon request, provide the Commission with satisfactory evidence of the insurance required under the Contract.
- (f) Any amounts not insured, not claimed under, or not recovered from any applicable insurance policy of the Contractor shall be borne by the Contractor.
- (g) Information concerning reduction of coverage shall be furnished by the Contractor to the Commission with at least thirty (30) days prior written notice.
- (h) The Contractor undertakes that provisions to the same effect as the provisions in paragraphs (a) through (c) above will be inserted in all subcontracts made in performance of the Contract, except sub-contracts exclusively for furnishing Goods.

10. ENCUMBRANCES/LIENS

The Contractor shall not cause or permit any lien, attachment or other encumbrance by any person to be placed on file in any public office or on file with the Commission against any monies due or to become due for any Services or Goods provided under the Contract, or by reason of any other claim or demand against the Contractor.

11. OBSERVANCE OF THE LAW

- (a) The Contractor shall comply with all laws, ordinances, rules and regulations, including but not limited to health, environmental and labour laws bearing upon the performance of its obligations under the terms of the Contract.
- (b) In particular, the Contractor shall comply with the labour laws of the country in which the Services or Goods are to be furnished providing for benefits covering injury or death in the course of employment.

12. CONFIDENTIALITY

- (a) The Contract and any information identified as restricted or confidential that is delivered or disclosed by one Party (Discloser) to the other Party (Recipient) during the course of performance of the Contract shall be used on a 'need to know' basis and shall not be disclosed to any person and/or entity without the prior written consent of the other Party. As a general rule, all technical and financial information and other documentation and data received from the Commission under the Contract shall be treated as confidential.
- (b) The Recipient shall: (i) use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser's confidential information as it uses with its own similar information that it does not wish to disclose, publish or disseminate; (ii) use the Discloser's confidential information solely for the purpose for which it was disclosed; and (iii) return, delete, or destroy all confidential information, including data backups, upon written instruction of the Discloser.

- (c) There will be no obligation of confidentiality or restriction on use, where the information:
 - (i) Is publicly available, or becomes publicly available, other than by an action or omission of the Recipient;
 - (ii) Was already lawfully known to the Recipient prior to the performance of the Contract; or
 - (iii) Was received by the Recipient from a third party not in breach of an obligation of confidentiality.
- (d) The Contractor may disclose confidential information to the extent required by law, judicial order or national authority, provided that, subject to and without any waiver of the privileges and immunities of the Commission, the Contractor will give the Commission sufficient prior notice of a request for the disclosure of information in order to allow the Commission to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made.
- (e) The Commission may disclose confidential information to the extent required by its governing body pursuant to any decision, regulation or rule of that governing body.
- (f) The Contractor shall process, retain or store the Commission's confidential information exclusively in countries that are signatories to the Comprehensive Nuclear-Test-Ban Treaty and that ensure adequate legal protection of the Commission's privileges and immunities.
- (g) Data security: Upon discovery of a data security breach, the Contractor will immediately notify the Commission and undertake at its sole expense to:
 - (i) Propose immediate remedial actions (including containment);
 - (ii) Implement, as directed by the Commission, all necessary damage mitigation and remedial actions;
 - (iii) Where applicable, as directed by the Commission, restore the Commission's and end-users' access;
 - (iv) Keep the Commission informed of its progress.
- (h) The Contractor, at its sole expense, will cooperate fully with any Commission investigation, remediation steps and response to a data security breach.

13. LANGUAGES, WEIGHTS AND MEASURES

Unless otherwise specified in the Contract, the English language shall be used by the Contractor in all communications with the Commission, including written correspondence, and in all documents related to the Contract. The Contractor shall use metric units, except when otherwise specified in the Contract.

14. PUBLICITY

The Contractor shall not advertise or otherwise make public for purposes of commercial advantage or goodwill that it has or had a contractual relationship with the Commission. Also, the Contractor shall not, in any manner whatsoever, use the name, emblem or official seal of the Commission or any abbreviation of the name of the Comprehensive Nuclear-Test-Ban Treaty Organization in connection with its business or otherwise without the written permission of the Commission.

15. OFFICIALS NOT TO BENEFIT

The Contractor warrants that no representative, official, employee or other agent of the Commission has been or shall be admitted by the Contractor or their subcontractors to any direct or indirect benefit arising from or related to the performance of the Contract or of any other contract with the Commission, or the award thereof, or for any other purpose intended to gain an advantage for the Contractor..

16. INTELLECTUAL PROPERTY AND OTHER PROPRIETARY RIGHTS

- (a) Except as is otherwise expressly provided in writing in the Contract, the Commission shall be entitled to all intellectual property and other proprietary rights including, but not limited to, patents, copyrights and trademarks, with regard to products, processes, inventions, ideas, know-how or documents and other materials which the Contractor has developed for the Commission under the Contract and which bear a direct relation to or are produced or prepared or collected in consequence of, or during the course of, the performance of the Contract. The Contractor acknowledges and agrees that such products, documents and other materials constitute works made for hire for the Commission.
- (b) To the extent that any such intellectual property or other proprietary rights consist of any intellectual property or other proprietary rights of the Contractor: (i) that pre-existed the performance by the Contractor of its obligations under the Contract, or (ii) that the Contractor may develop or acquire, or may have developed or acquired, independently of the performance of its obligations under the Contract, the Commission does not and shall not claim any ownership interest thereto, and the Contractor grants to the Commission a perpetual license to use such intellectual property or other proprietary right solely for the purposes of and in accordance with the requirements of the Contract.
- (c) At the request of the Commission, the Contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring or licensing them to the Commission in compliance with the requirements of the applicable law and of the Contract.

17. DEFAULT BY THE CONTRACTOR

- (a) In case the Contractor fails to fulfil its obligations and responsibilities under the Contract and provided the Contractor has not remedied such failure(s) within thirty (30) days of having been given written notification by the Commission of the nature of the failure(s), the Commission may, at its entire discretion and without prejudice to its right to withhold payment(s) and any other rights and remedies under the Contract, hold the Contractor in default under the Contract.
- (b) When the Contractor is thus in default, the Commission may, by giving written notice to the Contractor, terminate the Contract as a whole or such part or parts thereof in respect of which the Contractor is in default in accordance with Clause 26 ('Termination') below. Upon such notice, the Commission shall have the right to seek completion, at the Contractor's expense, of that part or those parts of the Contract with respect to which the Contractor is in default.
- (c) The Contractor shall, in this case, be solely responsible for any reasonable costs of completion of the Services and/or delivery of Goods, including such costs, which are incurred by the Commission over and above the originally agreed Contract Price.

18. WITHHOLDING OF PAYMENT

- (a) The Commission may withhold any payment to the Contractor or, on account of subsequently discovered evidence, nullify the whole or part of any payment approval theretofore given, to such an extent as may be necessary to protect the Commission from loss under the Contract on account of:
 - (i) The Contractor's failure to carry out its obligations or to make adequate progress with the obligations, except for failure arising out of force majeure;
 - (ii) The Contractor's failure to remedy unsatisfactory performance, when such failure has been drawn to its attention by the Commission;
 - (iii) The Contractor's failure to submit on time the reports required.
- (b) The withholding by the Commission of any interim payment shall not affect the Contractor's obligation to continue performance of its obligations under the Contract.
- (c) No interest shall accrue on payments eventually withheld by the Commission in application of the stipulations of this paragraph.

19. LIQUIDATED DAMAGES

Subject to Clause 20 ('Force Majeure') below, if the Contractor fails to deliver any or all of the Services and/or

Goods within the latest time period(s) specified in the Contract, the Commission may, without prejudice to its rights and other remedies under the Contract, deduct from the Contract Price as liquidated damages, a sum equivalent to 0.2 per cent of the portion of the Contract Price for the delayed Services and/or Goods for each working day of delay until actual performance, up to a maximum of sixty (60) working days. The recovery by the Commission of proven damages shall not be excluded.

20. FORCE MAJEURE

- (a) Force majeure as used herein shall mean acts of God, industrial disturbances, acts of the public enemy, civil disturbances, explosions and any other similar cause of equivalent force not caused by nor within the control of either Party and which neither Party is able to overcome.
- (b) In the event of force majeure, the Contractor shall give immediate notice in writing to the Commission, if the Contractor is thereby rendered unable, wholly or in part, to perform its obligations under the Contract. On receipt of such notice, the Commission shall at its sole discretion grant the Contractor a reasonable extension of time in which to perform its obligations or terminate the Contract on the same terms as are provided for in Clause 26 ('Termination') below, except that the period of notice shall be seven (7) days instead of thirty (30) days. In any case, the Commission shall be entitled to consider the Contractor permanently unable to perform its obligations under the Contract in case the Contractor is unable to perform its obligations, wholly or in part, by reason of force majeure for any period in excess of ninety (90) days.

21. INSOLVENCY AND BANKRUPTCY

Should the Contractor be insolvent, adjudged bankrupt, or should the Contractor make a general assignment for the benefit of its creditors, or should a receiver be appointed on account of the Contractor's insolvency, the Commission may, without prejudice to any other rights or remedies it may have under the terms of the Contract, terminate the Contract immediately in accordance with Clause 26 ('Termination') below.

22. INDEMNIFICATION

- (a) The Contractor shall indemnify, hold and save harmless and defend at its own expense the Commission, its officials, agents and employees from and against all suits, proceedings, claims, demands, losses and liability of any nature or kind brought by any third party against the Commission, including, but not limited to, all litigation costs and expenses, attorney's fees, settlement payments and damages, based on, arising from, or relating to:
 - (i) Allegations or claims that the possession of or use by the Commission of any patented device, any copyrighted material, or any other Goods, property or Services provided or licensed to the Commission under the terms of the Contract, in whole or in part, separately or in a combination contemplated by the

Contractor's published specifications therefor, or otherwise specifically approved by the Contractor, constitutes an infringement of any patent, copyright, trademark, or other intellectual property right of any third party; or

- (ii) Any acts or omissions of the Contractor, or of any subcontractor or anyone directly or indirectly employed by them in the performance of the Contract, which give rise to legal liability to anyone not a party to the Contract, including, without limitation, claims and liability in the nature of a claim for workers' compensation.
- (b) The indemnity set forth in paragraph (a) above shall not apply to:
 - (i) A claim of infringement resulting from the Contractor's compliance with specific written instructions by the Commission directing a change in the specifications for the Goods, property, materials, equipment or supplies to be used, or directing a manner of performance of the Contract or requiring the use of specifications not normally used by the Contractor; or
 - (ii) A claim of infringement resulting from additions to or changes in any Goods, property, materials equipment, supplies or any components thereof furnished under the Contract if the Commission or another party acting under the direction of the Commission made such changes.
 - (c) The Commission shall advise the Contractor about any such suits, proceedings, claims, demands, losses or liability within a reasonable period of time after having received actual notice thereof. The Contractor shall have sole control of the defence of any such suit, proceeding, claim or demand and of all negotiations in connection with the settlement or compromise thereof, except with respect to the assertion or defence of the privileges and immunities of the Commission or any matter relating thereto, for which only the Commission itself is authorized to assert and maintain. The Commission shall have the right, at its own expense, to be represented in any such suit, proceeding, claim or demand by independent counsel of its own choosing.
 - (d) In the event the use by the Commission of any Goods, property or Services provided or licensed to the Commission by the Contractor, in whole or in part, in any suit or proceeding, is for any reason enjoined, temporarily or permanently, or is found to infringe any patent, copyright, trademark or other intellectual property right, or in the event of a settlement, is enjoined, limited or otherwise interfered with, then the Contractor, at its sole cost and expense, shall, promptly, either:
 - (i) Procure for the Commission the unrestricted right to continue using such Goods or Services provided to the Commission; or

- (ii) Replace or modify the Goods or Services provided to the Commission, or part thereof, with the equivalent or better goods or Services, or part thereof, that is non-infringing; or
- (iii) Refund to the Commission the full price paid by the Commission for the right to have or use such Goods or Services, or part thereof.

23. AMICABLE SETTLEMENT

The Parties shall use their best efforts to settle amicably through negotiation any dispute, controversy or claim arising out of, or relating to, the Contract or the breach, termination or invalidity thereof. If the Parties cannot reach such amicable settlement through negotiations, the matter shall first be referred to conciliation, by a request by either Party for conciliation procedures. The conciliation shall take place in accordance with the United Nations Commission on International Trade Law (UNCITRAL) Conciliation Rules then prevailing, or according to such other procedure as may be agreed between the Parties, within a time period of ninety (90) days. There shall be one conciliator. The conciliation shall be in Vienna, Austria, and it shall be conducted in the English language.

24. ARBITRATION

- (a) In the event of a failure to reach an amicable settlement in accordance with Clause 23 (Amicable Settlement) above, any dispute, controversy or claim arising out of, or relating to, the Contract or the breach, termination or invalidity thereof shall be settled in accordance with the arbitration rules established by UNCITRAL as at present in force. The number of arbitrators shall be one. The arbitration shall be in Vienna, Austria, and it shall be conducted in the English language.
- (b) The arbitrator shall take into account the internationally recognized general principles of commercial transactions. The arbitrator shall have no authority to award punitive damages, nor to award interest in excess of five (5) per cent, and any such interest shall be simple interest only. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute.

25. PRIVILEGES AND IMMUNITIES

- (a) Nothing in or relating to the Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of the Commission and its employees.
- (b) In principle, the Commission is exempt from all Taxes. Since the arrangement under which such exemption is respected varies from country-to-country, the Contractor shall collaborate with the Commission to achieve Tax exemption at source or to pursue reimbursement of Taxes paid by the Commission, as the case may be.

26. TERMINATION

- (a) The Commission may terminate the Contract in whole or in part, and at any time, upon thirty (30) days' notice of termination to the Contractor. In the event such termination is not caused by the Contractor's negligence or fault, the Commission shall be liable to the Contractor for payment in respect of Services already satisfactorily accomplished or Goods delivered and accepted and in conformity with the terms of the Contract, for necessary terminal expenses of the Contractor, and for the cost of such urgent work as is essential and as the Contractor is asked by the Commission to complete. The Contractor shall keep expenses at a minimum and shall not undertake any forward commitment from the date of receipt of the Commission's notice of termination.
- (b) The Commission may, without prejudice to any other right or remedy available to it, terminate the Contract immediately upon giving the Contractor written notice of such termination in the event that:
 - (i) The Contractor is adjudged bankrupt or otherwise insolvent as provided for in Clause 21 ('Insolvency and Bankruptcy') above; and/or
 - (ii) The Contractor commits a breach of essential terms as provided in Clause 50 ('Essential Terms') below and fails to remedy the situation within a reasonable time upon the Commission's written request.

27. NON-WAIVER OF RIGHTS

The failure by either Party to exercise any rights available to it, whether under the Contract or otherwise, shall not be deemed for any purposes to constitute a waiver by the other Party of any such right or any remedy associated therewith, and shall not relieve the Parties of any of their obligations under the Contract.

28. NON-EXCLUSIVITY

Unless otherwise specified in the Contract, the Commission shall have no obligation to purchase any minimum quantities of Goods or Services from the Contractor, and the Commission shall have no limitation on its right to obtain Goods or Services of the same kind, quality and quantity described in the Contract from any other source at any time.

29. AUDITS AND INVESTIGATIONS

- (a) Each invoice paid by the Commission may be subject to a post-payment audit by auditors, whether internal or external, of the Commission or by other authorized and qualified agents of the Commission at any time during the term of the Contract and for a period of five (5) years following the expiration or prior termination of the Contract. The Commission shall be entitled to a refund from the Contractor for any amounts shown by such audits to have been paid by the Commission other

than in accordance with the terms and conditions of the Contract.

- (b) The Commission may conduct investigations relating to any aspect of the Contract or the award thereof, the obligations performed under the Contract, and the operations of the Contractor generally relating to performance of the Contract at any time during the term of the Contract and for a period of five (5) years following the expiration or prior termination of the Contract.
- (c) The Contractor shall provide its full and timely cooperation with any such post-payment audits or investigations. Such cooperation shall include, but shall not be limited to, the Contractor's obligation to make available its personnel and any relevant documentation for such purposes at reasonable times and on reasonable conditions and to grant to the Commission access to the Contractor's premises at reasonable times and on reasonable conditions in connection with such access to the Contractor's personnel and relevant documentation and use reasonable and proportionate efforts to require its suppliers and subcontractors to engage with and participate in any post-payment audit or investigation conducted pursuant to this Clause 29. The Contractor shall require its agents, including, but not limited to, the Contractor's attorneys, accountants or other advisors, to reasonably cooperate with any post-payment audits or investigations carried out by the Commission hereunder.

30. LIMITATION ON ACTIONS

- (a) Except with respect to any indemnification obligations in Clause 22 ('Indemnification') above, or as are otherwise set forth in the Contract, any arbitral proceedings in accordance with Clause 24 ('Arbitration') above, arising out of the Contract must be commenced within three (3) years after the cause of action has accrued.
- (b) The Parties further acknowledge and agree that, for purposes of paragraph (a) above, a cause of action shall accrue when the breach actually occurs, or, in the case of latent defects, when the injured Party knew or should have known all of the essential elements of the cause of action, or in the case of a breach of warranty, when tender of delivery is made, except that, if a warranty extends to future performance of the Goods or any process or system and the discovery of the breach consequently must await the time when such Goods or other process or system is ready to perform in accordance with the requirements of the Contract, the cause of action accrues when such time of future performance actually begins.

31. SURVIVAL

The obligations set forth in Clauses 12 ('Confidentiality'), 14 ('Publicity'), 15 ('Officials not to Benefit'), 22 ('Indemnification'), 23 ('Amicable Settlement'), 24 ('Arbitration'), 25 ('Privileges and Immunities') and 29 ('Audits and Investigations') shall survive the completion, expiration or termination of the Contract.

32. GOODS

In the event that the Contract requires the Contractor to supply Goods, Clauses 33-40 shall additionally apply.

33. WARRANTY

- (a) The Contractor warrants that the Goods, including packaging, conform to the specifications for the Goods ordered under the Contract and are fit for the purpose for which such Goods are ordinarily used and for purposes expressly made known to the Contractor by the Commission, and are new and free from defects in design, workmanship and materials.
- (b) This warranty shall remain valid for twenty-four (24) months after the Goods or any part thereof have been delivered and accepted, whichever is later, unless the Parties have agreed on a longer period. Should the Commission transfer the title of the Goods to a third party during the warranty period, the right to enjoy the warranty shall be transferable to the new title holder.
- (c) If, during the warranty period mentioned in paragraph (b) above, the Goods or any part thereof are found to be defective or not in conformity with the specifications under the Contract, the Contractor shall, upon notification, promptly and at its own expense correct all such defects and non-conformities. If these defects and non-conformities cannot be corrected, the Commission shall have the right, at the Contractor's expense, to either demand replacement of the defective item, or receive appropriate reimbursement, or have the defective item repaired or otherwise procured from a third party.

34. INSPECTIONS AND TESTS

- (a) The Commission shall have the right to inspect and/or to test the Goods to confirm their conformity to the technical specifications. The technical specifications shall specify what inspections and tests the Commission requires.
- (b) The inspections and tests may be conducted on the premises of the Contractor or its subcontractor(s), at a point of delivery designated by the Commission and/or at the Goods' final destination. The Contractor shall give all reasonable facilities and assistance – including drawings and production data – to the Commission at no charge to the Commission.
- (c) Should any inspected or tested Goods fail to conform to the technical specifications, the Commission reserves the right to reject them and the Contractor shall either replace the rejected Goods or make all alterations necessary to meet specification requirements free of cost to the Commission.
- (d) The Commission's right to inspect, test and, where necessary, reject the Goods after the Goods' arrival at the point of delivery designated by the Commission or at the Commission's offices, shall in no way be limited

or waived by reason of the Goods having previously been inspected, tested and passed by the Commission.

- (e) Nothing in this Clause on inspections and tests shall in any way release the Contractor from any warranty or other obligations under the Contract.
- (f) All equipment/material supplied under the Contract may be subject to pre-shipment inspection by a third party to be specified by the Commission. The Contractor is not liable for cost of this inspection.

35. PACKING

The Contractor shall comply or ensure compliance with the following provisions concerning packing:

- (a) The Goods shall be packed as is required to prevent their damage or deterioration during transit to their final destination. The packing shall be sufficient to withstand, without limitation, rough handling during transit.
- (b) In the case of a cross-border shipment, the Goods shall have appropriate export packing. If necessary, all cases/crates must be wrapped inside with heavy-duty plastic lined paper, should be steel-strapped and must be able to withstand tough handling. Skids for truck handling are imperative if the gross weight is more than thirty (30) kilograms.
- (c) The consignment shall be marked and shipped as per address shown in the Purchase Order/Contract.
- (d) Neither partial delivery nor transshipment shall be made unless specifically agreed by the Commission in writing.
- (e) Each case/crate/package shall carry a consecutive number, dimensions, volume and weight (i.e. Case No. X of Y cases, A x B x C cm, E m3, D Kg.) and shall be marked as follows:

EQUIPMENT FOR
THE PREPARATORY COMMISSION FOR THE
COMPREHENSIVE NUCLEAR-TEST-BAN TREATY
ORGANIZATION.

[point of delivery]

PURCHASE NO. _____
GROSS WEIGHT _____
NET WEIGHT _____

- (f) Markings shall be done with weatherproof materials. In case of transport by ship, all non-containerized Goods shall be shipped below deck.
- (g) Each case/crate/carton shall carry (outside) a copy of the packing list describing the contents of the case/crate/carton. Outside Case No. 1 should be attached with invoice covering the actual delivery. The accompanying papers must be made out in the English language.
- (h) Prior to delivery, a written notice shall be sent to the consignee, if any, advising of the following:
 - (i) Purchase order/Contract number,

- (ii) Waybill number or equivalent reference number of the shipment (if any),
- (iii) Number of boxes/cartons/crates/etc.,
- (iv) Estimated time of departure (ETD),
- (v) Point of departure and name of the carrier,
- (vi) Estimated time of arrival (ETA) to final destination.

- (i) The following documents shall be enclosed with the shipment in case of shipping by air:

- (i) Airway bill,
- (ii) Proforma or commercial invoice,
- (iii) Packing list.

- (j) The above documents are indispensable and must reach the consignee, if any, on time to permit customs clearance and in order to avoid demurrage charges.

36. DELIVERY AND TRANSPORTATION

- (a) Delivery of the Goods shall be made by the Contractor in accordance with the terms specified in the Contract. The Contractor shall provide to the Commission such shipment documentation (including, without limitation, bills of lading, airway bills and commercial invoices) as are specified in the Contract. Unless otherwise stated in the Contract (including, but not limited to, in any 'INCOTERM' or similar trade term), the entire risk of loss, damage to, or destruction of the Goods shall be borne exclusively by the Contractor until the physical delivery of the Goods in accordance with the terms of the Contract. Delivery of the Goods shall not be deemed in itself as constituting acceptance of the Goods by the Commission.
- (b) Unless otherwise specified in the Contract (including, but not limited to, in any 'INCOTERM' or similar trade term), the Contractor shall be solely liable for making all transport arrangements and for payment of freight and insurance costs for the shipment and delivery of the Goods in accordance with the requirements of the Contract. The Contractor shall ensure that the Commission receives all necessary transport documents in a timely manner so as to enable the Commission to take delivery of the Goods in accordance with the requirements of the Contract.

37. TAKE-OVER/HAND-OVER

Upon successful completion of delivery or of installation and a testing and evaluation period, as specified in the Contract, responsibility for the Goods will be handed over to the consignee or other designated entity.

38. EXPORT LICENCES

- (a) The Contractor shall be responsible for obtaining any export license required with respect to the Goods, products, or technologies, including software, sold, delivered, licensed or otherwise provided to the Commission under the Contract. The Contractor shall procure any such export license in an expeditious manner.
- (b) Subject to and without any waiver of the privileges and immunities of the Commission, the Commission shall lend the Contractor all reasonable assistance required for obtaining any such export license.
- (c) Should any governmental entity refuse, delay or hinder the Contractor's ability to obtain any such export license, the Contractor shall promptly consult with the Commission to enable the Commission to take appropriate measures to resolve the matter. In the event of failure to obtain such licence or authorization within reasonable time, the Commission may terminate the Contract in accordance with Clause 26 ('Termination') above.

39. SPARE PARTS

In accordance with the Contract, the Contractor may be required to provide any or all of the following materials and notifications pertaining to spare parts manufactured and/or distributed by the Contractor:

- (a) Such spare parts as the Commission may choose to purchase from the Contractor, provided that the Contractor is not relieved of any warranty obligations under the Contract.
- (b) In the event of termination of production of the spare after delivery of the Goods:
 - (i) Advance notification to the Commission of the upcoming termination, in sufficient time to permit the Commission to place a final order;
 - (ii) Following such termination, furnishing at no cost to the Commission, the blueprints, drawings and specifications of the spare parts, if and when requested.

40. UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

Questions concerning matters arising under the Contract, but not settled in it, shall be settled in conformity with the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980), which shall be applicable to the Contract. The applicable language version of the Convention shall be the version in which the Contract is written.

¹ United Nations Guiding Principles on Business and Human Rights, available at https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

41. SUSTAINABLE BUSINESS PRACTICES

The Commission requires the Contractor and its personnel to:

- (a) Support and respect the protection of internationally proclaimed human rights¹ and to observe the highest standards of ethics and integrity throughout its supply chains.
- (b) Abide by the United Nations Supplier Code of Conduct².
- (c) Take appropriate steps, whenever possible to perform its obligations in a manner that takes into account economic, environmental and social considerations.
- (d) Certify that they have not and will not engage in harassment or sexual harassment, sexual exploitation or abuse, proscribed practices or any further practice described in Clauses 42, 43, 44, 45, 46 and 47 below, during the procurement process and the performance of the Contract.

42. PREVENTION OF HARASSMENT, SEXUAL HARASSMENT, AND SEXUAL EXPLOITATION AND ABUSE

- (a) The Commission is committed to providing a professional work environment that upholds the highest standards of equality, respect and dignity for all. The Commission is also committed to maintaining an environment that prevents and responds effectively to harassment and sexual harassment and reported and/or suspected cases of sexual exploitation and abuse. The Commission does not partner with, or use services of, entities that fail to address harassment, sexual harassment, and sexual exploitation and abuse through appropriate preventive and responsive measures, including investigation and corrective action.
- (b) In this regard, and without limitation to any other provision contained herein, the Contractor shall:
 - (i) Adhere to zero tolerance for harassment, sexual harassment, and sexual exploitation and abuse and therefore accepts and agrees to refrain from any such conduct. For the avoidance of doubt, 'harassment' shall be understood as any improper or unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person when such conduct interferes with work, is made a condition of employment, or creates an intimidating, hostile or offensive work environment. 'Sexual harassment' shall be understood as harassment of a sexual nature, and the above definition of harassment applies equally to sexual harassment. Sexual

² Available at <https://www.un.org/Depts/ptd/about-us/un-supplier-code-conduct>.

harassment may occur between persons of opposite sex or of the same sex. ‘Sexual exploitation’ shall be understood as any actual or attempted act of taking advantage of a position of vulnerability, power differential, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially, or politically from such an activity. ‘Sexual abuse’ shall be understood as any actual or threatened physical intrusion of a sexual nature, by force or under coercion, including when a person is incapable of giving consent.

- (ii) Take all reasonable and appropriate measures to prevent and deter any form of harassment, sexual harassment, and sexual exploitation or abuse of anyone by its employees, agents, officials or any other persons engaged or controlled by the Contractor to perform the Services.
 - (iii) Promptly report to the Commission any actual, reported or suspected cases of harassment, sexual harassment, and sexual exploitation or abuse of anyone by its employees, agents, officials or any other persons engaged or controlled by the Contractor to perform the Contract of which the Contractor becomes aware. Such reports to the Commission may be on a no name basis, if necessary.
 - (iv) In addition to notifying the Commission pursuant to paragraph (iii) above, on becoming aware of any allegation of harassment, sexual harassment, and sexual exploitation or abuse of anyone, the Contractor shall take all reasonable and appropriate measures to address the matter, including engaging in good faith consultations with the Commission, while ensuring minimum impact and/or disruption of the Services.
- (c) The Contractor acknowledges and agrees that any breach of the provisions of this Clause 42, as determined by the Commission, shall permit the Commission, at its sole discretion, to:
- (i) Request the Contractor to remove, temporarily or permanently, from the relevant assignment, any Contractor’s personnel and/or subcontractor reported for having committed harassment, sexual harassment, and sexual exploitation or abuse of anyone;
 - (ii) Terminate the Contract and/or any other agreement, arrangement or partnership concluded by the Commission with the Contractor, immediately upon written notice to the Contractor, without any liability for termination charges or any other liability of any kind, on the terms and conditions as are provided for in Clause 26 (Termination) above; and/or
 - (iii) Exclude the Contractor from participating in any ongoing or future solicitations and/or entering into any future contractual or collaborative relationships

with the Commission and/or suspend the Contractor from the Commissions supplier roster.

- (d) The Commission shall be entitled to report any breach of the provisions of this Clause 42, as determined by the Commission, to the Commission’s governing body, other United Nations agencies and/or donors.

43. PROSCRIBED PRACTICES

The Contractor and its personnel and subcontractors certify that they have not and will not engage in proscribed practices and proscribed conduct during the procurement process and the performance of the Contract. For the purpose of these General Conditions of Contract, Proscribed Practices are defined as follows:

Fraudulent practice is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

Corrupt practice is the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;

Coercive practice is the impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of any party in order to influence the actions of that party;

Collusive practice is the proposing or entering into an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;

Unethical practice is conduct or behaviour that is contrary to the conflict of interest, gifts and hospitality, post-employment provisions or other published requirements of doing business with the Commission;

Obstructive practice is any act which deliberately and in an effort to compromise an investigation, destroys, falsifies, alters or conceals information or documents that may be relevant to a fraud and corruption investigation, or material that could become evidence as a result of such investigation; or the making of false statements to investigators during such an investigation.

44. CHILD LABOUR

The Contractor represents and warrants that neither it, its parent entities (if any), nor any of the Contractor’s subsidiary or affiliated entities (if any) is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which, inter alia, requires that a child shall be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.

45. MINES

The Contractor represents and warrants that neither it, its parent entities (if any), nor any of the Contractor's subsidiaries or affiliated entities (if any) is engaged in the sale or manufacture of anti-personnel mines or components utilized in the manufacture of anti-personnel mines.

46. TERRORISM

The Contractor shall ensure that none of the funds received from the Commission under the Contract are used, directly or indirectly, to provide support to individuals or entities subject to sanctions or other measures promulgated by the United Nations Security Council and appearing in the Consolidated United Nations Security Council Sanctions List. This provision shall be included in all subcontracts or sub-agreements entered into under the Contract.

47. STANDARDS OF LABOUR, FORCED LABOUR AND HUMAN TRAFFICKING

- (a) The Contractor shall comply with all applicable laws concerning terms of employment and conditions of work, and any collective agreements to which it is party.
- (b) The Contractor shall not restrict its personnel from freely organizing or associating and shall provide for equal opportunity and treatment in respect of employment without discrimination on grounds of race, sex, religion, nationality, ethnic origin, sexual orientation, disability, age, language, social origin or other status. The Contractor shall take all appropriate measures to ensure that workplaces are safe and without risk to health, including with respect to chemical, physical and biological substances and agents under the Contractor's control. The Contractor shall promote 'Fair Recruitment' in its supply chain, as defined in the International Labour Organization's General Principles and Operational Guidelines for Fair Recruitment.
- (c) The Contractor shall not engage, directly or indirectly, including in its supply chain and operations, in 'Forced Labour,' i.e. by exacting work or service from any person under the threat of a penalty, indebtedness, or for which the person has not otherwise offered personal services voluntarily.
- (d) The Contractor shall not engage, directly or indirectly, including in its supply chain and operations, in 'Trafficking in Persons,' i.e. by recruiting, transporting, transferring, harbouring or receiving persons by threat or use of force or other forms of coercion, abduction, fraud, deception, or abuse of power.
- (e) Whenever the Contractor becomes aware that Forced Labour or Trafficking in Persons is or is likely occurring in the Contractor's operations, including in its supply chain, the Contractor shall, as soon as reasonably practicable, notify the Commission and take all reasonable action to address or remove these occurrences, including

where relevant, by addressing any practices of other entities in its supply chain.

48. FULL DISCLOSURE

- (a) The Contractor will immediately notify the Commission upon becoming aware of any Proscribed Practices or other prohibited practices or conduct or suspicion thereof, as per Clauses 42-47 above, by itself or its personnel during the procurement process or the performance of the Contract. The Contractor will take all appropriate measures to prohibit and prevent its personnel from engaging in Proscribed Practices or any other prohibited conduct, as well as to investigate allegations thereof, or to take corrective action when such a Proscribed Practice or any other prohibited conduct has occurred.
- (b) The Contractor further warrants that it is not the subject of any sanctions, or otherwise identified as ineligible by any government, supranational organization (e.g. European Union), another entity of the United Nations System or multilateral development finance institution. The Contractor will disclose to the Commission if it becomes subject to any sanction or temporary suspension during the term of the Contract. The Contractor recognizes that a breach of this provision constitutes a fraudulent practice.

49. PERSONAL DATA PROTECTION

- (a) Personal data, which refers to any information relating to an identified or identifiable natural person ('data subject'), shall be treated as Confidential Information within the meaning of Clause 12 (Confidentiality) and shall be subject to all provisions therein, including those governing handling, safeguarding, disclosure, reporting obligations and remedial measures in the event of a breach. Personal data processing (which includes any activity concerning the handling of personal data) for internal research, marketing, sales, or promotional purposes is strictly prohibited.
- (b) The Contractor confirms that it has in place and will apply a personal data protection policy that complies with all applicable legal requirements, which at a minimum shall ensure that:
 - (i) Personal data is processed only for fair, legitimate and legal purposes;
 - (ii) Personal data is processed and retained only as proportionate and necessary for the purpose of performing its obligations under the Contract;
 - (iii) Appropriate measures are taken to protect personal data from unauthorized access and other risks presented by personal data processing;
 - (iv) There are no personal data transfers to a third party, unless the Contractor is satisfied that that

third party affords appropriate protection for the personal data;

- (v) The Commission is informed, upon request, about how personal data has been processed, and which rights data subjects enjoy with respect to their personal data.
- (c) The Contractor shall remain fully liable for any damages or penalties arising from its failure to comply with its obligations under this Clause.

50. ESSENTIAL TERMS

The Contractor acknowledges and agrees that each of the provisions in Clauses 12, 15 and 41 to 49 above constitutes an essential term of the Contract. If the Contractor's actions are materially inconsistent with the requirements of Clauses 12,

15 and 41 to 49 above, the Commission shall, unless in the reasonable opinion of the Commission, the inconsistency is incapable of being remedied, notify the Contractor of such inconsistency, and the Contractor shall have thirty (30) days to provide evidence that it has taken effective steps to remedy such inconsistency. In cases in which the Commission has determined that the inconsistency cannot be remedied, or in cases in which the Contractor fails to respond, the Commission shall have the right to terminate the Contract or any other contract the Contractor has with the Commission, immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind. Furthermore, the Commission is entitled to exclude the Contractor from participating in future tenders should the Contractor breach any of the provisions included in Clauses 12, 15 and 41 to 49 above.