

GENERAL TERMS AND CONDITIONS

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1. Generalities

1.1. Application scope

These general terms and conditions set the general commercial and administrative clauses that apply to the Agreements in which reference is made to these, save where exceptions or changes to these are provided in other contractual documents specific to these Agreements.

1.2. Definitions

Subject to the requirements of the context, the terms (listed hereafter in alphabetical order) used in these general terms and conditions are given the following meaning :

a) Agreement

Designates the agreement concluded between the Client and the Contractor, under which the latter undertakes to provide to the former the Goods and/or Services according to stipulations which are agreed and specified in the form of an order.

b) Client

Designates the purchaser of the Goods and/or Services which are the subject of the Agreement.

c) Contractor

Designates the individual or legal entity with whom the order has been concluded by the Client. The term "Contractor" may be used indifferently for a supplier, a manufacturer, an erection contractor, etc.

d) Days - Weeks - Months

Specifies the number of calendar days, weeks or months and not of working days, weeks or months.

e) Engineer

Designates TRACTEBEL S.A. and its associates, if any, to which the Client has entrusted various tasks in relation to the carrying out of his Project and in particular the implementation of the relevant Agreements.

For such task, the Engineer is fully empowered to represent the Client and to nominate one or several representatives to assume the local supervision of the Site.

In the case when the Agreement does not specify the intervention by the Engineer, the rights and obligations are exercised and borne by the Client, *mutatis mutandis*.

f) Goods and/or Services

Designate, depending on the case, all or part of the drawings or documents, substances, materials, materiel, equipment, structures, plant, tools, machinery, ... to be studied, designed, manufactured, supplied, erected, built, assembled, adapted, arranged or put into service by the Contractor under the Agreement, including all the studies, tasks, works and services specified by the order.

The terms Goods or Services may be indifferently used one for the other as required by the context.

g) Operator

Designates the entity of the Client or any other company in charge of, mainly, the operation and maintenance of the object of the Project.

h) Project

Designates the aggregate of the Goods and/or Services to be provided by one or more Contractors.

i) Quantities - Bills of quantities

- Estimated Quantities

Means the quantities of substances, materials, plant, equipment, construction and/or erection work, tasks and services which the Engineer estimated necessary for the proper performance of the Agreement, based on the data available at the time of drawing up the order.

- Measured Quantities

Means the quantities of substances, materials, plant, equipment, construction and/or erection work, tasks and services which the Contractor has actually supplied and/or carried out and which quantities have been accepted by the Engineer based on Bills of quantities.

- Bills of quantities

Designate the quantity calculations to be taken into account when these calculations are made from detailed or construction drawings, or from work actually performed, and presented according to a jointly agreed breakdown of the Goods and/or Services.

j) Site or Building Site

Designates the land and/or any other premises on, under, in or across which the Goods and/or Services have to be supplied, erected, assembled, adjusted, arranged and/or commissioned.

k) Tenderer

Designates the individual or legal entity which has made a proposal, a tender or a bid with the aim of concluding an Agreement with the Client.

l) Value

- Estimated order Value

Designates the sum of the products obtained by the multiplication of the Estimated Quantities by the unit prices of the order, and/or the sum total of the contractual lump sums.

- Final order Value

Designates the amount actually paid by the Client to the Contractor, on completion of the order.

1.3. Extent of Contractor's obligations

The Contractor guarantees that all his obligations, including among others, his services, studies, substances, materials, plant and equipment, supplies, work, means and methods will satisfy :

- all the stipulations of the order;
- all the consequences that normally result thereof;
- the soundest practice and best workmanship;
- the laws, decrees, departmental orders and regulations in force at the time of concluding the Agreement.

The interventions or approvals of the Engineer in no way lessen the responsibility of the Contractor.

The drawings and other documents specified by the order and drawn up by the Contractor must fully cover the Goods and/or Services defined by the order and must comprise all the details necessary to suit their purpose.

The Goods and/or Services must be complete in every respect; they must comprise all the work, substances, materials, plant, equipment, systems and accessories as are needed to fully meet their purpose and destination, even if not expressly mentioned in the order, of which the specifications are accepted as a non-exhaustive indication.

If the order requests construction, erection, repair or replacement work, it also includes the supply of all the materials, plant equipment and accessories, the construction of temporary structures and any work and services required for the construction, erection, repair or replacement (including eventual disassembly and final disposal) except for those interventions of the Client which are expressly specified in the order.

Site plant and equipment, other than that which is explicitly made available by the Client in accordance with the provisions of the order, required for the adequate supplying of the Goods and/or Services shall be available at any time.

2. Agreement

2.1. Constituent documents

The order for an Agreement is composed of all or part of the following documents :

- the contract or the order form

Stating the non-technical stipulations (commercial, delivery/completion times, administrative, etc.) finalized with the Contractor.

- the technical requisition file (TRF)

Containing all the technical documents which apply to the Agreement, including among other the specifications, drawings and diagrams, appendixes to the specifications, the safety stipulations.

- the building site or site regulations

Describing the conditions at the Site and formally establishing the relations, mutual obligations as well as the responsibilities of the contracting parties at the Site.

- the general terms and conditions

In case of contradictions or discrepancies between the constituent documents, each document prevails over the one which follows it in the order in which they are listed in the contract or the order form, or else in the order as listed hereabove.

In the case of differences, ambiguities or contradictions between a constituent document of the order and its complements or appendixes, the main document prevails.

2.2. Conclusion and date of coming into effect

The Agreement is deemed concluded :

- in the case of a contract, by its signature by the Client and the Contractor, all the constituent documents having previously been initialled by the parties;
- in the case of an order form, by the handing over or mailing it by the Client to the Contractor followed by the handing over or mailing to the Client of the order form acknowledgment, duly dated and signed for approval without any reservations to the order clauses.

The date of coming into effect is :

- in the case of a contract, the date of signature of the contract by the Client;
- in the case of an order form, the date on which the order form is handed over at the post office or to a representative of the Contractor.

In the case of a contract, it is drawn up in two originals destined respectively to each of the parties. If the two parties can meet, they sign the contract simultaneously and initial all the constituent documents; if they cannot meet, they sign and initial following the exchange of mail, though no more than fifteen Days shall elapse between the signing by one and the other of the parties. Should this time limit be exceeded, unless otherwise agreed between the parties, the party that has signed first may forego the conclusion of the Agreement.

In the case of an order form, the Contractor returns the acknowledgment within the period specified in the order form, or within fifteen Days if no such period is specified.

If this acknowledgment is not received or if it contains any reservation whatsoever, the Client may notify to the Contractor that the order is void.

By starting the supplying of the Goods and/or Services without having signed the contract or without having returned the order form acknowledgement, the Contractor has accepted the Agreement without any reservations.

The documents or the agreements, whether verbal or in writing, between the Client and the Contractor prior to the date of conclusion of the Agreement cannot prevail over the stipulations contained in the order nor complement these. They can only be invoked to clarify stipulations of the Agreement that may give rise to different interpretations.

By signing the contract or by returning the acknowledgment of the order form, the Contractor abandons all his own terms and conditions, including those which may appear in the margin or at the back of his letters, quotations, notices, statements, drawings, invoices, etc. or which may be attached to these, unless other conditions are expressly agreed by the Client.

The date of coming into effect of the Agreement, if it is not expressly specified in the contract or the order form, is the date of conclusion of the Agreement.

2.3. Assignment

The Contractor may not assign or transfer to any third party his rights and obligations arising from the Agreement without receiving a prior written consent from the Client.

2.4. Subcontracting

Under his full responsibility, the Contractor may purchase from, or subcontract out to third parties all or part of certain supplies or services conditional to these falling outside the Contractor's own resources and personal experience.

Such purchases and subcontracted items are made in full compliance with the terms and conditions of the Agreement and do not relieve the Contractor of any of his contractual obligations. The Contractor retains responsibility for any action, deficiency or negligence of his suppliers or subcontractors.

For any Agreement, the Engineer is entitled to demand from the Contractor, for approval, the list of suppliers or subcontractors the Contractor intends to involve and of the orders he may entrust to them. The Engineer may further demand that proposals of competitors be produced for him to examine. Approval by the Engineer cannot give rise to any legal bond between the Engineer and the suppliers or subcontractors, and leaves full responsibility to the Contractor.

In the event where the guarantee agreed between the Contractor and his suppliers or subcontractors exceeds in scope or in period those required under the Agreement, the Contractor undertakes to make the Client the full and direct beneficiary of that guarantee.

2.5. Partnership

Once the Agreement has been concluded, the Contractor is prohibited from entering into partnership with a third party to supply the Goods and/or Services, without prior written consent from the Client.

When the order is concluded with a partnership, the partners are individually and jointly liable to the Client with respect to all the contractual obligations imposed on the Contractor by virtue of the order, barring any exceptions specified in the latter. The partners nominate one of them to represent the partnership, with the full powers to represent them and to ensure the co-ordination of the carrying out of the Agreement; such nomination requires prior approval of the Client.

2.6. Termination - Substitution - Indemnification - Defaulting of Contractor

Save for the cases provided for in Art. 2.7., if the Contractor fails to fulfil any of his obligations, the Client reserves the right, after simple summons to comply and without prejudice to any other measures provided for in the contractual documents, to offset the Contractor's deficiency by substituting himself or another third party to the Contractor for the purpose of carrying out those obligations, at the Contractor's expense, risk and peril, or to terminate the Agreement without prejudice to the Client's rights of receiving reparation for the resulting damage.

The Client may terminate the Agreement when the Contractor's situation at any time after the conclusion of the Agreement is found to have become so precarious that there is every indication that he will not be able to fulfil his obligations.

Such indications may be, for example, the Contractor's filing for bankruptcy or composition, or going into receivership or liquidation, or any similar procedures under foreign legislation.

In any of the hypotheses referred to above, the Client or any third party substituting for the Contractor is entitled to use, for the purpose of performing the Agreement, those technical documents, materials, tools, plant and equipment as well as the construction site facilities which the defaulting Contractor had assigned to performing the Agreement.

2.7. Cause for exonerations

Among the accepted causes for exoneration are the cases of force majeure occurring after the coming into effect of the Agreement, such as :

- war, whether declared or not, civil war, unrest and revolution, piracy, criminal attempts or terrorism, sabotage;
- natural disasters such as violent storms, tornadoes, earthquakes, tidal waves, floods, destruction by lightning, etc.;
- explosions, fires, destruction of machinery, plant and installations of any nature;
- government arbitrariness;
- refusal by Public Authorities or Official Bodies to grant the necessary permits needed to carry out the Agreement, providing such refusal is not the result of the doing of the parties.

The following are also considered ground for exoneration :

- boycotts, strikes and lock-outs of any nature, disruptive, occupation of plant and premises, work stoppages occurring at the premises of the party requesting to be relieved of its liability;
- delays in completion of part of a structure (e.g. foundations for equipment or constructions, access areas, ...) which have to be completed prior to the Contractor's intervention, if their being delayed directly affects the Contractor's performance and the delays are not in any way caused by the Contractor himself or his suppliers and subcontractors.

Should any one or more of the events referred to in this article occur, affecting the performance of the obligations of either of the parties, this party shall notify to the other party the existence of a cause for exoneration as soon as it has knowledge of such event and not later than within fifteen Days from the date the event has arisen. The notification shall contain the details regarding nature, starting date, presumed end date, as well as the estimated effects of the case of force majeure or other cause of exoneration on the obligations of the party which has incurred the event.

As soon as the cause for exoneration has ended, the party the performance of which has been affected shall notify, in writing, to the other party the precise date of the end of the cause of exoneration and the extent, with justification, to which it has actually been affected in the performance of its obligations. It adds to this statement the necessary certificates issued by an Official Body.

Any case of force majeure or other cause for exoneration suspends the carrying out of the obligations affected. However, the party which claims force majeure or other cause shall show every diligence towards reducing as much as feasible the effects. It is exonerated only for the minimum period, which may in no event exceed the delay actually incurred as a result of the force majeure or other cause of exoneration.

The parties may request that the Agreement be deemed cancelled if its carrying out has become totally impossible, this case aside from the other cases of cancellation as may be specified in the contract or order form.

2.8. Hardship

In the case where unforeseeable events occur other than provided for by Article 2.7. and which neither the Client nor the Contractor are able to prevent, and, inasmuch as they result in upsetting significantly the economic bases of the Agreement for one or the other of the two parties, these parties shall jointly agree regarding amendments to the order. If the parties cannot come to an agreement, the parties jointly appoint an expert. The expert may, if necessary, determine an indemnification to be borne by one or the other of the parties, taking into account the documented expenses.

2.9. Claims

Any Contractor who intends to file a claim shall notify and substantiate the reasons for the claim by registered mail to the Engineer within ten Days following the appearance of the events which have given rise to this action. The Engineer shall acknowledge receipt within five Days of this notification.

Reckoned from the date of acknowledgment of receipt by the Engineer, the Contractor is allocated thirty Days within which to submit a comprehensive file stating his reasons for the claim and evaluating the amount claimed.

If the Contractor is unable to submit his file within said period of thirty Days, he shall inform the Engineer, who may grant him an extension of this period.

If the Contractor has not formally filed his claim within the period as allocated to him above, he is deemed to have foregone his claim.

The Client informs the Contractor of his opinion within a period of thirty Days following receipt of the formal file.

2.10. Disputes and arbitration

2.10.1. Agreement carried out in Belgium

In Agreements carried out in Belgium or in which the Client has Belgian nationality, any disputes that may arise out of the interpretation or the performance of the Agreement and that cannot be settled amicably will be resolved through arbitration.

To this effect the most diligent of the parties notifies the other in writing of the subject of the dispute and puts forward the name of an arbitrator. The notified party is allowed a period of fifteen Days starting from the date it receives the letter of notification to name its own arbitrator. This exchange of correspondence must be by registered letters and acknowledgements of receipt.

If the second party does not name its arbitrator within the stipulated period, its silence shall be construed as a tacit, final and irrevocable acceptance of the arbitrator appointed by the more diligent party, and this arbitrator will resolve the matter alone.

In case a second arbitrator has been named, both arbitrators - within fifteen Days from the designation of the second arbitrator - are to appoint a third arbitrator. If they cannot agree upon a third arbitrator, the latter is designated by the Chairman of the Commercial Court of Brussels at the request of the more diligent party.

The arbitrator or the three arbitrators have all powers to demand from the parties that information which he or they deem(s) necessary to establish the nature and the causes of the dispute.

If there are three arbitrators, resolutions are made by a majority of votes. Unless otherwise agreed, the arbitrators resolve within two Months from the designation of the last arbitrator. Resolutions are final and irrevocable.

Only the Belgian law shall apply.

In all cases, arbitration shall take place in Brussels.

2.10.2. Agreement carried out abroad

For Agreements carried out abroad and in which the Client is not Belgian, all disputes arising out of the Agreement will be finally settled under the rules of conciliation and arbitration of the International Chamber of Commerce by one or more arbitrators appointed according to said rules. Arbitration shall take place in Brussels.

Only the Belgian law shall apply.

2.10.3. Recourse

Recourse to arbitration does not suspend the performance of the Agreement.

3. Contractual time-schedule

3.1. Compliance with time-limits

The Contractor must carry out the obligations object of the Agreement within the time-limits set by the latter.

The time-schedule starts being counted from the date the Agreement comes into effect and is imperative.

When the time-limit is determined in Days, it expires at the end of the last Day of the allocated period. When the time-limit is determined in Weeks, it is counted from Day to Day. When it is specified in Months, the period is counted from Day of Month to Day of Month. If the Day of Month does not exist in the Month in which the time-limit expires, the period expires at the end of the last Day of that Month.

If the last Day of a time-limit is a public holiday, the time-limit is extended to the end of the first working day that follows.

3.2. Changes to time-limits

No time-limit can be extended unless it is justified by a cause accepted within the limits and conditions specified above or is caused by the Client or has been agreed to prior in writing by the Client.

The Contractor is not entitled to invoke as reason for extending the contractual time-limits the delays incurred as a result of tests specified by the order or resulting from refusals, corrections or deficiencies which are of his own doing.

The time-limits prescribed by the contract or the order form take into account manufacturing contingencies both at the Contractor's and at his subcontractors, if any, and at the Client. However, the Engineer may accept an extension to the contractual time-limits in the event of manufacturing incidents with parts that involve exceptional manufacturing risks (e.g. castings or forgings). However, it must be established that :

- all rules of sound manufacturing practice have been applied;
- the Contractor has subjected those parts, as soon as possible (prior to machining) to all reasonable checks intended to minimise the risk;
- the incidents actually result in a delay to the overall contractual time-schedule of the Goods and/or Services.

Reciprocally, the contractual time-limits may be shortened if beneficial events take place.

Any modification to the time-schedule, of whatever type and whatever the cause or action that gave rise to it, must be recorded in a change order.

The Contractor undertakes to mobilise all available resources (increase of manpower, plant and equipment, etc.) to make good the delays, if any, whether caused by himself, his subcontractors or other parties.

If the delays are caused by third parties, the Contractor undertakes to take any measures required to offset these delays, and will be compensated for these measures according to a change order.

If the supplying of the Goods and/or Services is found to have become definitively impossible, each party may request the cancellation of the Agreement. The apportionment of the costs resulting to each of the parties due to this cancellation will be equitably and jointly agreed according to the circumstances.

If the supplying of the Goods and/or Services is suspended for a period of three Months or if it appears likely it will be suspended for a period of three Months, the parties meet at the earliest possible date to examine, and agree the contractual impact of the case of force majeure, particularly with respect to the prices, time-limits and the continuation of the respective obligations of each of the parties.

Should the parties fail to agree within the shortest possible time, each party may invoke this circumstance to terminate the Agreement, without indemnity, and the consequences of this termination on the apportionment of the resulting costs to each party will be identical to those determined according to the above paragraph.

3.3. Summons

At the expiry of the contractual time-limits, the Contractor is deemed having been summoned to comply, and cannot invoke the absence of a written summons for not respecting the time-limits stipulated by the contract or order form.

3.4. Measures taken by right in the event of Contractor's delay in the supplying of the Goods and/or Services.

3.4.1. Delay in the supplying of the Goods and/or Services

If the Contractor abandons the Site without agreement of the Engineer or if the Contractor disregards the instructions formulated by the Engineer for the purpose of making good a delay, the Engineer has the right, after a summons in writing has not resulted in compliance within fifteen Days of it being issued, to have the supplying of the Goods and/or Services continued and completed by another contractor of the Engineer's choice, at the risk and expense of the defaulting Contractor.

These measures do not suspend the application of the specified penalties for delays.

3.4.2. Delay at the time of Provisional Acceptance (except as regards Civil Works)

If three Months after Industrial Start-up, barring cases of force majeure and delays which cannot be ascribed to the Contractor, the latter has not requested the Engineer to proceed with the Provisional Acceptance operations, the Engineer may, after having heard the reasons given by the Contractor, allocate to the latter an additional period within which to prepare the Goods for Provisional Acceptance operations.

If at the expiry of this additional period the Contractor cannot submit the Goods to the acceptance operations :

- the Engineer summons the Contractor to proceed within eight Days with the Provisional Acceptance operations;
- if the Contractor fails to comply, the Engineer has these tests carried out at the expense of the Contractor, even if the Contractor deems the Goods are not fully adjusted. The results of these tests cannot be contested and are the only results taken into consideration when calculating the penalties or deciding whether or not the Goods are to be rejected.

These measures do not suspend the application of the specified penalties for delays.

3.4.3. Delays during the Guarantee period

If, except in the event of force majeure or cases not involving the Contractor's liability, the Contractor fails to carry out during the period of Guarantee the repairs and adjustments within the period specified by the Engineer, the latter reserves the right to have these performed by others at the expense and risk of the Contractor.

3.5. Penalties for exceeding the time-limits

The calculation of penalties for exceeding the contractual time-limits is based on the Final order Value, the latter taken without penalties.

The penalties are calculated based on the actual period of delay.

The contract or order form specifies the penalties applicable in events when contractual time-limits are exceeded.

If separate penalties are specified for several time-limits, their application is cumulative if more than one time-limit is exceeded.

The total amount of the penalties shall not exceed ten percent of the Final order Value, the latter taken without penalties.

Only the Client is entitled to appreciate whether a delay caused by the Contractor results in prejudice for him and whether or not the application of the penalty can be waived.

The collection of penalties may be done by automatic deduction from the amounts owed to the Contractor.

4. Prices - Invoicing - Payment

4.1. Modes of remuneration

The supplying of the Goods and/or Services by the Contractor is remunerated according to the modes defined in the contract or the order form. The remuneration modes may be :

4.1.1. Overall lump sum

An Agreement against an overall lump sum is one in which a lump sum covers the aggregate of the Goods and/or Services or one which only contains items covered by lump sums.

4.1.2. Bills of quantities and prices

An Agreement with bills of quantities and prices is one in which only fixed unit prices are specified for the Goods and/or Services.

The price to be paid to the Contractor is obtained by adding up the various products obtained when multiplying the Measured Quantities with the fixed unit prices.

4.1.3. At controlled cost

An Agreement at controlled cost is one in which agreed fixed rates (and, if any, unit prices for related materials) as defined by the contract or the order form are applied or the actual cost incurred by the Contractor is reimbursed to him.

4.1.4. Mixed

A mixed Agreement is one in which the Goods and/or Services are remunerated according to several of the above modes.

4.2. Nature of the prices

4.2.1. Lump sum (overall or unit)

The lump sums are recognized as all-inclusive, covering all the expenses resulting from the supplying of the Goods and/or Services, including those resulting from the obligations to be met by the Contractor as stipulated by the various documents of the order, as well as all overheads, taxes, duties, profits and all related expenses such as, among other, travel and reproduction of the contractual quantities of drawings.

All the equipment necessary for supplying of the Goods and/or Services is included in the overall lump sum or the fixed unit prices.

The prices are also recognized as comprising all the contingencies relating to the conditions, period and site during and at which the Goods and/or Services are supplied, e.g.

- foreseeable natural phenomena;

- normal use of public premises or use of public infrastructure or services;
- the presence of structures, ducts, piping and cables of any nature, as well as the presence of construction sites necessary for the relocation or modification of these installations;
- the simultaneous progress of other structures, work or services;
- the presence of other contractors;
- the operation of installations or structures.

The prices stated in the contract or the order form are exclusive of value-added tax (V.A.T.).

4.2.2. Agreed rates

The agreed rates stated in the contract or the order form under the heading remuneration at controlled cost are used to compensate the Contractor for his manpower expenses and equipment charges:

- Manpower expenses

The hourly rates are based on normal working hours and applied on hours actually worked. They include all charges and related costs, e.g. insurance, wages, social charges and bonuses to the manpower involved, the profits, transport and travel costs at the Site, accommodation, allowances, expenses specific to controlled nuclear areas, work clothing and protective clothing, small tools and consumables, and include the portion relating to the supplying of the Goods and/or Services, of the wage cost of the whole of the personnel for which no hourly rates are stated.

- Equipment charges

The rates for site plant and equipment comprise the costs of any nature whatsoever, including depreciation, repair and maintenance, consumables and operators. These rates apply only to the actual time of operation of the plant or equipment, excluding idle time, transport to and removal from the Site.

These rates can only be applied to site plant and equipment which has not been borrowed from the plant and equipment destined for carrying out an Agreement falling under an overall lump sum or a bill of quantities and prices, and provided they are applied to the supplying of Goods and/or Services which have been ordered additionally at controlled cost.

The rates specified in the contract or order form are given exclusive of value added tax (V.A.T.).

4.2.3. Reimbursement of actual costs

Should the Contractor, after prior written agreement from the Engineer, have to make expenses that are not covered by the lump sums, prices or rates provided for in the order, the Client will reimburse the Contractor the actual cost of these.

These costs are computed at actual cost, supported by the documents (invoices of subcontractors, exclusive of V.A.T,...), increased with the percentage for overheads and profit specified in the contract or order form.

The prices indicated in the contract or the order form are without value added tax (V.A.T.).

4.3. Adjustment of prices

The contract or the order form specifies whether or not the Contractor's remuneration is revisable during the performance of the Agreement, upwards or downwards, in function of the changes in economic parameters.

The contract or the order form may include a number of prices that are subject to revision and a number that are not.

When an amount is revisable, formulas are applied of which the general form is given hereunder and which are deemed to cover on a lump sum basis the variations in economic parameters :

$$P = P_o \left(a + b \frac{M}{M_o} + c \frac{S}{S_o} + \dots \right)$$

where :

- P_o : the part of the basic price to be revised;
- P : the new value of P_o after revision;
- a, b, c : the coefficients specified in the contract or order form which express the respective importance of the fixed portion, of raw materials, materials, materiel or equipment (M) and of wages and social charges (S) appearing in the formula;
- M_o : the official cost indexes of raw materials, materials, materiel or equipment known at the time of submitting the tender;
- M : the average, linearly weighted in time, of the above indexes during the contractual period of procurement specified in the contract or order form;
- S_o : the official rates for hourly wages, including social charges, known at the time of submitting the tender;
- S : the average, linearly weighted in time, of the above rates during the contractual period specified in the contract or order form.

The contract or order form specifies the value of the terms M_o and S_o , the date relating to those values, as well as the titles of the publications in which the values of M and S are regularly published.

If the Goods and/or Services that are the subject of the Agreement are not completed upon the expiry of the overall time-limit prescribed by the contract or order form for reasons that are beyond the Contractor's responsibility, the time allocated for completion may be extended by a period equal that of such incurred delay, in which case the M and S indexes are extended up to the final dates of completion.

However, if the Goods and/or Services are not completed by the expiry of the contractual periods for reasons for which the Contractor does bear responsibility, the latter periods shall be maintained with respect to the application of M and S indexes.

Should in the course of the carrying out of the order the indexes specified in the contract or in the order form cease being published, the parties shall consult each other to jointly agree upon adequate replacement indexes and coefficients. Such modification shall be formalised with an amendment to the order.

4.4. Invoicing procedures

4.4.1. General stipulations

The invoices and payment request letters are submitted by separate mail to the addresses and with the number of copies specified by the contract or order form, and must show, in addition to the items prescribed by the V.A.T. regulations :

- the full references of the order and its possible change orders :
 - the name of the Project or work,
 - the description of the object,
 - the complete reference number of the order and of its change orders, if any;
- the total price or, as the case may be, the partial amounts of the order or its change orders for the remunerations at overall lump sum, or the amount consistent with the progress statement for the remuneration covered by bills of quantities and prices;
- the indication of the due term and the breakdown of the requested payment, consistent with the breakdown provided for in the contract or the order form;
- in the case of partial or complete delivery, the detail of the supplies or services for which payment is requested;
- the supporting documents (e.g. progress statements, work orders, delivery notes, ...).

The contract or order form specifies the identity of the Client to whom the invoice has to be established, and, when required, the address (of the Engineer) to whom the invoice has to be mailed.

Failure to adhere to these procedures, or the absence of any of the indications required by law or stipulated by the contract or the order form, will render the invoice void and cause it to be returned to the Contractor.

A separate invoice is to be established for each payment term, and the invoicing shall be complete at the following times :

- upon final delivery, for Goods;
- upon completion of erection, for Goods supplied involving erection;
- upon Provisional Acceptance, for works or services.

Subsequent payment terms shall be the subject simply of a payment request letter.

Invoices or payment request letters subject to reports of end-of-work, Industrial Start-up, Provisional or Final Acceptance, shall be submitted together with a copy of their relevant reports.

The amounts relating to change orders are invoiced with invoice(s) separate from those issued for the main order.

Price revisions are invoiced :

- upon granting of Provisional Acceptance, for an overall lump sum Agreement;
- at the end of each quarter, for Agreements at controlled cost or with bills of prices which are the subject of monthly progress statements.

Prior to invoicing, any request for price revision shall be submitted together with its official supporting documents to the Engineer for approval.

Each price adjustment shall be the subject of a separate invoice.

The prices are inclusive of all income taxes, rights and duties, but exclusive of V.A.T. The contract or order form specifies the taxation regime regarding V.A.T.

The contract or order form specifies whether the invoice is exempted of V.A.T. or whether the carry-over of V.A.T. payment is the responsibility of the Co-contractor.

When the order covers Goods imported from one of the EC member States, the Contractor shall supply on his invoice the information requested in the contract or order form with a view to making it possible for the Client to comply with Intrastat obligations in Belgium (combined nomenclature, statistical regime 19).

Consistent with article 55 of the Belgian VAT-code and administrative memorandums Nos. 84.1970 and 105.970, the foreign Contractor must, prior to each of the operations specified hereafter when at least one of these operations falls within the scope of the order, have a Responsible Representative approved by the Belgian Ministry of Finance; the Contractor must notify as soon as possible the name, address and VAT-registration number of his Responsible Representative :

- temporary importation of equipment destined for the supplying of Goods and/or Services of any nature or for rental (tools, instruments and plant of any nature, containers, etc.) : the temporary importation in Belgium must be made in the name of the VAT-payer established abroad who is the owner of the equipment, in whose name and on whose behalf his Responsible Representative shall perform all the obligations the person established abroad is liable to;

- all material services provided in Belgium, of a movable or real estate nature, by a VAT-payer established abroad, regardless whether or not such services involve supply of goods :
 - the importation of foreign equipment and the purchase of Belgian equipment must be made in the name of the VAT-payer established abroad, in whose name and on whose behalf his Responsible Representative shall perform all the obligations the person established abroad is liable to,
 - the VAT-payer established abroad shall transmit to his Belgian Co-contractor all invoices, exclusive of Belgian taxes, in conformity with the terms and conditions for invoicing and with the amount of the order; on his part, the Responsible Representative shall establish the documents stipulated by article 4 of the Royal Decree No. 31 of December 29, 1970 with respect to VAT on the work and services carried out , which is due by the Belgian Co-contractor of the VAT-payer established abroad, and this in perfect correlation with the invoices of his foreign actual Vendor,
 - as regards the above paragraph, the VAT-Administration allows the VAT-payer established abroad the option to establish invoices in the name of his Belgian Co-contractor that do carry Belgian VAT, conditional to such invoices first being transmitted to the Responsible Representative of the VAT-payer established abroad to be countersigned and completed with his name, address and VAT-registration number; the Responsible Representative shall keep a duplicate of these documents and shall enter them in the sales book in the name and on behalf of the person represented, and shall send to the Belgian Co-contractor of the latter person the original and the other copies of the invoices.

4.4.2. Overall lump sum Agreement

The contract or order form defines :

- the percentages payable at the various milestones;
- the dates at which the Contractor can submit his invoices or payment requests;
- the currencies in which invoices are to be paid.

4.4.3. Agreement with bills of quantities and prices

For Agreements with bills of quantities and prices, monthly progress statements shall be drawn up on numbered sheets, using the forms developed by the Engineer if the latter has supplied these.

These statements are drawn up in 4 copies and duly signed by the Contractor's representative. Two copies are transmitted to the Engineer, the third copy must be attached to the monthly invoice, and the fourth copy is kept by the Contractor for his files.

If the Engineer disputes a number of items contained in those statements, the remarks or reservations which resulted from his own observations are entered on the execution statements, of which one copy, or reservation he wishes to record, is transmitted to the Contractor. The latter is allowed a period of eight Days within which to make his comments known in writing. Past this period, the remarks or reservations are deemed accepted without qualification. Any request for payment which is not submitted together with the relevant progress statements duly signed by the Engineer will be ignored.

The monthly progress statements for Agreements with bills of quantities and prices should reflect as closely as possible the real physical progress so that neither the Client nor the Contractor are disadvantaged.

Monthly invoices are submitted together with a recapitulative statement of all the already paid invoices.

The fact that the Engineer has accepted items, quantities and prices of these progress statements does not prejudice in any way their later approval when the final recapitulative Bill of quantities is established. The latter is drawn up when the works are complete, based on the as built drawings or on the completion reports, so as to establish the Final order Value. This is the subject of an order amendment which closes the order. After this closing amendment the Client will not take into account any further invoices.

4.4.4. Agreement at controlled cost

Any work at controlled cost shall be covered by a work order signed by the Engineer, or, as the case may be, by the Client, detailing the nature of the work ordered and giving the estimate of the required Goods and/or Services.

The statements are signed and drawn up jointly and daily on numbered forms, and established in 4 copies, i.e. one intended for the Client, two for the Contractor and one for the Engineer.

The approval or contesting procedures are identical to those stipulated for the Agreements with bills of quantities and prices.

The invoices are transmitted monthly, based on the work orders and work statements, a copy of which must be attached to the invoice.

4.5. Payment modalities

The amounts due are payable at thirty Days from the end of the Month in which the invoice or the payment request letter are received.

Each payment is carried out only if the Contractor has fulfilled all his contractual obligations by the date relating to the introduction of an invoice for a down payment or a milestone or of a payment request letter.

The Client makes the payment only upon an invoice or a payment request in writing from the Contractor, showing the amount(s) due of the prices of the Goods and/or Services.

No payment can be called for if payment relating to previous terms have not been carried out due to a deficiency or fault on the part of the Contractor.

A percentage may be withheld, as a guarantee, from the amount of each invoice issued by the Contractor, including from the remuneration adjustment invoices. The percentage withheld is specified in the contract or order form. The amounts withheld in this way are paid to the Contractor when he requests to the Engineer their payment in writing after the Final Acceptance has been granted, less any amounts as may still be owed to the Client at the date of Final Acceptance.

4.6. Interdependence and connectivity

If there exist monies owed to each other, of any origin whatsoever, between the parties to the Agreement, the Client reserves the right to offset his own debt to the Contractor against the debt due to to him by the latter, or to exercise his right of deduction or of compensating shortcomings, as if the whole of the monies owed to each other existed under a single contractual commitment.

5. Planning and progress monitoring

5.1. Planning

Unless they are stipulated in the order, the Contractor transmits to the Engineer, within the time-limit set in the order form or the contract, or otherwise within thirty Days from the coming into effect of the Agreement, a planning containing :

- a) a bar chart, or similar, including the network of activities if required on account of the complexity of the Agreement, showing the time-scale of the main steps in the carrying out of his obligations, and showing at least :
 - the dates at which the Contractor has to supply the informations and documents stipulated by the order form,
 - the dates at which the main orders for materials and equipment must normally be placed, and the required delivery dates for these,
 - the method by which the Goods and /or Services are carried out outside the Site and/or at the Site so that the contractual time-limits can be met,
 - the time-limits for making available to the Contractor the information, structures and equipment that have to be provided by others.

This planning does not relieve in any way the Contractor of his obligations regarding compliance with the contractual time-limits;

- b) the planned physical progress and the calculation methods of this progress describing the activity indicators taken into account (linear metre, cubic metre, kilogram, pieces, number of documents, ...),
- c) the document showing the quantities of manpower and working hours required to fully complete all the Goods and/or Services, the monthly consumption of these hours, the number of men and hours forecast per category of personnel,

- d) the organizational chart, with names, of the team in control of the studies and the carrying out of the work. The Contractor describes the liaisons between said team and his existing structure. He states the skills and experience of the personnel involved regarding similar projects. This organizational chart also shows the links with his subcontractors and suppliers.

5.2. Progress monitoring

The planning (bar chart or similar physical progress forecast and quantities of manpower) established as per article 5.1. is used as a reference to regularly monitor the progress of the Contractor's supplying of the Goods and/or Services. In particular, the latter submits to the Engineer, in principle monthly, the actual physical progress computed by the method referred to in article 5.1.

The planning is updated regularly by the Contractor, and is reviewed when the Engineer so requests, any time particular circumstances significantly affect the elements that were taken into account when the planning was established.

If the work progress rate is deemed insufficient to meet the prescribed time-limits, the Engineer notifies this to the Contractor and demands that he define, in writing and within fifteen Days, the measures he intends to take in order to improve the rate of progress, which measures have to receive the prior approval of the Engineer.

The Client and/or the Engineer reserve the right to have the progress of studies, procurement, work or any other contractual services monitored by any person of their choice, without this right in any way lessening the Contractor's responsibility.

6. Studies, design

6.1. Study/design documents

The order specifies the Services which are entrusted to the Contractor as far as the studies and/or design are concerned. These studies include:

- a) The principle studies for the supply of equipment or the carrying out of works, e.g. :
 - the overall and dimensional drawings of the equipment;
 - the overall drawings of the structures and their layout
 - the calculation sheets and descriptions;
 - all data such as, for instance, the static and dynamic loads and stresses on foundations, and diagrams of auxiliary equipment, necessary for the basic design of the civil works (general plans, excavations, foundation systems);
 - the weight and overall dimension of equipment, needed to determine the handling requirements and clearances for erection;
 - the data regarding ancillary or related equipment of which the characteristics depend upon those of the structures and equipment which are the subject of the studies and/or design;
 - all the diagrams and characteristics of the hydraulic, electric and other networks interfacing with the structures or equipment, required for the provision of the general utilities of the Project where the structures and equipment are installed.
- b) The final documents and guide-drawings, including, among other :
 - the definition of the characteristics of structures and equipment, with indication of all openings, crossings and accesses required for the erection and operation of the equipment, the structures and their auxiliary equipment, with static and dynamic loads;
 - the details of foundation slabs and anchorages;
 - the location and characteristics of the connection of the equipment to the general utilities, fluids, electric and other networks.

In the course of the studies, the Contractor updates the list of documents established, and transmits the list monthly to the Engineer.

- c) The documents necessary for design quality follow-up.

6.2. Approval of documents

The contract or order form stipulates the time-limits within which the study documents have to be prepared and delivered to the Engineer.

The Engineer is allocated thirty Days within which to transmit to the Contractor his remarks and comments. Past this period, the documents are deemed approved by the Engineer.

The Contractor amends the documents as requested or conveys his position within the shortest possible time and at any rate no later than twenty Days following the Engineer's remarks.

The acceptance by the Engineer of the documents submitted in no way relieves the Contractor of any liability.

These accepted documents are binding on the Contractor, who cannot alter them without prior written consent from the Engineer. The costs incurred as a result of changes made by the Contractor to accepted drawings or documents are borne by the Contractor. The Client is entitled to indemnification for the Goods and Services he has supplied and which have become unusable or are unused as a result of the Contractor's doing.

6.3. Obligations and responsibilities of the Contractor regarding all the documents of the Project

In relation to the efficient carrying out of the Project, the Contractor is under the obligation to check the data relating to his Goods and/or Services as included in the documents forwarded to him by the Engineer or which the Engineer has advised him he may consult. The Contractor informs the Engineer of any anomaly he has noticed, otherwise he must assume alone all the consequences thereof. The Contractor has thirty Days within which to submit his remarks regarding these documents.

The Contractor enquires timely from the Engineer as to the possible effects the studies, designs and works of other contractors involved in the Project may have on his own studies.

The Contractor is responsible for any delay arising on his account in the exchange of information described above, and for any changes rendered necessary by his failure to conform to the Project documents.

6.4. Changes to the technical conditions

As the documents, which contain information regarding the effect of the Contractor's studies on the studies, designs and works of other contractors involved in the Project, are conveyed to the Engineer, are received and are examined by him, the Engineer retains the right to demand changes to the technical conditions of the order form. After agreement with the Contractor on the basis of the justifications supplied by the latter regarding, among other, the changes entailed to contractual prices and time-schedule, the resulting changes will be the subject of a change order.

6.5. Utilisation of the documents

6.5.1. Confidentiality

The Contractor cannot, without agreement of the Client, disclose nor enable third parties to benefit from the documents drawn up in the course of his studies in cooperation with the Client and the Engineer, or including information originating from these latter.

Moreover, he is not allowed to publish, copy or transmit to third parties the documents that are transmitted to him by the Client or the Engineer. The Client or the Engineer retains the right to claim damages and interests in the cases where these documents have been used without his written consent.

However, these obligations do not apply to documents for which the party concerned can demonstrate that :

- they were already public before they were communicated to the other parties, or have become public since without any fault or negligence of the party concerned, or
- they were already in its possession without having obtained them directly or indirectly from any of the other parties, or
- they were obtained from an independent source that had no direct nor indirect secrecy commitment to the other parties.

Regarding the application of this clause, the experts appointed by the Engineer are not considered as third parties, and for this reason they have to respect, towards the Contractor, the same obligations as the Client in these matters.

6.5.2. Property

Unless otherwise specified, the documents and the results of the studies performed by the Contractor in the scope of the order, including, but not limited to, software, calculation sheets, design resources and methods, shall entirely and fully remain his property.

The Client and/or the Engineer can use only for their own needs the documents and results of studies and design transmitted to them. In this respect, own needs shall mean the requirements of operation and maintenance and of modification or repair of the Goods and/or Services.

6.6. Improvements

In the course of the supplying of the Goods and/or Services and until the Final Acceptance, the Contractor must inform the Client as soon as possible when he learns of any improvements that may be made to the Goods and/or Services on order as a result of advances in technology.

The Contractor communicates his opinion, together with the supporting documents, regarding the possible improvements and their feasibility, considering the current progress status of the Goods and/or Services. As the case may be, he submits to the Engineer, the effect which adopting the improvements will have regarding the initial conditions of the order in terms of contractual prices, guarantees and time-limits.

The Client retains the right to demand that the improvements be incorporated, covered by a change order.

6.7. Patents, industrial trade marks, designs and models

The Contractor shall bear alone the liability and costs of any prejudicial consequence of any infringement of all or part of the patents, industrial trade marks, designs and models relating to the Goods and/or Services. Therefore, the Contractor makes the arrangements at his own expense with the holders and pays the royalties, obtains the necessary licences and authorizations, failing which he agrees to modify the Goods and/or Services to the extent needed to avoid any infringement.

In case of legal action or proceedings for infringement against the Client, the Contractor undertakes to :

- stand up for the Client in the defence of his rights and interests;
- save him harmless of any financial and other consequences as may result to him from the legal action or proceedings;
- bear all the damages and interests as may be due to the holders of the patents, industrial trade marks, designs and models, in principal, costs and interests;
- reimburse to the Client, at the latter's first request, the costs of any nature whatsoever, including the fees of lawyers, experts and technical advisers, etc. incurred due to or on the occasion of the legal action or proceedings;
- have modified if need be and without delay, the incriminated equipment, or have it replaced, free of charge, by equivalent equipment free of any infringement. All the costs, risks and liability that result thereof shall be borne by the Contractor alone, including the costs of dismantling, erecting, adapting or modifying other goods and starting up, etc.

In case of legal action or proceedings for infringement brought against the Client, the Contractor has the right to participate to the former's defence. Any transaction with the third party has to be discussed and jointly agreed by the two parties.

The modifications to be brought to the Goods and/or Services must have the prior consent of the Engineer. This consent cannot in any way lessen the obligations of the Contractor that result from the present article, also in cases when new legal action or proceedings are initiated following the modifications that were made.

7. Shop manufacturing

7.1. General specifications

The manufacture and the erection are done exclusively with substances, building materials, plant and equipment which are new, of first quality and free of any defect.

The Goods the supply of which is the object or one of the objects of the Agreement, must be strictly complete, ready for use, in good working order, or according to the case ready for assembly and erection in order to carry out the Commissioning. The Goods must therefore be supplied with all the accessories necessary to their good working, even if this supply is not explicitly required in the constituent documents of the order.

The accessories must be selected in such a way that they will in no way degrade the performance and the safety of the Goods.

Independently of the acceptance test that all components, materials or equipment supplied to the Client must undergo in the conditions specified in the order certain supplies may, in the course of their manufacture, be subject to supervision or controls on the premises of the Contractor or of the authorized subcontractors, who are warned of the existence of these terms by the Contractor. These supervision and controls by the Engineer do not in any way relieve the Contractor of any liability, which remains total until the end of the Guarantee period.

The Engineer has the right to send delegates to attend inspections and tests carried out by a specialized Control Organization.

The Contractor bears all the costs resulting from the inspections and tests imposed by the order, with the exception of travelling and lodging expenses as well as remuneration costs of the staff of the Engineer or of his delegate. However, if during the test the equipment shows a non-conformity with the specifications, or if the test cannot be carried out because of a failure of the Contractor in the conduct of this test, and if it must be repeated, the Client has the right to ask the Contractor for reimbursement of the expenses referred to above that must be paid for a new test.

7.2. Manufacturing documents

The Contractor must draw up all the following documents :

- a) shop drawings : drawings and other documents concerning manufacture in workshop, erection and assembly of Goods of every kind, including all general and detailed drawings, the workshop drawings with mention of the materials and weights for the whole of studied equipment, the assembly drawings for the mechanical part, the pipes, as well as for the electrical power, control and instrumentation circuits, the lists of materials, the lists of cables and the electric motors, the nomenclatures of the drawings , etc.;

- b) construction inspection documents : the programs and results of testing and inspection during and after manufacture, the reports on receipt of orders from subcontractors, ...;

- c) operation documents :
 - "As Built" drawings,
 - detailed operation, utilisation methods, inspection and maintenance manuals in conformity with the R.G.P.T. (Occupational Health and Safety Regulations) and the R.G.I.E. (General Regulations for Electric Installations).
- d) documents necessary for quality follow-up.

The time-limits prescribed for the delivery of construction and operation documents are specified in the contract or the order form.

The procedures stated in articles 6.2. to 6.5 concerning study documents are also applicable to construction documents.

7.3. Defects - Faults

The Contractor is under the obligation to notify the Engineer, at all times, of any defects and/or faults noticed during manufacture and to submit a proposition for accepting, repairing or rejecting the materials or machined components.

The Engineer may refuse the faulty materials or components and forbid the use of manufacturing processes that do not comply with the requirements of the order, the state of the art and that fail to conform to the drawings approved by the Engineer; he can demand further tests before taking his decision.

He may accept a repair or replacement by the Contractor, at the latter's cost, of all or part of the Goods that do not comply with the requirements of the order, the state of the art and the manufacturing drawings.

When materials or work are rejected, the Engineer draws up a confirming report that he sends to the Contractor within seven Days, by registered letter with acknowledgement of receipt.

7.4. Access of the Engineer to the Contractor's premises

The Contractor shall allow free access to his workshops, offices, warehouses and sites to the representatives of the Engineer, and give them any facilities and information necessary to their task.

In particular,

- the Engineer is entitled to delegate at his cost to the Contractor, his subcontractors or consultants, the personnel necessary for the follow-up of the studies and documents. This personnel shall be given access to all the drawings and documents related to the studies at hand;
- the Contractor provides free access to his workshops and laboratories as well as to those of his subcontractors, to the Engineer or his representative, so that they may :
 - satisfy themselves of the good quality of the materials incorporated, the progress status of procurement and manufacturing of equipment,

- check whether the methods comply with the stipulations of the order and sound practice,
- verify whether the manufacturing is consistent with the Contractor's drawings and procedures,
- attend the inspections and tests as may be prescribed by the order.

The Engineer or his representative informs the Contractor reasonably beforehand of his visits to the subcontractors' workshops and laboratories. The test protocols are presented to the Engineer, who checks the results against the specifications of the order or, failing such specifications, appraises them against sound practice and good workmanship.

7.5. Tests in the course of manufacture

If tests in the course of supply, manufacturing or erection are specified in the order, those tests are carried out under the Contractor's liability and at his own risks, in accordance with programs drawn up with the approval of the Engineer.

The Contractor notifies the Engineer, in writing, of the date of the tests, at least eight Days beforehand.

The Engineer has the right to have measuring instruments used for the tests checked by an Organization of his choice, without expenses to the Contractor.

The Engineer may decide not to attend the tests.

In any case, the Contractor conveys the results of the tests to the Engineer, within the shortest possible time, not to exceed fifteen Days, and in compliance with the provisions of the order !

7.6. Inspections and tests on completion of manufacturing

On completion, partial or total, of the manufacture of the Goods, the Engineer carries out his inspection. He attends the final tests performed in the workshops, in the factory or any other place of manufacture or assembly.

These final inspections and tests are carried out under the Contractor's liability and at his own risks.

The Contractor notifies the Engineer in writing of the date of these operations, with at least eight Days' notice.

The Engineer has the right to have measuring instruments used for the tests checked by an Organization of his choice, without expenses to the Contractor.

In the case of plant or equipment which is to be supplied, and subject to the test results being satisfactory, the Engineer authorizes the Contractor to package and prepare the Goods for dispatch; granting this authorization does in no way relieve the Contractor of any liability.

The Engineer may grant this authorization without undertaking the inspection of the plant or equipment and without having been present during the final tests thereof.

In any case, the Contractor forwards the results of the tests to the Engineer, within the shortest possible time, not to exceed fifteen Days, and in accordance with the provisions of the order.

7.7. Additional tests

The Client can also, at his own expenses, have tests which were not specified in the order made by an Official or approved Organization, when he considers necessary to check the quality of the raw materials or of the manufacture.

The signing of the Agreement implies that the Contractor acknowledges the competence of each of the organizations indicated in their specialized fields. Whenever no standard or generally agreed method exists, the results of the controls and tests performed and analyzed by the Official or approved Organization, based on processes that the Contractor considers adequate to measure the properties implied, can be set against him in the same way as the results of the tests and controls prescribed by the order.

In any case, additional tests are designed so as to require a minimum of time. Before starting these additional tests, the Contractor defines and justifies, to the Engineer's satisfaction, the possible effects of the duration of these tests on the contractual time-limits.

The Contractor places at the disposal of the Engineer, or of the chosen Organization, the tools and/or items of general use which belong to him as well as the staff necessary for the additional controls and tests decided by the Engineer.

Should these additional tests reveal unacceptable faults, taking into account the features asked for and the specifications of the order, that entail the repair or rejection of the controlled components, the Contractor will be responsible of the ensuing delays, inasmuch as these tests have been made in the shortest possible time. He bears, in this case, any costs he has had for the carrying out of the tests.

If, on the other hand, the additional tests do not reveal, in the opinion of the Engineer, unacceptable faults as indicated above, the cost borne by the Contractor for the carrying out of these tests will be invoiced to the Client, after prior justification, and the Contractor may be entitled to an extension of the time limit.

7.8. Manufacturing secrets

The Client, the Engineer and their representatives are under the obligation to respect the manufacturing and assembly secrets.

8. Delivery

8.1. General specifications

Packaging, marking, transport and delivery occur in compliance with the Incoterms stipulations (latest effective issue) and the method of transport specified in the contract or order form.

8.2. Verification

The Contractor must advise the Engineer, in writing, of the completion of the shop manufacturing of each lot of equipment to allow the Engineer to have a verification made of the equipment before packaging and to check its full completion.

If the results of this operation satisfy the Engineer, the "completion of manufacturing in factory" is pronounced and conveyed in writing to the Contractor.

8.3. Packaging

The Contractor determines the weight of his supply before packaging and dispatching to the Site. This operation may be verified by the Engineer.

The dimensions and weight of the packages must be compatible with the gauges and load capacities of the handling equipment and ways and means of transport chosen. The Contractor is under the obligation to undertake himself the verifications required in this regard and to take all necessary action.

The Contractor submits in due time the measures foreseen for the packaging of his supply to the approval of the Engineer. This approval does in no way reduce the liability of the Contractor for any damage, deterioration or loss, attributable to defective or insufficient packaging of his supply. This liability extends to the damage caused to the Client, the Engineer or to third parties.

The Contractor packs and protects carefully his supplies, taking into account the various means of transport used, and complies with the various tariff regulations and applicable prescriptions.

The order may prescribe packaging methods. In this case, the Contractor shall comply.

If the Contractor wishes to retrieve certain packaging materials, he must let the Engineer know in writing at the latest at the time of dispatch, and have the packages fetched, at his expense and at the place specified by the Engineer, at the first request of the latter.

8.4. Marking

In order to facilitate warehousing and assembly, all packets and loose parts are marked as follows :

- name of the Client;
- order reference number of the Client;
- identifying item of the equipment or the parts (given in the contract or order form);
- gross weight in kilogram;
- net weight in kilogram;
- dispatch number and packet number;
- volume, in cubic metre.

Packets containing hazardous or radioactive or fissile products are marked, in addition, with the labels prescribed by law.

8.5. Warehousing

In case a dispatch has to be postponed at the written request of the Engineer, the Contractor must store his supply at his own risks and insure it against warehousing risks. The Contractor gives proof of this insurance at the first written request from the Engineer, by showing the insurance policies and receipts of payment of the relevant premiums.

The warehousing and insurance expenses can be charged to the Client only from the third Month onwards, counted from the latest of the two following dates :

- date of dispatch according to the schedule defined in the contract or the order form;
- date at which the supply was ready for shipment.

However, in order to reduce the time of warehousing, the Engineer informs the Contractor of the progress of the works so that the latter can adapt his delivery schedule. Decisions relating to the postponement of deliveries and the actions that follow are taken by common consent by the parties.

8.6. Dispatching

The Engineer and the Contractor agree in due time of a dispatch schedule. At least fifteen Days before the expected dispatch date, the Contractor seeks authorization from the Engineer to go ahead with the dispatching. Unless decision to the contrary from the Engineer within two Days, the Contractor is authorized to dispatch the equipment.

For each shipment, a consignment note shall be established, in the number of copies stipulated in the contract or the order form, mentioning the order reference, the shipment number, the number of packages and markings per item and/or per lot, the specifications of the goods supplied in the order and with the nomenclature as given in the order, the net and gross weights and the identification of the single or several means of transport used.

8.7. Transport

The order specifies the method of transport selected for delivering the materials and equipment.

If a delay is due to the Contractor, the Engineer may impose other means of transport to him, by notifying him of this in writing and allowing him an extra six days within which to make the necessary arrangements. The resulting additional costs are borne by the Contractor.

For exceptional transports, namely out of gauge or the transport of hazardous materials, the Contractor must see to obtain all the necessary authorizations and make all arrangements to effectuate the transport at his own cost and risk.

He must also take into account all local conditions in order not to damage any neighbouring installations, Site installations or already built goods. In case of damage, the Contractor bears all the costs resulting from the damage.

Specifications about the transport of radioactive or fissile material must comply with the Transport Regulation of the International Agency for Atomic Power, the European Regulation for the transport of Dangerous matters by Road (A.D.R. - class 7) and with the R.G.P.T. The Contractor must have the agreement of the Operator to introduce dangerous substances into the Site.

8.8. Delivery

In addition to the obligations the Contractor has to meet according to the method of transport specified in the contract or the order form, he shall normally carry out the transport of his supply to the place of assembly, erection or warehousing as specified by the Engineer, as well as the unloading on the spot.

The use, if necessary, of overhead cranes and other handling equipment of the Client is possible after prior agreement by the Engineer.

If the order does not specify any assembly work on the Site, the Contractor must request from the Engineer or his representative a receipt at the time of delivery.

If the order stipulates so, the delivery may be made at another place than the Site.

9. Work at the Site

9.1. General stipulations

Unless otherwise stipulated, the implementation of the Goods and/or Services by the Contractor at the Site includes the unloading and checking of the supplies at

the place where they will be used, the storage on delivery, the protection during storage, the handling from the places where the items are stored to the places intended for building and/or erection, assembly, adjustment, finishing, setting, as well as the surveillance of the storage, construction and assembly areas. Moreover, they can include ancillary supplies and Services necessary for implementation of the work, such as tests and tunings, commissioning and instruction and training of the Client's staff.

The Contractor must procure and implement all the means of production, both equipment and manpower. He must also ensure all necessary supplies and carry out all temporary construction required to carry out successfully and in compliance with the agreed schedule, the tasks he has been entrusted with by the order.

The substances, materials and equipment used by the Contractor, as well as the works executed by him must comply with the laws and regulations in force, with the order conditions and, for everything that has not been defined in the constituent documents of the order, with the customs and state of the art, within the scope of the objective pursued.

The Client retains the right to order the removal from the Site, of the substances, materials and equipment, that do not comply with the order, as well as the dismantling and correct rebuilding or reassembly of the Goods that do not comply with the order, both as regards the method of assembly and the substances, materials and equipment used.

In the event of default on the part of the Contractor, the Client may, at the Contractor's risk and expense, substitute himself or a third party to the Contractor.

9.2. Obligations of the Client

The only interventions which are borne by the Client are :

- The putting at the disposal of the Contractor of space for the storage of his materials, plant and equipment, as well as for the installations intended for his personnel.

If the allocated space is not sufficient, the Contractor shall procure additional space at his own cost. The arrangement of the allocated space is at the Contractor's responsibility and cost.

- The putting at the disposal of the Contractor of overhead cranes and other handling equipment present at the Site, to the extent that they are available and only after having submitted a request and having received the authorization of the Engineer. The Contractor furnishes the slings, fastens the pieces and supervises the manoeuvres. During their operation, the overhead cranes and the machines completely fall under his supervision and responsibility.

The Contractor cannot take advantage of the unavailability of overhead cranes or other handling equipment to justify a delay or a price supplement.

- The putting at the disposal of the Contractor of the roads and railways present at the Site, under the express condition that the Contractor uses them so as not to hinder the Client's own activities.
- The putting at the disposal of one single supply point for industrial water and electricity, within the limits of the available output and power. The Contractor shall bear the costs of consumption.
- The putting at the disposal of the Civil Engineering Works relevant to the mechanical and electrical Goods, whose realization is not part of the order that concerns them. The Civil Engineering Works are carried out on the basis of the dimensional layout drawings, loadings, anchorages and other requirements transmitted by the Contractor to the Engineer under the terms of the order.

9.3. Layout of the Goods

The Contractor must ascertain himself at the Site that the drawings which, as the case may be, he has received from the Engineer, comply with reality and are compatible with the works already carried out and/or to be carried out. He must, within fifteen Days following the receipt of the drawings, advise the Engineer of all the faults he may have found.

The main centre lines as well as the main landmarks of the Goods to be constructed and/or assembled are fixed on the ground. These elements are materialized by the Engineer outside the area of the works and, until the Provisional Acceptance of the Goods, they are put under the surveillance and the protection of the Contractor. He must advise the Engineer of all possible faults as soon as he has noted them.

The Contractor takes all necessary actions for the replacement of all elements he has to cover or remove during the period of the works and that have been damaged or disappeared.

The Engineer retains the right to have modified at any moment any layout that does not comply with the drawings or existing centre lines and landmarks. Should the Contractor fail to do so within twenty Days following the orders to this end of the Engineer, the Engineer may, at the Contractor's cost and risk, substitute himself or a third party to the Contractor.

9.4. Site personnel

During the time of his works at the Site, the Contractor is represented by a foreman who is solely responsible and the only person entitled to receive from the Engineer instructions and comments regarding the conduct of the works and related activities. The nomination of this delegate must have prior written approval of the Engineer. The candidate's training and experience must be compatible with the type and importance of the works and/or assemblies to be carried out.

During the entire execution of the Goods and/or Services, the Contractor is strictly forbidden to hire or entice away personnel of the Client, the Engineer or any other contractor working for the Client to carry out work at the Site.

The Contractor must comply with the site regulations, possible instructions of the Engineer, as well as with the safety regulations applied in the installations of the Client. Should the Contractor deem that the prescriptions of the site regulations or an instruction go beyond the conditions of the order or are contrary to the good supplying of the Goods and/or Services, he must, at risk of foreclosure, submit his written observations to the Engineer within eight Days from their communication.

9.5. Inspections and tests

The Engineer may at any time carry out inspections or tests, specified or not in the order and delegate any inspection or test Organization of his own choice for this purpose.

As for the installations or part of them, foundations or others, that have to be covered up, the Engineer has to be granted every facility to inspect or test them in due time. For that purpose, the Contractor shall notify the Engineer at least fifteen Days in advance of the date on which he will cover up the works. During that period, the Engineer can carry out the tests and inspections he deems necessary.

Moreover, at the request of the Engineer, the Contractor must uncover all or part of the Goods already hidden, if such is necessary for test or inspection purposes.

If the Engineer has been given the occasion to carry out his tests or inspections before the covering up of the works, in accordance with the stipulations of the preceding paragraph, the expenses entailed by the uncovering, the possible restoration and the covering up shall not be borne by the Contractor. In all other cases, however, all the expenses incurred in this way must be borne by him.

The Contractor shall bear all the expenses and costs entailed by the inspection and test operations, with the exception of the costs, remunerations and salaries of the inspectors delegated by the Engineer.

In case inspections or tests have to be repeated, the preceding tests and inspections having revealed shortcomings or faults to be remedied, all the expenses entailed by these additional tests and inspections shall, without any exception, be borne by the Contractor.

The Client may decide not to do the tests and inspections since he has the right but not the obligation to do them. Whether he exercises that right or not, no damage can be inflicted upon him.

The fact of having tested and inspected the Goods without having made any comment or the fact of not having performed any tests or inspections shall not be deemed an acceptance of these Goods.

If as a result of tests and inspections, the Engineer should find shortcomings or faults, he retains the right to refuse the Goods or part of them. If a refusal does not seem necessary or justified, he retains the right to advise the Contractor of all the comments, observations or suggestions he deems necessary to make the Goods and/or Services comply with the stipulations. The Contractor shall rectify the shortcomings or faults in the shortest possible time.

9.6. Interruption of the supply of Goods and/or Services

On written orders from the Client or the Engineer, the Contractor must interrupt the supplying of the Goods and/or Services partially or completely during the period and in the way the Client deems necessary. The Contractor must, during this interruption, maintain the Goods already supplied. The Client, however, may exempt the Contractor from this obligation.

The expenses shall be borne by the Contractor if the interruption is required for safety reasons or shortcomings attributable to him, as well as in the case of force majeure or natural events independent of the parties.

All additional expenses incurred by the Contractor, as a result of instructions of the Client, shall be borne by the Client and are to be specified in a change order.

9.7. Historical sites

If during excavations the Contractor should find articles of artistic, archaeological or historical value, human remains, armaments, etc., he is under the obligation to :

- immediately advise the Engineer and the competent authorities;
- suspend the supply of Goods and/or Services in the vicinity and to prevent all circulation with barriers;
- comply with the instructions received.

10. Commissioning - Provisional and Final Acceptance - Guarantee

10.1. Commissioning

10.1.1. Adjustment of the works - Requalification tests

The Contractor proceeds, as soon as possible, with the adjustment or, as the case may be, the requalification tests of the Goods, in accordance with the programs submitted to the prior written approval of the Engineer, taking into account the requirements and possibilities resulting from the progress made in commissioning of the Goods and, as the case may be, of their operation. This program defines amongst other the policing, safety and security actions that the Contractor deems necessary and sufficient.

During these periods, called "adjustment period" or, as the case may be "requalification test period", the Contractor may, with the agreement of the Engineer and if necessary with that of the other contractors concerned, shut down the equipment or, as the case may be, propose to have it shut down or operated at different levels, in order to make the necessary adjustments and to verify its correct operation.

These adjustments or requalification tests are made under the responsibility of the Contractor. The requalification tests are conducted for the part which is specific to the Goods that are the subject of the order. However, when equipment is first put under power or operated, the Client sets up, at his cost, an operations team under the authority of a supervisor. This team proceeds with the operation under the responsibility and the instructions of the Contractor and is moreover in charge of all the formalities of shutting down (plant intervention tasks). The means of shutting down (plant intervention tasks) of adjacent equipment are borne by the Contractor inasmuch as they concern him.

10.1.2. Putting installations in Semi-industrial Operation

- When all the contractual preliminary tests have been made and the Contractor considers that the equipment is ready to provide the industrial service for which it is designed, he notifies in writing the Engineer, and the equipment is put into service and operated according to a program fixed in common during a period of "semi-industrial operation".
- Personnel for commissioning

Two months prior to the beginning of the semi-industrial operation, the Contractor supplies to the Engineer the quantitative and qualitative list of the personnel who will be in charge of managing the semi-industrial operation, of operating the equipment and of training the Client's operators.

Unless specified otherwise, the Client has at his disposal this personnel for the commissioning, including for the period of putting into service proper, as for the training of the Client's personnel in charge of operating the Goods.

- Semi-industrial operation period

The length of the period of semi-industrial operation is defined in the order; it includes a continuous operation of at least eight Days. During the period of semi-industrial operation, the Goods must operate without any incident leading to the obligation of shutting them off because of faults in the construction or adjustments. The Contractor may proceed with the adjustments that he deems necessary, complying with the procedure defined in the paragraph 10.1.1.

The Client reserves the right to extend, at his own costs, the period of semi-industrial operation.

If during this period of semi-industrial operation, the operation of the equipment leads to incidents in operation and if the Contractor is led, outside the normal shut-off period, to stop his equipment for modifications, or adjustments, this period is lengthened by a time equal to that of the interruptions.

If the interruptions are abnormally frequent, or if the continuous operation presents any danger, the Client has the right to stop the operation, and informs the Contractor; the Client in this case allocates to the Contractor an as short as possible period, compatible with the timely possibilities of operation, to render the equipment in conformity with the conditions imposed by the order; after repair and adjustment of the faulty elements, the equipment is started again, and the contractual duration of the semi-industrial operation is started completely anew from this time onwards.

If the hereabove procedure is incompatible with the nature and/or the planning of the works of the order, the Client can postpone at a later date the adjustment of the works or the requalification tests.

- Responsibility of the Contractor

During the adjustment or requalification test period and semi-industrial operation period, the equipment is operated by the Client's personnel under the supervision and responsibility of the Contractor. Any revisions, repairs or modifications deemed necessary as part of the order, are made by the Contractor at his own costs.

- Material supplied by the Client

Generally, all consumable materials and operation fluids are supplied by the Client to the Contractor, either through the distribution networks installed, or directly on the spot, with the exception of the materials for the first filling up which shall be supplied by the Contractor.

However, the Contractor must bear the cost of materials used due to error or misoperation ascribable to him.

- Training of the personnel

During the period of semi-industrial operation, the Contractor must provide the technical training of the Client's personnel who will be entrusted with the normal operation of the equipment, and must in particular instruct them about all the orders and procedures of operation and maintenance to ensure the correct operation of the Goods.

10.1.3. Industrial Start-up

After the period of semi-industrial operation, and at the Contractor's request, the Industrial Start-up is pronounced by the Client and recorded in a report under the reservations that the Contractor has correctly trained the Client's personnel for the day-to-day operation and maintenance of the equipment, and that he has supplied the Client with the number of copies specified in the technical requisition file (TRF) of all the manuals, drawings and operation documents (operation, control and maintenance).

However, Industrial Start-up does not prejudge of the performance of the Goods, which will be assessed before the Provisional Acceptance (see article 10.2).

If the conditions stipulated above have not been fully met, but the operation of the installations can be pursued under normal safety conditions, the Client may pronounce the Industrial Start-up. However, the conditions that remain to be met will be added to the list of reservations drawn up at the Provisional Acceptance, unless those conditions have been met in the meantime.

10.2. Provisional Acceptance

10.2.1. Procedures

- a) Goods built and/or assembled and/or put into operation at the Site by the Contractor

As soon as the Industrial Start-up is pronounced :

- the Client ensures the operation and maintenance for the equipment;
- the Contractor retains until the Provisional Acceptance, and with the agreement of the Engineer, the right to proceed, at his costs, with modifications, adjustments and controls that are still necessary within the operational limitations.

After the Industrial Start-up has been pronounced and after the Goods have satisfactorily operated for a period of one Month, the procedures of Provisional Acceptance are started at the written request of the Contractor.

The Acceptance procedure must include the verification of the equipment and the tests to check conformity of the Goods with the conditions of the order as to quantity, quality and reliability and in particular, if the guaranteed performance requirements are met. The date and program of the acceptance procedures are agreed jointly by the Engineer and the Contractor.

The Client reserves the right to consider operation tests made before the request for Provisional Acceptance as part of this acceptance procedure.

The installations, apparatus and staff necessary to proceed with the Provisional Acceptance are provided by the Contractor.

The Client may, if he wants to, supply and fit some measuring equipment; in this case the Contractor has the right to check their accuracy; the Client can also proceed with a calibration of the Contractor's measurement instrumentation.

The Contractor bears the costs of the specialized personnel he deems necessary to attend these tests.

The Provisional Acceptance tests may, at the request of the Client, be entrusted to an Approved Organization; the Client bears the costs of this Organization. The results of the tests made by this Organization are witnessed by the parties concerned.

The results of the Provisional Acceptance procedures are recorded in a report signed by the delegates of the Client, the Engineer and the Contractor, which report may contain reservations. Should the results of these tests be disputed, a new series of tests is entrusted, at the choice of the Client, to an Approved Inspection Organization, specially named for this task.

If the Client thinks that the Agreement or the operational made doesn't justify the hereabove controls and procedures, he may forego them and proceed to the Provisional Acceptance.

- b) Goods erected and/or assembled at the Site, but not started-up by the Contractor

When the Contractor considers he is ready for the inspections, tests and checks prescribed to obtain the statement of Provisional Acceptance, the Provisional Acceptance of the Goods erected and/ or assembled at the Site, but not put into service by the Contractor, is requested in writing from the Engineer and is granted :

- when the erection and/or assembly of the Goods are completed to the satisfaction of the Engineer and when they are ready to be started-up, and;
- the Contractor has fulfilled all other provisions and obligations of the order.

- c) Goods that are neither assembled nor put into service by the Contractor

The Provisional Acceptance of the Goods that are neither assembled nor started-up by the Contractor is granted when, after inspections and tests in the factory, the Engineer is satisfied that the Goods are supplied in good condition, under the terms and at the place stipulated in the order.

- d) Goods that are assembled but not supplied by the Contractor

At the earliest two Months after the Industrial Start-up of the Goods assembled by the Contractor or as the case may be after correction by the Contractor of a fault in the assembly detected after the Industrial Start-up, the Contractor may request in writing from the Engineer to proceed with the inspections for the Provisional Acceptance. The report of these inspections is signed by all the parties; if no assembly fault is found, the Client grants the Provisional Acceptance.

e) Other Goods and/or Services

The Provisional Acceptance of Goods and/or Services which are not covered by the above paragraphs is granted when the Engineer establishes that these Goods and/or Services are supplied according to the terms and at the place specified and that they fulfil the specifications and obligations of the order.

10.2.2. Documents to be submitted for Provisional Acceptance

Following the procedures specified in the order and latest at the time of Provisional Acceptance, the Contractor conveys to the Engineer a complete and updated file of the documents drawn up during the supplying of the Goods and/or Services.

This file, accompanied by a nomenclature, the format of which was previously agreed by the Engineer, contains amongst others the whole of the detailed drawings of all the supplied equipments and carried out works. These drawings are the true reflection of the Goods and/or Services at the Site and take into account all the modifications, even minor, made during manufacture, erection, assembly, tests and adjustment ("As Built" drawings).

10.2.3. Date of granting of Provisional Acceptance

- a) Provisional Acceptance takes effect from the day when all the parties signed the Provisional Acceptance report. This report is drawn up by the Engineer and signed by the Client, the Engineer and the Contractor when :
 - acceptance verifications and/or tests are completed;
 - the Contractor has submitted to the Client all the copies of the documents contractually required at Provisional Acceptance.
- b) If the granting of Provisional Acceptance gives rise to reservations, these must be formulated in writing and joined to the Provisional Acceptance report. In spite of the formulation of certain reservations, the Client has the right to pronounce the Provisional Acceptance, but the Final Acceptance is only granted when the last reservation recorded in the Provisional Acceptance report has been lifted.
- c) In order to proceed to Provisional Acceptance, the Client , the Engineer and the Contractor shall delegate personnel who are duly entitled and authorized to sign the Provisional Acceptance report.
- d) The possibility of bringing claims against the Client ceases at the date the Provisional Acceptance is granted.

10.2.4. Postponement of the Provisional Acceptance

If the reservations stated are deemed unacceptable by the Client and/or the results of the tests lead to penalties or are not satisfactory, mutual agreement can be reached on some modifications to the Goods and/or Services in order to comply with the requirements of the guarantees. The Provisional Acceptance is then postponed and an extra period fixed by agreement is granted to the Contractor to proceed to the necessary modifications. The Contractor bears all costs relating to the new inspections and tests.

If the results of the new tests fall shorts of the guaranteed results, the final penalty

is calculated according to these tests.

The Provisional Acceptance is only granted, as the case may be, after previous reservations have been lifted and the results of these new inspections and tests have been recorded.

10.3. Transfer of Title and Risk

10.3.1. The Transfer of Title and Risk means the time when the Goods and/or Services become the property, at his own risks, of the Client.

The Transfer of Title and Risk takes place :

- at the Industrial Start-up of the Goods erected or assembled and/or put into service at the Site by the Contractor;
- at the Provisional Acceptance for the Goods erected or assembled by the Contractor that do not require start-up, for the Goods supplied by the Contractor without erection, assembly nor start-up at the Site and for the other Goods and/or Services.

From the date of the Transfer of Title and Risk, the operation and use of the Goods and/or Services are under the management and responsibility of the Client.

10.3.2. In case of delay not ascribable to the Contractor, the Transfer of Title and Risk takes place in the following cases :

- the materials and equipment are ready in factories, workshops or other premises of production, manufacture and erection, but cannot be delivered to the Site;
- the substances, building materials, plant and equipment are delivered, but the erection and/or assembly work cannot be started or completed;
- the Goods are erected and/or assembled but they cannot undergo the Industrial Start-up or their Start-up is delayed extensively for reasons that are not ascribable to the Contractor.

The Transfer of Title and Risk is only recorded if the Contractor has fulfilled all the obligations set by the order up to the date of the interruption of his work and after he has sent a written request to the Engineer.

The obligations of the Contractor and of the Client, such as those concerning the Provisional Acceptance, the Guarantee and the Final Acceptance remain applicable, but their expiry date is postponed and determined by common consent in function of the circumstances.

10.4. Guarantee

10.4.1. Obligations of the Contractor

Article 1.3. stipulates the general guarantees given by the Contractor. The contract or the order form specifies the particular guarantees covered.

The duration of the Guarantee covers the period of validity of the general guarantees and of the particular guarantees laid down in the order.

The Guarantee period lasts at least twelve Months from the date of Provisional Acceptance. The Guarantee period lasts from the Provisional Acceptance until the Final Acceptance.

During the Guarantee period the Contractor must make any changes, adjustments, and any setting that are recognized necessary to satisfy the conditions of the order, and must replace any part of the Goods and/or Services that is found defective.

The Contractor is under the obligation to remedy :

- any defects of substance, building materials, plant and equipment;
- any defects in design, manufacture, erection, assembly, operation or performance;
- defects arising from the conditions of transport or of commissioning;
- all the consequences resulting from these defects, inasmuch as the defects are not the result of an error in operation or use ascribable to the Client after the date of the statement of Transfer of Title and Risk.

If part of a Good is replaced, this part will be guaranteed under the same terms and conditions and for a new period equal to the duration stated above. The Contractor alone bears fully the expenses incurred relating to the Goods, including transport, dismantling and erection, putting back into service; manpower provided in such context by the Client is billed to the Contractor, except as regards the logistics involved for nuclear environment and radioprotection.

All the tasks devolved upon the Contractor during the Guarantee period must be performed in the shortest possible time agreed upon with the Client, taking into account the requirements of operation; the Contractor must moreover bear the cost of all actions such as provisional repairs that may be necessary to comply with these requirements, reducing the total or partial down time of the Goods as much as possible.

All defects resulting from lack of maintenance, normal wear or modifications made to the Goods by a third party or the Client are not covered by the Guarantee.

10.4.2. Obligations of the Client

The maintenance of the installations during the Guarantee period is provided by the Client at his cost, within the limits of the instructions given in the maintenance manuals received by the Client from the Contractor and approved by the former.

10.4.3. Extension of the Guarantee Period

If during the Guarantee period the Goods and/or Services become unavailable for reasons due to the Contractor, e.g. in cases of abnormal wear, rupture or faulty design or malfunction of equipment, the Guarantee period for the whole of the facility supplied is extended by the sum of all the periods of unavailability due to the shortcomings of the Goods and/or Services.

If during the Guarantee period a part of the Goods has to be replaced as a result of abnormal wear, rupture, faulty design or malfunction, the period of Guarantee commences only, for the part involved, from the time of Industrial Start-up of the replacements.

If a defect is recognized to originate from a systematic design error, the Contractor must replace or modify all the identical parts incorporated in the other equipment that is part of the order, even though they may not have resulted in incidents. In this case, the period of Guarantee is extended as stated above.

10.4.4. Penalties for deficiencies in performance

The order determines the penalties which are applicable if the performance guaranteed by the order is not reached when carrying out the controls and tests for the Provisional Acceptance. These penalties can be either financial penalties as specified in the contract or the order form, or the rejection in accordance with the stipulations of paragraph 10.6.

These penalties are cumulative with the penalties for delays.

The collection of financial penalties may be done by automatic deduction from the amounts owed to the Contractor.

10.5. Final Acceptance

10.5.1. Procedures

The Contractor may ask, in writing, that the Final Acceptance be granted:

- at the earliest twelve Months after the Provisional Acceptance and at the end of the Guarantee period;
- inasmuch as the Contractor has remedied all faults and defects that have been found before the expiry of that period;
- inasmuch as all reservations listed in the Provisional Acceptance report have been cleared;
- conditional to the outstanding claims having been finally settled.

A general control of the Goods and/or Services and of the operating conditions from the date of Provisional Acceptance takes then place within fifteen Days.

10.5.2. Official date of Final Acceptance

- The Final Acceptance is official on the date the Final Acceptance report drawn up and signed by the Engineer has been signed by the Client and the Contractor.

This document puts an end to the Guarantee obligations and relieves the Contractor of his contractual obligations, except as concerns the guarantee for hidden defects, and is the starting date of the decennial liability.

- The Final Acceptance must not contain any reservations or qualifications.
- The Client, the Engineer and the Contractor shall delegate personnel who are duly authorized and empowered to sign the Final Acceptance report.

10.6. Rejection of the Goods and/or Services

10.6.1. Causes of rejection

Independently of any former Transfer of Title and Risk, the Client reserves the right to reject the Goods and/or Services in the cases stated hereafter :

- if, during the period of manufacture or assembly, certain parts have been found defective;
- if, after the period of manufacture or assembly, the Contractor could not, within the fixed time-limits, make the Goods and/or Services comply with the conditions specified in the order for Provisional Acceptance;
- if the tests carried out when putting installations in Semi-industrial Operation or at Industrial Start-up or at the time of the Provisional and Final Acceptance reveal from to the guaranteed performance in excess of differences the acceptable limits fixed by the order;
- if, during the period of Guarantee, serious faults appear that are not compatible with the normal operation and that cannot be corrected by the Contractor within a period compatible with the operation program of the Goods and/or Services.

If, during the period of Guarantee, it is necessary to replace an element for reasons of abnormal wear, break or operating failure, the extension of the period of Guarantee applied to this element does not preclude the granting of a partial Final Acceptance by the Client, if the latter so decides and provided the replacement element does not entail the putting out of service of all the Goods and/or Services.

The rejection of a component may entail the rejection of all components associated with it, or of the whole functional system it is part of.

10.6.2. Rejection conditions

In case of a rejection, the Client may :

- either, accept that the Goods and/or Services be replaced, totally or in part, by the Contractor, at the latter's cost and to his detriment and grievance, and without prejudice to the possible rights of the Client to damages. While waiting for the replacement, the Client is entitled to use these Goods and/or Services under the responsibility and with the agreement of the Contractor, on condition of certain modifications, additions or adaptations made at the cost of the Contractor, either by himself or by another supplier, if need be.

The rejected Goods and/or Services are then freely at the disposal of the Client, who undertakes to use them in the operating and maintenance conditions specified in the documents transmitted by the Contractor.

- or, refuse the replacement of the rejected Goods and/or Services, and, with a fifteen Days notice by registered letter, cancel all or part of the Agreement. This rejection and the cancelling of the Agreement are notified by the Client to the Contractor as indicated above; the latter must repay to the Client, within thirty Days from the date of mailing of this notification, the payments already received for the rejected Goods and/or Services.

In all the cases above, the rejected components are returned to the Contractor at the place of the installation, save for other regulatory stipulations.

The Contractor must, at his own cost, dismantle and evacuate these rejected elements, at the time indicated by the Client.

Should the Contractor fail to do so, the Client may have the required demolition, dismantling, decontamination or evacuation done at the Contractor's cost, without any liability to the Client.

10.7. Splitting the Goods and/or Services into parts

If the Goods and/or Services can be split into several parts, each representing independent functional sets, the stipulations of paragraphs 10.1 to 10.5 may, with the written consent of the Engineer, be applied to each of these sets considered separately.

11. Administrative and legal provisions

11.1. Administrative provisions

11.1.1. Addresses and representation of the parties

The parties concerned exchange their official addresses, as well as the list, addresses and powers of their qualified representatives, to whom contractual notifications can be validly addressed.

11.1.2. Languages

The language of the order is specified in the contract or the order form. It applies to all documents.

11.1.3. Units

Save exceptions agreed to by the Engineer, the only measurement units admitted are the internationally used measurement units of the metric system.

11.1.4. Administrative authorizations

The Contractor is responsible for obtaining all prior authorizations required by the competent authorities for the supplying of the Goods and/or Services.

The Contractor supplies, at the Client's request, all the information concerning the Goods and/or Services supplied and necessary to the introduction of the authorization applications and the establishment declarations that are the responsibility of the Client.

Within the limits of the services, studies, supplies and works specified in the order, the Contractor undertakes to take the necessary measures, during their execution, to guarantee the acceptance of the Goods and/or Services by the Administration, the Authorities and the Authorized Inspection Organizations.

It is understood that the Contractor, after the conclusion of the Agreement, is not entitled to any price supplement to finance these provisions or for having to bring his services, studies, supplies and works in conformity with the requirements of the Administration, the Authorities and/or the Authorized Inspection Organizations.

11.2. Legal provisions relating to Site activities in Belgium

11.2.1. Registration of Contractor

This section refers to the provisions contained in the Royal Decree of October 5, 1978 concerning the execution of Articles 299 bis of the Code of Income Taxation and 30 bis of the Law of June 27, 1969 revising the decree-law of December 28, 1944 concerning the social security of workers.

Only the Contractor registered in accordance with the aforementioned Royal Decree and who furnishes proof of such registration may be accepted as contracting party for the activities subject to the aforementioned Royal Decree.

Upon accepting the order, the Contractor shall furnish proof of registration in accordance with Articles 59 and 61 of the Law of August 4, 1978 and the Royal Decree effective as of October 5, 1978. No Agreement shall be valid without proof of the Contractor's registration.

If the Contractor is removed from the register, he shall inform the Client thereof by registered post before making any payment request and in any event within ten days of publication of the removal in the "Moniteur belge".

Should the Contractor fail to do this, he shall automatically pay to the Client, without need to serve notice, the amount that should have been paid as the first payment following removal from the register as well as the fines and tax or social contribution surcharges that the Client may be required to pay as a result of infringement of the provisions in the aforementioned Articles 59 and 61.

In addition, in the event of removal from the register, the Client may terminate the order within fifteen Days of the date on which he was notified by the Contractor of his removal from the register, in accordance with the provisions in the preceding paragraph, or at any moment, in case the Contractor is not in conformity with the provisions of the preceding paragraph.

If the order is terminated, a bill will be drawn up on the basis of services rendered and payments arising therefrom pursuant to the provisions contained in articles 59 and 61 of the Law of August 4, 1978 and the Royal Decree of October 5, 1978.

11.2.2. Contractor's personnel

a) Seconded personnel

Within the framework of the Goods and/or Services he supplies at the Site, the Contractor is under the obligation to comply with all the legal or regulatory provisions. He registers all declarations and pays all the corresponding duties or fees.

The Contractor undertakes to employ only those workers who are covered by social security, and to comply with the social security legislation and to produce proof of this when requested to do so by the Client. This proof is established, among other, as regards personnel who remain subject to the social legislation in an EC Member State other than Belgium, by the presentation of the E101 form stipulated by article 69 of the law of 04.08.1978. In case the Contractor should fail to fulfil this obligation, the Client reserves the right to terminate the Agreement without period of notice nor indemnity to the Contractor.

b) Individual file

Only the workers of the Contractor who are in possession of an individual file, as prescribed by the programme-law of July 6, 1989 and by the Royal Decree of March 8, 1990 will be allowed to enter the Site.

If one or more of his workers are not in possession of the file, for whatever reason, the Contractor shall immediately advise the Engineer.

Any delay or interruption resulting from that fact, such as for example the refusal of admittance to the Site, is entirely at the Contractor's expenses.

c) Attendance list

The Contractor has the daily obligation to submit to the Engineer a list of the workers he employs at the Site; this list must be in compliance with the programme-law of July 6, 1989 and with the Royal Decree of March 12, 1990.

The list used for this purpose is that published by the National Construction Confederation; it shall be duly completed by the Contractor and drawn up under his responsibility as far as his workers are concerned.

Upon arrival at the Site, the list is handed over to the foreman or deposited at the place designated for this purpose.

In case of non-fulfilment of this obligation or of false listings, the Contractor is under the obligation to compensate the Client for all the expenses incurred as a result thereof.

d) Sanctions

In case the Contractor fails to comply with one or more of the stipulations of the present article, the Agreement may be terminated at the Contractor's expense.

Moreover, the Contractor is under the obligation to compensate the Client for all the expenses incurred as a result of the non-fulfilment of his obligations.

11.2.3. R.G.P.T.

For the supply of the Goods and/or Services, the Contractor shall comply with the legal and regulatory requirements he is responsible for with respect to safety and hygiene,

including as regards :

- article 54 quater of the R.G.P.T. (i.e. of the Belgian occupational health and safety regulations) dealing with individual and collective protection;
- article 28 to 28 sexies of the R.G.P.T., inserted therein by the Royal Decree dated 14 September 1992 in execution of the directive of the Council of the European Communities dated 12 June 1989 concerning the implementation of measures aimed at improving the safety and health of workers at the working place;
- the stipulations of the various Royal Decrees dealing with health and safety.

11.3. Documents

The presentation of the documents (drafting, numbering, marking system, symbols, etc.) conforms to the special prescriptions as may be defined by the Engineer in the TRF. Documents and drawings are signed by the Contractor and specify their status.

Each sending of drawings and documents shall be accompanied by a memorandum or letter listing all of them, giving their revision indexes and the quantities transmitted.

Drawings shall be established in A4 format (21 x 29.7 cm) or a multiple thereof (maximum height 3 x 29.7 cm) and folded to A4 format with the title and number showing.

The CAD drawings of assemblies and subassemblies, having C.F.C. status, are transmitted on a computer medium complying with the conditions of logic format (I.G.E.S., rev. 2.0 at least, or D x F OR S.I.F.), of coding (A.S.C.II) and of physical format (3" 1/2 or 5"1/4 DOS disquettes or 1600 BPI 9-track magnetic tape).

Three copies of each document are transmitted. With the final file, ten copies are supplied.

12. Responsibility - Insurance

Except for any derogations specified in the present article, the responsibility of both contracting parties is governed by common law.

12.1. General responsibility

Until the Transfer of Title and Risk, as defined in article 10.3., the Contractor is fully and solely responsible towards the Client and towards third parties, for all financial consequences, accidents, damage and prejudice occurring while the Agreement is being carried out, regardless of the causes which produced them.

In case of damage caused by his goods or his personnel, to the personnel or goods of the Client, whose original perpetrator is believed by Contractor to be a third party, the Contractor himself shall file any claims against that third party, after having compensated the Client for the damage and having informed the latter of his intent to claim from the party.

The Contractor's responsibility remains complete, even after the end of his Services, if it is established that the damage or loss inflicted as defined above is ascribable to the Contractor or to one of his subcontractors working under his authority.

The Contractor bears all the consequences of disturbances to the neighbourhood unless he can pass these on to the Client when these disturbances are inherent to the Works and/or Services ordered by the Client.

During the periods of Guarantee or decennial liability, the Contractor assumes, both towards the Client as towards third parties, the responsibility for any direct damage during or due to his intervention and/or by his fault, by those of his personnel, or that due to faults in his supplies which gave rise to an application of the Guarantee clauses.

The presence of the supplies which are the subject of erection or assembly at the Site of the Client, cannot be invoked to imply the latter's responsibility. It beholds the Contractor to operate accordingly and in particular to take all the necessary measures and precautions.

12.2. Decennial liability

The decennial liability starts on the date the Final Acceptance is granted, except legal provisions to the contrary which apply to the order.

Irrespective of the application of the decennial responsibility, the Contractor retains responsibility for hidden defects.

12.3. Nuclear responsibility

The Client, as a "Nuclear Facility Operator", in the sense given by the international agreements and the Belgian legislation, is responsible for nuclear accidents as defined by the same agreements and legislation. As such, he takes out a civil liability insurance as stipulated by the law.

The Client shall see to it that it is he who at all times is designated as the "Nuclear Facility Operator" by the competent authorities.

This responsibility applies to this type of incident taking place during erection work or deliveries made in the scope of the Agreement, whether or not these specifically concern nuclear installations.

The "Nuclear Facility Operator", i.e. the Client, may, if the case arises, exercise the recourses provided for by law and/or international agreements, against any third party, the Contractor, his subcontractors or the forwarders.

12.4. Insurance covers to be taken out by the Contractor

Prior to undertaking the supplying of any Goods and/or Services, the Contractor shall take out and maintain for the whole duration of his activities :

- a) The insurance policies imposed by Belgian legislation, including :
 - a "Legal" insurance policy as stipulated by the Belgian legislation, guaranteeing compensation for working accidents and accidents on the way to/from work as may be incurred by members of his personnel, even if they work under the authority, supervision and control of the Client.

This "Legal" policy must contain a waiver clause by the insurer for any recourse against the Client and any of the parties present at the Site, or in the scope of the order;
 - an "Automobile Civil Liability" insurance covering the officially-registered vehicles which have access to the Site and the installations.
- b) A "Contractor's Civil Liability" insurance policy guaranteeing the third parties and the Client against any physical injury, material and immaterial damages including the disturbances to the neighbourhood as referred to in point 12.1. up to the amounts per claim stipulated in the contract or order form (or, failing such amounts being specified, an amount of BEF 50 million per claim regardless whether for physical injury or material damage or both).

The damages resulting from disturbance to the neighbourhood, to the extent they are not inherent to the supplying of the Goods and/or Services ordered by the Client, shall also be covered.

This policy must include the following clauses :

- the cover applies without restrictions nor reservations to the civil liability as may devolve upon the Contractor under any legal provisions or regulations, as a result of damage of any nature caused to third parties as well as to the goods of the Client, whether entrusted or not to the Contractor and arising directly or indirectly out of his undertaking or

out of his personnel, his plant and equipment, during or outside the working hours, within or outside the Site;
- the members of the personnel of the Client and the Engineer are considered as third parties in relation to the Contractor;

- inasmuch as the civil liability of the insured is involved, the policy produces its effects also in cases of accidents caused by the personnel, the equipment and the materials made available to the Contractor by the Client.
- c) A "Product and/or Post Delivery and/or Post Completion Civil Liability Insurance" which guarantees third parties as well as the Client against any physical injury, material and immaterial damages up to the amounts per claim specified by the contract or order form.

The Contractor maintains this policy into effect for a period of at least twelve Months starting from the date on which his work was complete.

- d) A "Transport" insurance policy covering the damage as may be caused to the Goods and/or Services during transport, including that incurred during loading, intermediate storage, unloading, including stowing and covering, if such operations are the responsibility of the Contractor.

12.5. "Site All Risks" insurance

The contract or order form specifies, as the cause may be, whether a "Site All Risks" policy exists or by whom it shall be taken out. If the Client is subscribing such policy, the Contractor's obligation of taking out the insurances stipulated in article 12.4. is maintained.

- a) In the event of the Client subscribing the "Site All Risks" insurance :
- The Client takes out a "Site All Risks" insurance for his and the benefit of all the entities involved, e.g. :
 - . the contractors, the Engineer, the architects, the subcontractors;
 - . the suppliers and erection contractors except those suppliers which do not carry out any erection work at the Site;
 - . all the participants of any nature involved on account of their contribution to the studies and work for the implementation of the Project relevant to the Agreement.

Damage to goods

Are covered :

- . up to their total value, any loss of or damage occurring on the Site to goods under construction at the Site or any materials brought to the Site in view of their incorporation into these goods, this up to the Provisional Acceptance of the constructed goods;
- . any damage to goods finally erected, up to their total value, noticed during the Guarantee period, and which damage was :
 - either, caused by the Contractor in the course of or as a result of the Contractor carrying out his contractual services between the time of the Provisional Acceptance and the time of Final Acceptance, or
 - due to any originating event having occurred at the Site during the construction - erection - test period.

The equipment which is the sole property of the Contractor or his subcontractors (including site huts and tools) used for the construction work is excluded from the cover.

The indemnifications are payable to the Client, who apportions them among the contractors, subcontractors and himself.

Civil liability outside the Agreement

Are covered, any amounts as may be claimed from the insured by virtue of any responsibilities outside those specified by the order, which result from or arise out of or in connection with the supplying of the Goods and/or Services.

An amount per claim is determined in the order, whatever the number of persons prejudiced and the sum total of all physical injuries and material damages.

Barring specific exception, this cover intervenes after the exhaustion of any other cover required by article 12.4. a) above.

Damage to existing goods

Existing goods which are owned by the Client are covered for an amount stated in the order.

Neither the Client nor the Engineer can be rendered responsible for possible shortcomings in the policies referred to above.

Exempt Amounts

The exempt amounts shall be borne by the Contractor or by the party responsible for the damage caused. The exempt amounts are specified in the contract or the order form.

- Obligations of the Contractor regarding insurance

The Contractor complies with the obligations falling on him under the insurance policies, and is responsible for the detrimental consequences of his negligence. Among other obligations, he must notify to the Engineer, the Client and the insurer any incidents that are cause for claims.

- Consulting of the text of the policies

The text of the insurance policies taken out by the Client in application of the above clauses may be examined by the Contractor at the Client's insurance department.

These texts are part of the order.

- b) In the event of the Contractor subscribing the "Site All Risks" insurance,

The Contractor takes out a "Site All Risks" insurance for his account and in favour of his subcontractors, the Client and the other contractors at the Site, under conditions of cover that are not less than those provided for by above point 12.5. a).

The amounts covered by the policies or the exclusions therein cannot be construed as acceptance by the Client of a limitation of the Contractor's responsibility.

The Contractor is responsible for having his subcontractors subscribe, for the duration of the work they carry out at the Site, insurances covering the same risks under the same policy conditions. However, he ascertains that no premiums are billed in duplicate (same risk covered by more than one policy) to the Client, and the latter retains the right to verify the grounds for the costs billed.

12.6. Miscellaneous provisions

The choice of the Insurance Companies and the clauses of the policies taken out by the Contractor must receive the approval of the Client (who cannot, however, refuse without reasonable grounds), such approval not giving rise to responsibility of the Client nor limiting that of the Contractor.

The Contractor undertakes to reimburse to the Client the extra premiums for extension of the cover period resulting from the delays and claims ascribable to the Contractor.

The Contractor transmits to the Client or his representative a copy of the policies and receipts of the premiums paid, prior to the start of carrying out the Agreement. He shall obtain from the insurers that they commit themselves to giving thirty Days notice by registered letter to the Client in the event of a change to or cancellation of the policies.

At the Client's or the Engineer's request, the Contractor and his subcontractors request their insurers to streamline, if need be, their policies with those of the other parties.

The fact that the Contractor has taken out the insurance covers prescribed by the order does not relieve him of his legal or contractual liabilities.