**ICC MODEL CONTRACT**

**COMMISSIONING & AFTER SALES SERVICES**

**Comment Draft 🡪 ICC Commission on Commercial Law and Practice (CLP) and ICC national committees (NCs)**

**Comments due by 18 October 2024**

**ICC MODEL CONTRACT**

**COMMISSIONING & AFTER SALES SERVICES**

**by and between**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

(**the “Client**”)

And

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

(**the “Contractor”)**

**Contents**

[FOREWORD 4](#_Toc536542610)

[INTRODUCTION 4](#_Toc536542611)

[ICC Model Contract on Commissioning and After Sales Services 5](#_Toc536542612)

[CHAPTER 1 General Provisions 6](#_Toc536542615)

[CHAPTER 2 Obligations of the Parties 12](#_Toc536542616)

[CHAPTER 3 The execution of the Contract 13](#_Toc536542617)

[CHAPTER 4 Contract price and payment 16](#_Toc536542620)

[CHAPTER 5 Risk, Acceptance, Warranty and Liability 16](#_Toc536542621)

[CHAPTER 6 Force Majeure and Suspension 18](#_Toc536542622)

[CHAPTER 7 Applicable law and Resolution of Disputes 19](#_Toc536542623)

ANNEXES AND APPENDICES:

Annex I: Special Conditions and Appendices Thereto…………………………………………...22

Appendix 1: Services to be Performed, Client's Requirements and Assumptions…………23

Appendix 2: Price and Payment Terms…………………………………………………………….25

Appendix 3: Schedule and Performance Test …………………………………………………...26

Annex II: ICC Model Confidentiality Clause ……………………………………………………….27

Annex III: ICC Model Anti-corruption Clause…………………………………………………….28

**FOREWORD**

Companies purchasing a machine or industrial solution typically need to arrange for the provision of after-sales services to maintain the smooth functioning of operations. In the context of global trade, these services may be provided in a range of formats and across geographies. The increasing diversification and global reach of company operations highlight the need for a set of standard terms to govern such service arrangements. ICC has drafted this model contract to provide companies and their advisors with an internationally-applicable, fair, and balanced template.

This model contract, one of a well-known series produced by the ICC Commission on Commercial Law and Practice under the leadership of Chair Ercüment Erdem (Turkey), has benefited from the active participation of the following members of the Working Group, chaired by Co-Chair of the Commission on Commercial Law and Practice Valle Garcia de Novales (Spain): Horst Becker (Germany); Tatiana Dratovsky Sister (Brazil); Ercüment Erdem (Turkey); Lothar Hoffman (Austria); Loh Yong Hui (Singapore); Oliver Peltzer (Germany); Philip Peng (China); Ralf Lindback (Finland); Wang Yijie (China); and Angelika Zoder (Austria).

The model also benefitted from active involvement of the ICC national committee network, which provided comments on several drafts.

ICC Secretariat leadership was provided by Emily O’Connor, Director of Commercial Law and Practice.

**INTRODUCTION**

1. **Purpose of the model**

In the context of an increasingly digitalized trade environment with supply and value chains routinely spanning the globe, ICC has drafted this new international model framework services contract that covers the after-sales services connected to the supply of a machine, equipment, or an industrial solution. This typically involves installation; assembly and putting into operation (the ‘commissioning services’); and maintenance or after-sale services. The model is intended to service both manufacturers and suppliers of machines, equipment and industrial solutions, on the one hand, and on the other hand, companies providing such commissioning and maintenance and after sale services.

When negotiating such services agreements abroad, one of the main difficulties faced by parties engaged in international trade is the **lack of standard provisions** for agreements of this type. Further, services agreements are often not governed by specific statutory provisions.

Since there is no globally agreed uniform legislation on the subject (unlike for example in the case of the international sales contracts[[1]](#footnote-2)), parties must rely on national laws and court decisions which (i) do not take into account the specific needs of international trade (since they have been enacted *in primis* for domestic agreements), and (ii) may substantially differ from one country to another.

For the above reasons ICC believes that there is space for an alternative solution, consisting in the use of uniform contractual rules, not based on any specific national law, but incorporating the prevailing practice in international trade as well as the principles generally recognised by domestic laws.

ICC has unrivalled experience in the drafting of model international commercial contracts, with a library of model forms of contract for international trade on topics such as confidentiality, international sales, distribution and selective distribution, commercial agency, and consultancy services related to entering a foreign market, among others.

In preparing this model form, ICC has sought to strike a **fair balance between the interests** of the client and those of the contractor. In other words, this model form does not favour the position of one of the parties, but aims at protecting and balancing the legitimate interests of both.

1. **Scope of application**

This model form has been prepared on the assumption that it would apply to situations where a supplier of equipment or an industrial solution (“the Client”) engages a service provider (“the Contractor”) to provide after-sales services to an end user who has previously purchased the equipment or industrial solution from the Client. The scope of these after-sales services may include, but is not limited to, installation, commissioning, supervision, training and maintenance. The model form has been prepared to be used, either as a framework contract between the Client and the Contractor, so that the Client can make unlimited service requests to the Contractor during the term of the contract, or on a single project basis.

Although the present model form has been established especially for international situations, nothing prevents the parties from using it for domestic contracts, i.e. contracts between parties having their place of business in the same country. The parties are therefore advised to check which amendments are necessary in order to comply with a local situation before using this model for domestic contracts.

1. **Applicable law**

This model contract has been based on the assumption that it will **not be governed by a specific national law**, but only by the provisions of the contract itself and the principles of law generally recognised in international trade as applicable to service contracts (also called «*lex mercatoria*»). The purpose of this solution is to ensure that the rules of this model form can be applied in a uniform way to clients and contractors of different countries, without the interference of national laws, which may differ on a number of points of detail[[2]](#footnote-3), without giving one party the advantage, and the other party the disadvantage, of applying one party’s national law.

The working group is of the opinion that the possible disadvantage that may result from the application of rather flexible and general international principles is counterbalanced by the greater certainty of a uniform set of contractual rules and by the reference to the **Unidroit Principles** of International Commercial Contracts[[3]](#footnote-4), which offer a reasonably foreseeable legal framework for most issues that may arise.

In fact, the Unidroit Principles offer adequate solutions to the majority of contractual problems of a more general nature (e.g. formation of contract, validity, performance, non-performance, damages, etc.). Only in some very exceptional cases the provisions of the Unidroit Principles may not actually reflect the expectations of international trade[[4]](#footnote-5): however, when this happens, the general principles of international trade and the trade usages will prevail over such particular provisions of the Unidroit Principles on the basis of Article 32.1, which puts the various sources incorporated by reference in the following hierarchical order: contract clauses, general principles of law, trade usages, Unidroit Principles. This also implies that, even when the Unidroit Principles provide that certain of its rules are mandatory, such rules will not prevail over the contractual clauses, general principles or trade usages.

In any case, if the parties wish to have their contract governed by a specific **national law,** they can use the alternative set forth in Article 32. In such cases, they should carefully check if this model form conforms to all provisions and/or judicial precedents of the national law they have chosen[[5]](#footnote-6). This alternative (national law) is preferable if the contract is of domestic nature and/or the parties submit the contract to the jurisdiction of ordinary courts (see Article 33.2) instead of arbitration.

Whenever disputes are not submitted to arbitration, it is recommended to submit the contract to a national law, by choosing the Option B of Article 32, since it is very unlikely that national courts may accept that the contract be governed by a-national rules instead of a domestic law.

1. **Resolution of disputes: ADR, arbitration, national courts**

The drafters of a service contract should consider how disputes arising out of or in connection with the contract shall be settled. There are binding and non-binding forms of dispute resolution. Litigation before state courts and arbitration are binding forms of dispute resolution, whereas mediation aims at inducing the parties of a contract to arrive at a consensual settlement to their dispute. There are many other forms of dispute settlement between arbitration and mediation. Mini-trial and expert determination are some examples of these intermediate forms. They often have an element of a legal opinion or decision, but they also demand consent of the parties to a certain extent.

The following section outlines arbitration and litigation procedures, giving some remarks on their advantages and disadvantages as well as some hints on how to legally implement arbitration or litigation in a service contract.

* 1. ICC Arbitration

Since the model form is a set of uniform contractual rules, avoiding (as far as possible) the direct application of conflicting domestic legislations, it is appropriate that possible disputes be solved by a uniform resolution system, organised at an international level.

From this point of view **the most appropriate solution appears to be international commercial arbitration** under the ICC arbitration rules (see particularly Option A of Article 33.2), which offers a more international neutral approach by overcoming the option between the domestic courts. This is also the reason why in Article 33.2 arbitration is the "default solution" which applies automatically if the parties make no choice (see Article 34.1).

Since arbitration is essential in the framework of this model, this ICC model contract should not be used in cases where the dispute may be considered as non-arbitrable (i.e. “not capable of settlement by arbitration”) according to the New York Convention of 1958.

* 1. Jurisdiction of national courts

Under Option B of Article 33.2, the parties may choose to submit possible disputes to the **national courts** indicated in such clause.

When choosing this alternative, parties must check whether the choice of forum clause is effective in the countries involved.

* 1. ADR / Mediation

It may be advisable to try to **solve the dispute before resorting to arbitration or to litigation** through the recourse to an amicable method of dispute resolution, i.e. to a procedure aiming at facilitating an amicable settlement of the controversy. A qualified neutral (mediator) will often be able to help parties to agree upon a settlement, thus avoiding the recourse to arbitration or to courts.

Under Article 33.1, each party may propose to the other party to proceed to mediation under the **ICC Mediation Rules**, but such request is without prejudice to the proceedings under Article 33.2. This means that mediation is optional and does in no way limit the parties’ right to have recourse to arbitration or to litigation (according to the choice made under Article 33.2).

If the parties wish that mediation should be obligatory, i.e. that parties should be bound to submit the dispute to mediation before starting arbitration or litigation, they should modify Article 33.1 appropriately. ICC provides guidance and model Mediation Clauses, which cover different situations and needs.[[6]](#footnote-7)

1. **Remuneration of the Contractor**

The model foresees that the Client shall pay the Contractor ´s invoices in the currency specified in the Special Conditions through a bank transfer, net thirty (30) days from the date of the invoice, unless the parties agree otherwise under Appendix 2.

The Contractor will also be entitled to actual, reasonable and necessary expenses directly related to the services, provided that Contractor provides Client with advance written notice of such expenses and includes written documentation with its monthly invoices.

1. **Precautions for use of the model form**

Any model contract should, to the extent possible, be adapted to the circumstances of a specific case.

Of course, in theory the best solution is drafting an individual contract based on existing model forms in order to take account of all the specific requirements of the parties. However, the parties are often not in a position to prepare a specific contract and prefer to have recourse to a ready-to-use balanced model form: in this case they will ask for a model which can be used as it stands, with only minor modifications or additions.

The present model is an attempt to achieve a balance between these two possibilities.

ICC has tried to work out a single solution on every issue. However, where this has not been possible (see e.g. Articles 3, 32 and 33), alternatives have been suggested. Such alternative solutions have been presented side-by-side under the letters A and B, in order to point out that only one of them can apply. Therefore, before signing the contract, the parties must decide which of the alternative solutions they choose, and then cancel the alternative they do not want to apply. In any event, the model form provides that, if the parties do not make a choice by cancelling one alternative, one of them will automatically apply according to Article 34.1 of the model form.

There are also some points where the parties must fill in their requirements – the end date for a fixed term contract, for example - and several points in the annexes and appendices to this document where the parties can fill in and (where necessary) modify such annexes or appendices during the life of the contract, without making changes to the basic text of the contract. Before signing the contract the parties should fill in the annexes and appendices and, if appropriate, delete the parts they do not need.

In order to avoid misunderstandings the parties should, when signing the contract, put their initials on each page of the contract and of the annexes and appendices, in order to make sure which amendments they have agreed upon or which alternative solutions they have chosen.

The present model serves as a guideline for potential interested parties, although it does not replace the recommended review by legal and financial advisors to tailor it appropriately to the specific situation.

**ICC MODEL CONTRACT ON COMMISSIONING & AFTER SALES SERVICES**

This contract is entered into this \_\_ \_\_\_\_\_\_, 20\_\_ (“**the Contract Date**”), by and between:

**(\_\_\_\_\_\_\_\_\_\_\_)**,a company incorporated and existing under the laws of \_\_\_\_, holder of Company/Tax No. \_\_\_\_, whose registered office is at \_\_\_\_\_\_\_\_\_ (the **Client)*,*** which expression shall include successors and permitted assigns), represented by \_\_\_\_\_, acting as \_\_\_\_\_\_; and

**(\_\_\_\_\_\_\_\_\_\_\_\_)**, a company incorporated and existing under the laws of \_\_\_\_, holder of Company/Tax No. \_\_\_\_, whose registered office is at \_\_\_\_\_\_\_\_\_ (the **Contractor**,which expression shall include successors and permitted assigns), represented by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, acting as \_\_\_\_\_\_\_\_\_\_\_\_\_\_;

each a **Party** and collectively the **Parties**.

**WHEREAS:**

1. The Client has decided to appoint the Contractor to provide the after sales services defined in this Contract as to the scope, purpose and performance as set out in **Appendix 1** and as amended in accordance with the provisions of the Contract;
2. The Contractor has agreed to such appointment on the terms and subject to the conditions of this Contract as provided herein; and
3. All capitalised words and expressions shall have the same meanings as are assigned to them in this Contract, its Annexes and its Appendices.

**IT IS AGREED AS FOLLOWS**

The Contractor shall provide the Services for each of the Projects under this Contract and perform the other actions required of it, as described in this Contract for the Contract Price set forth in **Appendix 2** (the **Contract Price**) as more particularly described in the Special Conditions attached hereto.

**CHAPTER 1**

**GENERAL PROVISIONS**

**ARTICLE 1**

**DEFINITIONS**

* 1. As used in this Contract, the following terms shall have the meanings set out below.

**“Appendix”** or **“Appendices”** means the appendix or appendices to the Special Conditions of the Contract referred to throughout this Contract.

**“Breach of Contract”** means any omission or failure on the part of any of the Parties to fulfil any of its obligations or duties under the Contract.

**“Certificate of Acceptance”** is the certificate issued according to Article 28.

**“Client”** means the legal or natural person named as client in the Contract, its agents, assignees agreed by the Contractor and the legal successors in title to this person.

**“Client’s Requirements”** means the document(s) prepared by, or on behalf of, the Client setting out the comprehensive Client’s requirements for the Services and set forth in **Appendix 1** to the Special Conditions. The Client’s Requirements include, without limitation, documents specifying the purpose, scope, time frame for completion, and/or basic and/or other technical criteria, and/or conceptual elements for the Services.

**“Contract”** means this Contract, including its Annexes and Appendices and subsequent alterations and additions agreed in writing.

**“Contract Date”** means the date the Contract becomes effective as set out in Article 3.

**“Contract Price”** means the price paid to the Contractor by the Client in consideration of the Services, as set out in **Appendix 2**.

**“Contractor”** means the legal or natural person named as Contractor in the Contract, its agents, assignees agreed by the Client and the legal successors in title to this person.

**“Contractor´s Documents”** means any document or software made by (or on behalf of) the Contractor for the provision of the Services, as set out in Article 23.2.

**“Defect”** means a visible, hidden or latent non-conformity with the Client’s Requirements or as set forth in the Punch List, in the Services

**“Delay Damages”** means the monetary compensation payable under Article 22.

**“End User”** meansthe owner of the Equipment in relation to which the Services are performed.

**“Equipment”** means the equipment and/or machines supplied by the Client to an End User and in connection with which the Services are rendered.

**“Force Majeure”** has the meaning specified in Article 31.

**“Intellectual Property Rights”** includes, without limitation, know-how, software, trademarks, slogans, translations, patents, utility models, trade names, domain-names, designs, models, formulae and any application thereof as well as copyrights and related rights and trade secrets.

**“Performance Tests”** means those tests (if any) to be performed, specified as such in the Contract, in accordance with **Appendix 3** to the Special Conditions (if any).

**“Project”** means each of the projects for which the Client issues a Services Request to the Contractor.

**“Punch List”** has the meaning set out in Article 27.2.

**“Schedule”** is the schedule (if any) for performing the Services in a Project, as set out in or in accordance with Article 18.

**“Services”** means the services to be provided by the Contractor under this Contract, as described in **Appendix 1**.

**“Services Request”** has the meaning set forth in Article 17.1**.**

**“Site”** (or **“Sites**” as the context requires) means the place of destination of the Equipment where the Services must be provided.

**“****Special Conditions”** means the annexure to this Contract described as Annex I – Special Conditions and referred to throughout this Contract, and describing amendments to this Contract.

**“Start Date”** means the Date determined in accordance with Article 18 of the Contract.

**“Subcontractor”** means any person appointed as a Subcontractor for a part of the Services, and the legal successors in title and/or interest to this or these person(s).

**“Territory”** means the country or part thereof where the Services are to be provided.

**“Variation Order”** means any change to a Services Request in accordance with Article 17.5.

**ARTICLE 2**

**GOOD FAITH AND FAIR DEALING**

2.1 In carrying out their obligations under this Contract, the Parties will act in accordance with the principles of good faith and fair dealing.

2.2. The provisions of this Contract, as well as any statements made by the Parties in connection with it, shall be interpreted in good faith.

**ARTICLE 3**

**ENTRY INTO FORCE AND TERM OF THE CONTRACT**

This Contract shall become effective and be binding on the Parties on the last of the dates of execution by the Parties (the “**Contract Date**”). The responsibility for, and expense of stamp duties and similar charges (if any) imposed by law in connection with the signature of this Contract shall be borne by the Client.

|  |  |
| --- | --- |
| **Option A – Indefinite Term**3.2.1 This Contract is concluded for an indefinite period and enters into force on the Contract Date.3.2.2 This Contract may be terminated by either Party at any time by giving four (4) months written notice of termination by any means of communication ensuring evidence and date of receipt (e.g. registered mail with return receipt requested, special courier). The effective date of termination shall be the last day of the month in which such notice is given. | **Option B – Fixed Term**3.2.1This Contract enters into force on the Contract Date and shall remain in force until \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.3.2.2This Contract shall be automatically renewed for successive periods of one (1) year, unless terminated by either Party by giving four (4) months written notice before the date of expiry by any means of communication ensuring evidence and date of receipt (e.g. registered mail with return receipt requested, special courier). The effective date of termination shall be the last day of the month in which such notice is given. |

**ARTICLE 4**

**EARLIER TERMINATION**

4.1 This Contract may be terminated:

4.1.1 In the event of a Breach of Contract which remains uncured after twenty-one (21) days from a written notice mentioning the obligation breached.

A. Breach of Contract by the Client include, but are not limited to:

(a) Failure to pay sums due under the Contract as they become due; or

(b) Failure to provide or delay in providing any document required under the Client’s Requirements for the execution of the Services and requested by the Contractor to perform the Services.

B. Breach of Contract by the Contractor include, but are not limited to:

(a) Persistently failing to provide the Services in accordance with the Schedule;

(b) Failure to correct any Defects reported by the Client within thirty (30) Days of receipt of Client´s notice of Defect;

(c) Failure to comply with labour, health, safety and environmental protection laws and regulations of the Site.

4.1.2 Immediately upon receipt of written notice from the other Party, upon the occurrence of any of the following:

(a) Failure by the Contractor to achieve acceptance of the Services after the period when the maximum amount of Delay Damages applies.

(b) The Contractor subcontracts performance to a third party without the express written consent of the Client as per Article 17.3.

(c) Any of the Parties assigns the Contract without the express written consent of the other Party, as per Article 10.

(d) In the event of bankruptcy or insolvency[[7]](#footnote-8) of any of the Parties resulting in the inability to meet its obligations under the Contract.

(e) In case of an event of Force Majeure that lasts for more than 120 days, in accordance with Article 30.3.

4.2 Consequences of termination:

(a) If the Client terminates for Breach of Contract, the Contractor shall stop performance of the Services and shall immediately return to the Client any materials or tools provided by the Client for the provision of the Services, including all record data and reports. The Contractor shall be entitled to the price of Services carried out, for which the Contractor has not been paid.

(b) If the Contractor terminates for Breach of Contract, it shall be entitled, in addition to the price of the Services carried out and for which the Contractor has not been paid, to the amount set forth in the Special Conditions of Contract, as damages.

4.3 Surviving provisions:

The provisions of Articles [TO COME] of this Contract shall survive the termination or expiry of this Contract

**ARTICLE 5**

**CONFIDENTIALITY[[8]](#footnote-9)**

Each Party agrees not to disclose to third parties any confidential information disclosed to it by the other Party in the context of this Contract in conformity with the ICC Model Confidentiality Clause at **Annex II**. This Article 5 survives the termination of this Contract for a period of five (5) years.

**ARTICLE 6**

**REPRESENTATIONS AND NON-EXCLUSIVITY**

6.1 The Parties ensure to each other that entering into and performing their respective obligations under this Contract does not, and will not, conflict with any other contract to which any of them is a party.

6.2 The Parties are not bound by any exclusivity commitment towards each other in connection with the provision of the Services.

**ARTICLE 7**

**ENTIRE CONTRACT**

This Contract constitutes the complete agreement and sets forth the entire understanding and agreement of the Parties as to the subject matter of this Contract and supersedes all prior discussions and understandings concerning the subject of this Contract, whether made in writing or orally.

**ARTICLE 8**

**SEVERABILITY**

 If any provision of this Contract is held unenforceable by a court of competent jurisdiction, that provision shall be severed and shall not affect the validity or enforceability of the remaining provisions.

**ARTICLE 9**

**MODIFICATIONS**

No modification, termination, or attempted waiver of this Contract, or any provision thereof, shall be valid unless in writing signed by the Party against whom the same is sought to be enforced.

**ARTICLE 10**

**SUCCESSORS AND ASSIGNS**

This Contract may not be assigned by either Party without the prior written consent of the other Party, except in the event of a change of control of a Party, in which case the successor-in-law of that Party shall be bound by this Contract.

**ARTICLE 11**

**INDEPENDENT CONTRACTORS**

The Parties are independent contractors and neither the Parties nor their respective employees shall be deemed to be agents, representatives or employees of the other Party, or bind such Party in any way. How the Services are rendered shall be within the Contractor’s sole control and discretion.

**ARTICLE 12**

**WAIVER**

No waiver, express or implied, by either Party of any right or remedy for any breach by the other Party of any provision of this Agreement shall be deemed or construed to be a waiver of any subsequent breach of such provision or as a waiver of the provision itself.

**ARTICLE 13**

**NOTICES**

All notices under this Agreement shall be given to the representatives of the Parties set forth in the Special Conditions to this Agreement, or to their successors in office, as notified in writing to the other Party.

**ARTICLE 14**

**PRIORITY OF DOCUMENTS**

The provisions of the Special Conditions of Contract , including the Appendixes, shall prevail over any other provision of this Contract.

**CHAPTER 2**

**OBLIGATIONS OF THE PARTIES**

**ARTICLE 15**

**GENERAL OBLIGATIONS OF THE CONTRACTOR**

In providing Services under this Contract, the Contractor:

1. Shall inform the Client in writing and immediately of any feedback, complaint or claim raised by End Users in the Territory.
2. Commits to abide by the Schedule agreed with End Users or with the Client to provide the Services and will seek the Client´s prior written authorization before modifying the initial settings of the Equipment made by the Client or the End User.
3. Shall provide the Client with any certificate of tax residence in the Territory mentioned in the Special Conditions of Contract.
4. Shall abide by any health, security at the workplace of the End User or the Client while providing the Services at Site.
5. Shall keep full records of its staff and labour employed on the Site and shall make these available to the Client and/or the End User upon request, by abiding to any applicable data protection regulations.
6. Upon request by the Client the Contractor will submit certificates of compliance with Social Security obligations.
7. Shall take out, maintain throughout the term of this Agreement and provide the Client, upon request, an insurance policy covering civil liability arising from the provision of the Services, for the minimum amount set forth in the Special Conditions of Contract.
8. Shall abide by any applicable law and regulations in the Territory concerning its business, employees and the provision of the Services.

**ARTICLE 16**

**GENERAL OBLIGATIONS OF THE CLIENT**

16.1 The Client shall provide information, data, drawings, manuals and documents in timely manner to enable the Contractor to commence and complete the Services as per the Schedule. The Client warrants to the Contractor that any information and/or documentation provided is fit for the purpose of enabling the Services provisions and shall bear full liability in case it is not.

16.2 If agreed by the Parties in **Appendix 1**, the Client shall provide the Contractor with training in the assembly/installation/commissioning and maintenance of the Equipment, on the terms and conditions agreed therein.

16.3 The Client shall pay the Contract Price as varied in accordance with the Contract and perform all prerequisites for such payment, in particular review any payment applications by the Contractor and approve the amount due and payable to the Contractor with respect to each application for payment within the period foreseen in the Contract or, if no such period has been specified, within reasonable time without any undue delay.

16.4 The Client’s responsibilities include the obligation to cooperate at any time in good faith with the Contractor to enable the Contractor to perform its obligations under this Contract, and not to hinder or delay the Contractor in the Contractor’s performance of the Services, in particular, by ensuring that the Contractor has unrestricted and safe access to the Site to perform the Services.

16.5 The Client shall provide the Contractor with a non-binding annual Services forecast, which shall be updated by the Client on a quarterly basis.

**CHAPTER 3**

**THE EXECUTION OF THE CONTRACT**

**ARTICLE 17**

**GENERAL PROVISIONS**

17.1 Services Requests. The Client shall issue to the Contractor a Services Request for Services to be performed on each Project, which shall include all required information and a Project identifier (number/name) for tracking and organizing documentation. The Services Request may not exceed the Client´s Requirements agreed in Appendix 1. The Contractor may reject any Services Request for good cause by providing written notice to the Client. Once a Services Request has been accepted by the Contractor, the Client is obliged to accept the Services if the conditions for acceptance in Article 27 are fulfilled.

17.2 Resources. The Contractor will provide the Services according to the Client’s Requirements and - in this order of prevalence - good industry standards by devoting appropriate technical resources and skilled staff duly trained to perform the Services as requested and without delays.

17.3 No sub-contracting. The Contractor shall not subcontract the Services totally or partially without the prior written consent of the Client; if consent is granted, the Contractor shall not be relieved from its liability under this Contract in respect of Services performed by any Subcontractor.

17.4 Reports. During the performance of the Services in every Project the Contractor shall provide the Client with written reports on the Services at such intervals, in such form and with such content as agreed in the Special Conditions of Contract.

17.5 Variation Orders. The Client shall be entitled to request Variation Orders to the Services from time to time during the performance of the Contract until the Certificate of Acceptance is issued.The following principles shall apply to any Variation Order:

1. Except to the extent that the Variation Order is necessitated by the Contractor’s negligence, the fair and reasonable cost, plus profit of all Variation Orders shall be taken into account in determining the Contract Price. Any Variation Order resulting from the Contractor's negligence shall be paid for by the Contractor.
2. Except in the case of negligence, the Contractor shall not be obliged to carry out any variation which is not instructed as a Variation Order. Any Variation Order shall be taken into account in assessing the compliance with the Schedule.
3. Variation Orders shall not, without the approval of the Contractor, consist of the omission of any part of the Services with a view to having such Services performed by parties other than the Contractor. Where there is a Variation Order resulting in the omission of any part of the Services, the value of the Variation Order shall include compensation for the under-recovered overheads and profit of the Contractor.
4. No Variation Order shall valid unless reduced to writing and signed by both Parties as an acceptance.

**ARTICLE 18**

**SCHEDULE**

18.1 The Client and the Contractor shall agree on a Schedule and the Contractor shall perform the Services in accordance with the Contract and the Schedule as set out in the Special Conditions.

18.2 The Schedule shall contain:

(a) A reference to the Start Date;

(b) Milestone Dates (if any), including the dates of any Performance Tests; and

(g) The date of acceptance of the Services.

18.3 The dates set out in the Schedule may be amended by written agreement of the Parties.

**ARTICLE 19**

**PROVISION OF THE SERVICES**

19.1 The Contractor shall notify the End User and the Client in writing of the date on which its personnel will arrive at the Site. As soon as the Contractor´s personnel are at the Site, the Contractor shall charge the Client for any period of inactivity or delay in the provision of Services due to reasons beyond the Contractor´s control, including but not limited to Force Majeure or lack or insufficiency of power supply.

19.2 The Contract Price is based on the assumption that the Equipment has arrived at the Site and that the Site is clean and freely accessible for the Contractor, without any outstanding engineering or construction works, and with all necessary supplies, failing which the Client shall bear any delays or cost or price increases resulting therefrom.

19.3 The Contractor shall provide the End User with a basic training in the operation and maintenance of the Equipment, during and after installation and commissioning; the scope of such basic training shall be agreed in writing by the Parties in **Appendix 1** to the Special Conditions.

**ARTICLE 20**

**TAXES**

20.1 The Contractor shall be responsible for and is entitled to charge to the Client all taxes arising from the Contract Price and other amounts paid under this Contract, including, but not limited to VAT and/or other indirect taxes, as per Article 25.1. The Contractor shall be responsible for all payroll taxes and benefits of the Contractor’s employees. No income tax, nor payroll tax of any kind or any other direct tax to the Contractor shall be withheld or paid by the Client on behalf of the Contractor or its employees. The Contractor understands that he is responsible to pay, according to law, the Contractor´s taxes and the Contractor shall, upon request by the Client, properly document to the Client that taxes have been paid.

20.2[[9]](#footnote-10) The Contractor shall provide the Client with any certificate of tax residency required under any applicable treaty to avoid double taxation, to avoid any withholding on payments by the Client.

**ARTICLE 21**

**QUALITY ASSURANCE**

21.1 The Contractor shall put into place and provide to the Client a quality assurance system to demonstrate compliance with the requirements of the Contract within ten (10) days of the Start Date. The system shall be in accordance with any details stated in **Appendix 1**, if any. If there are no such details, the Contractor shall implement a system that is appropriate in the Territory, demonstrating compliance with the Contract.

21.2 Compliance with the quality assurance system shall not relieve the Contractor of any of its duties, obligations or responsibilities under the Contract.

21.3 Without prejudice to the Contractor’s obligations under this Article 22, the Client shall be entitled to audit the Contractor’s compliance with the quality assurance system at any time during business hours, provided that such an entitlement does not impede the progress of the Services.

**ARTICLE 22**

**DELAY DAMAGES**

22.1 If the Contractor fails to provide the Services under each Services Request within the time specified in the Schedule for reasons attributable solely to the Contractor, then the Contractor shall pay to the Client Delay Damages for such Breach of Contract (which shall be the only monies due from the Contractor for such Breach of Contract and any other consequences of the delay), subject to the limit stated in the Special Conditions.

22.2 If no rate of Delay Damages is stated in the Special Conditions, the rate of Delay Damages shall be one half of one percent (0.5%) of the Contract Price for each complete week of delay, or on a pro rata basis, up to a maximum of ten percent (10%) of the Contract Price.

22.3 The payment of such Delay Damages shall not relieve the Contractor from its obligation to complete the Services for each Project or from any other of its obligations under the Contract,

**ARTICLE 23**

**INTELLECTUAL PROPERTY RIGHTS**

23.1 As between the Parties, the Client shall retain the copyright and other Intellectual Property Rights in the Client’s Requirements, any software, the Equipment and associated technical and commercial documents and other documents made by (or on behalf of) the Client. The Contractor may, at its expense, copy, use, and obtain communication of these documents for the purposes of the Contract. They shall not, without the Client’s consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract.

23.2 As between the Parties, the Contractor shall retain the copyright and other Intellectual Property Rights in any of the Contractor´s Documents.

23.3 Subject to the confidentiality obligations of Article 5, each Party grants to the other Party a limited, non-exclusive, non-assignable and royalty-free right to use any of such Client´s Intellectual Property Rights, or Contractor´s Documents for the sole purpose of operating, maintaining and repairing the Equipment, but not for any other purpose. The Client shall make the limitations of such right clear and effective in any contract it may enter into for the operation, maintenance and repair of the Equipment. This right shall:

(a) Last throughout the useful life of the Equipment;

(b) Entitle any person in lawful possession of the Equipment to copy, use and disclose the Contractor’s Documents for the purpose of operating, maintaining or repairing the Equipment.

23.4 The Contractor’s Documents shall not, without the Contractor’s consent, be used, copied or communicated to a third party other than the End User by the Client for purposes other than those permitted under this Article 23.

**ARTICLE 24**

**SPARE PARTS**

25.1 During the warranty period of the Equipment, spare parts required for the performance of the Services shall be supplied by the Client at no cost to the Contractor or the End User.

25.2 After the end of the warranty period, spare parts shall be ordered and paid for by the Contractor at the prices set out in the then current price list of the Client.

25.3 The Contractor may re-invoice the costs of spare parts to the End User.

**CHAPTER 4**

**CONTRACT PRICE AND PAYMENT**

**ARTICLE 25**

**PRICE, EXPENSES AND INVOICING**

25.1 In consideration for the Services, the Client shall pay to the Contractor the Contract Price specified in **Appendix 2** to the Special Conditions. The Contract Price does not include Value Added Tax or any other applicable tax.

25.2 The Client agrees to reimburse Contractor for all actual, reasonable and necessary expenses directly related to the Services, provided that Contractor provides Client with advance written notice of such expenses and includes written documentation with its monthly invoices. Such expenses shall include expenses related to travel (i.e., economy airfare, hotel, meals, parking, taxis, mileage, car rental, etc.). Any additional expenses for office, telephone, etc. are included in the price. Expenses incurred by Contractor will be itemized in Contractor’s invoices.

25.3 The Contractor shall issue a monthly invoice for Services rendered.

**ARTICLE 26**

**PAYMENT TERMS**

26.1 Unless otherwise agreed in **Appendix 2** to the Special Conditions, the Client shall pay the Contractor ´s invoices in the currency specified in the Special Conditions through a bank transfer, net thirty (30) days from the date of the invoice.

26.2 Payment of invoices shall not constitute acceptance of the Services by the Client.

**CHAPTER 5**

**ACCEPTANCE, WARRANTY AND LIABILITY**

**ARTICLE 27**

**PERFORMANCE TEST AND CERTIFICATE OF ACCEPTANCE**

27.1 If a Performance Test is provided for in the Special Conditions, it shall be set out in writing in the form provided by the Client with each purchase order and shall be signed by the Contractor and the Client or the End User.

27.2 The Contractor and the End User or the Client, as the case may be, shall jointly check the conformity of the Services with the Client´s Requirements and the Services Request for each specific Project in **Appendix 1** to the Special Conditions and shall note down any Defect, if any, in a list signed by the Contractor and the End User or the Client, as the case may be (the “**Punch List**”). The Contractor shall promptly make any adjustments or repairs at its own expense. After corrections have been made or, in the event of no objections, the Client or the End User and the Contractor shall sign the Certificate of Acceptance.

27.3 The cost of any analysis or report to determine whether a Defect exists shall be borne by the Client if the result shows that the Services conform to the Client´s Requirements and the Services Request, and by the Contractor if they do not.

**ARTICLE 28**

**WARRANTY**

28.1Unless otherwise provided for in the Special Conditions, the warranty period for the Services shall be twelve (12) months from the date of the Certificate of Acceptance. The Contractor warrants the absence of Defects in the Services provided. If the Services do not comply with the warranty obligations, the Contractor shall take remedial action as agreed upon with the Client. If the Contractor fails to take remedial action within a reasonable period of time as agreed in Article 28.1 of the Special Conditions, to eliminate or remedy a recorded Defect attributable to the Contractor, the Client shall be entitled either to reduce the invoiced amount of the Services accordingly or to engage a third party to perform the necessary remedial action for the account of the Contractor.

28.2 Normal wear or tear or damage to the Equipment caused by the End User and/or non-compliance by the End User or third parties with the operation or maintenance manuals supplied (if any) shall not be the responsibility of the Contractor, nor shall the Contractor be obliged to repair such normal wear and tear and/or such damage.

**ARTICLE 29**

**LIABILITY, EXCLUSIONS AND LIMITATION OF LIABILITY**

29.1 The Contractor shall be responsible for performing the Services in a safe, competent, and workmanlike manner and shall be liable for its own negligence and the negligent acts of its employees and Subcontractors, if any. The Contractor shall indemnify and hold harmless the Client and the End User from and against any and all liabilities imposed or claimed, including attorneys´ fees and other legal expenses, arising directly out of any act or omission of the Contractor or the Contractor’s employees or Subcontractors, including all claims relating to the injury or death of any person or damage to any property.

29.2 Except in the event of fraud, gross negligence, or willful misconduct by the Contractor, claims for damages by the Client or End User for indirect or consequential damages such as costs for production downtime, loss of profit, etc., are excluded.

29.3 Neither Party shall be entitled to claim that the other Party is liable to pay to it by way of damages or any other form of compensation for Breach of Contract (including any obligation to indemnify and/or hold harmless), sums which exceed the percentage of the Contract Price (excluding interest) specified in the Special Conditions.

29.4 Nothing in this Contract excludes or limits liability for either Party’s fraud, wilful misconduct and/or gross negligence.

**CHAPTER 6**

**FORCE MAJEURE AND SUSPENSION**

**ARTICLE 30**

**FORCE MAJEURE**

30.1 "Force Majeure" means the occurrence of an event or circumstance that prevents or impedes a Party from performing one or more of its contractual obligations under the Contract, if and to the extent that that Party proves: [a] that such impediment is beyond its reasonable control; and [b] that it could not reasonably have been foreseen at the time of the conclusion of the Contract; and [c] that the effects of the impediment could not reasonably have been avoided or overcome by the affected Party.

30.2 In the absence of proof to the contrary, the following events affecting a Party shall be presumed to fulfil conditions (a) and (b) under paragraph 1 of this Article: (i) war (whether declared or not), hostilities, invasion, act of foreign enemies, extensive military mobilisation; (ii) civil war, riot, rebellion and revolution, military or usurped power, insurrection, act of terrorism, sabotage or piracy; (iii) currency and trade restriction, embargo, sanction; (iv) act of authority whether lawful or unlawful, compliance with any law or governmental order, expropriation, seizure of works, requisition, nationalisation; (v) plague, epidemic, natural disaster or extreme natural event; (vi) explosion, fire, destruction of Equipment, prolonged break-down of transport, telecommunication, information system or energy; (vii) general labour disturbance such as boycott, strike and lock-out, go-slow, occupation of factories and premises.

30.3 A Party successfully invoking this Clause is relieved from its duty to perform its obligations under the Contract and from any liability in damages or from any other contractual remedy for Breach of Contract, from the time at which the impediment causes inability to perform, provided that the notice thereof is given without delay. If notice thereof is not given without delay, the relief is effective from the time at which notice thereof reaches the other Party. Where the effect of the impediment or event invoked is temporary, the above consequences shall apply only as long as the impediment invoked impedes performance by the affected Party. Where the duration of the impediment invoked has the effect of substantially depriving the contracting Parties of what they were reasonably entitled to expect under the contract, either Party has the right to terminate the Contract by notification within a reasonable period to the other Party. Unless otherwise agreed, the Parties expressly agree that the Contract may be terminated by either Party if the duration of the impediment exceeds 120 days.

**ARTICLE 31**

**SUSPENSION**

31.1 The Client may at any time instruct the Contractor to suspend the progress of the Services by giving written notice stating the reason for the suspension.

31.2 If suspension is necessary for reasons of Force Majeure or human safety, the Contractor may also suspend the Services by giving written notice to the Client. During the suspension the Contractor shall take all reasonable steps in the circumstances to avoid any deterioration or loss of or damage to the Equipment.

31.3 Either Party may suspend performance of the Contract if the other Party is in breach of the Contract. Notice of suspension under this Article 31 must be given at least seven (7) days before the first day of suspension. The Services shall be resumed within three (3) days of written notice that the breach has been remedied or that the circumstances giving rise to the suspension have ceased.

31.4 If, as a result of a suspension under Articles 31.1, 31.2 or 31.3, the Contractor is delayed and/or incurs costs for reasons not attributable to the Contractor, the Contractor shall give written notice to the Client and shall be entitled to 1) an extension of time to complete the Services in accordance with the Schedule and 2) reimbursement of the costs actually incurred and substantiated.

31.5 If the suspension has lasted for a continuous period of more than one hundred and twenty (120) days, either Party may terminate the Contract in accordance with the termination provisions of Article 30.3.

**CHAPTER 7**

**APPLICABLE LAWS AND RESOLUTION OF DISPUTES**

**ARTICLE 32**

**APPLICABLE LAW**

|  |  |
| --- | --- |
| **Option A – International Principles**[[10]](#footnote-11)32.1 Any questions relating to this Contract which are not expressly or implicitly settled by the provisions contained in this Contract shall be governed, in the following order:(a) by the principles of law generally recognised in international trade as applicable to international contracts,(b) by the relevant trade usages, and(c) by the UNIDROIT Principles of International Commercial Contracts,with the exclusion – subject to Article 13.2 hereunder – of national laws.32.2 The Parties agree that in any event consideration shall be given to mandatory provisions of the law of the country where the Contractor renders the Services which would be applicable even if the Contract is governed by a foreign law (overriding mandatory rules). Any such provisions will be taken into account to the extent that they embody principles which are universally recognized and provided their application appears reasonable in the context of international trade. | **Option B – National Law**This Contract is governed by the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of the country the law of which is to apply)[[11]](#footnote-12) regardless of the conflict of law rules of that country. |

**ARTICLE 33**

**RESOLUTION OF DISPUTES**

33.1. In the event of any dispute arising out of or in connection with the present Contract, the Parties shall first refer the dispute to proceedings under the ICC Mediation Rules. The commencement of proceeding under the ICC Mediation Rules shall not prevent any Party from commencing arbitration/litigation in accordance with Article 33.2 below.[[12]](#footnote-13)

|  |  |
| --- | --- |
| **Option A – ICC Arbitration[[13]](#footnote-14)** | **Option B – Litigation (Ordinary Courts)** |

33.2.

|  |  |
| --- | --- |
| All disputes arising out of or in connection with the present Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.[[14]](#footnote-15)  | In case of dispute the courts of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (place) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (country) shall have exclusive jurisdiction. |

**ARTICLE 34**

**AUTOMATIC INCLUSION UNDER THE PRESENT CONTRACT**

36.1. If the Parties have not made a choice between the alternative solutions provided in Articles \_\_, \_\_, \_\_, \_\_, \_\_, \_\_ and \_\_, \_\_, under the Options A and B, by deleting one of the alternatives, and provided they have not expressly made a choice by other means, option A shall be considered applicable.

36.2. The annexes attached to this Contract form an integral part of the agreement. Annexes or part of annexes which have not been filled in will be effective only to the extent and under the conditions indicated in this Contract.

**IN WITNESS WHEREOF**, the Parties have executed this Contract by duly authorised representatives in two identical counterparts as of the Contract Date.

**The Client The Contractor**

(Name of Company) (Name of Company)

Signed (Name, position) Signed (Name, position)

Date: Date:

**(The remainder of this page has intentionally been left blank)**

**ANNEX I**

**SPECIAL CONDITIONS AND APPENDICES THERETO**

**The reference to Articles in these Special Conditions refers to the Articles of the Contract which these Special Conditions amend or complement.**

**As the case may be, Appendices to these Special Conditions will be numbered by the number of the** **Articles of the Contract to which reference is made by these Special Conditions.**

**Article 1.1** The Client’s Requirements are set out in **Appendix 1** to these Special Conditions.

**Article 4.2.b)** The damages to which the Contractor shall be entitled in the event of termination for Breach of Contract shall be limited to …………… Euro/USD

**Article 15.g)** The minimum amount of liability insurance taken out by the Contractor shall be ……… Euro/USD.

**Article 17.4** The Contractor shall submit weekly/monthly reports to the Client on the progress of the Services in accordance with the template provided by the Client.

**Article 18** The Schedule is as follows: (to be completed by the Parties)

* Start date:
* Milestones (including any Performance Test, if any):
* Acceptance:

**Article 20.2** The Contractorshall provide the Client with a certificate of tax residence[[15]](#endnote-2) in the Territory, to the effects of the tax treaty between ………. And ……… to avoid double taxation and shall provide an updated certificate covering every fiscal year during the Term.

**Article 22** Delay Damages shall be calculated at a rate of \_\_% per each complete week of delay.

**Article 27.1 (Performance test, if any)**

**Article 28.1** The warranty period of the Services shall be \_\_\_\_\_\_\_\_\_\_ (only if a different period is agreed by the Parties).

**Article 28**.**1** A “reasonable” period of time to repair or delete any Defect in the Services during the warranty period shall be: xxxxxxx (different periods may be agreed for different Defects).

**Article 29.3** The maximum of the aggregate liability under this Contract shall be \_\_% of the Contract Price.

**Article 31.1** The law governing this Contract shall be the laws of …………………..

**Article 33** The Parties agree that the venue for the arbitration procedure shall be….………. and that the language of the arbitration procedure shall be …………...

**APPENDIX 1**

**SERVICES TO BE PERFORMED, CLIENT´S REQUIREMENTS AND ASSUMPTIONS[[16]](#footnote-16)**

**Description of Services[[17]](#footnote-17)**

(Please select as appropriate or add Services)

1. Installation, installation supervision, assembly and putting into operation (together, “Commissioning Services) of the Equipment.
2. End User training.
3. Maintenance.
4. Technical Support.
5. Others (please describe)

**CLIENT´S REQUIREMENTS AND SERVICES ASSUMPTIONS**

(Please select as appropriate)

The Client's Services estimate for the year \_\_\_\_\_\_\_ is \_\_\_\_\_\_\_ Projects, subject to the provisions of Article 16.5.

**Responsibilities of the Client (please fill in as appropriate)**

1. Deliver Equipment to End User and provide Contractor with assurance that: (i) the Equipment is at the Site and that all preparations for installation in accordance with any drawings have already been made by the End User; and (ii) the Site has adequate supplies (e.g., electricity, water, gas, air, etc.) for the main connections of the Equipment.
2. Training of Contractor, if needed.
3. Delivery of all required documentation, manuals, procedures and training to Contractor to properly and successfully provide the Services.

**Responsibilities of the Contractor (please fill in as appropriate, e.g)**

1. Equipment leveling (please define), reviewing all main connections of utilities supplied by the End User to the Equipment according to drawings (power, air, gas, water).
2. Commissioning of the Equipment for start-up operations according to Client´s procedures.
3. Testing and verifying that the Equipment is ready for operation.
4. Train End User to properly use the Equipment according to the Client´s operation manuals.

**Quality assurance system (Article 13) (TO BE LEFT BLANK IF NOTHING IS AGREED BY THE PARTIES)**

**APPENDIX 2**

**PRICE AND PAYMENT TERMS**

**Article 26.1** The price of the Services is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_\_\_\_\_\_\_). (EITHER A LUMP SUM OR A PRICE PER HOUR PER PERSON)

**Article 27.1** The currency of the Contract is Euro/USD/\_\_.

**Article 27** (Payment terms, if different from the one set forth in Article 27)

**APPENDIX 3**

**SCHEDULE AND PERFORMANCE TEST (if any)**

(To be deleted if the Parties agree to the Schedule in Article 19 of the Special Conditions and no Performance Test is foreseen)

**ANNEX II**

**ICC Model Confidentiality Clause 2016 (Article 5)**

**[2016 CONFIDENTIALITY CLAUSE TO BE INSERTED]**

1. In particular the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG). [↑](#footnote-ref-2)
2. In fact arbitrators are in principle not bound by domestic mandatory rules, with only the exception of “overriding mandatory rules”. [↑](#footnote-ref-3)
3. The text of the Unidroit Principles 2016 can be found at [UNIDROIT Principles 2016 - UNIDROIT](https://www.unidroit.org/instruments/commercial-contracts/unidroit-principles-2016/). [↑](#footnote-ref-4)
4. This may be the case with respect to certain rules which protect the disadvantaged party to an extent that goes beyond the standards which are usual in business to business relations: see for instance, Article 3.2.7 on gross disparity (particularly as concerns the end of the sentence in para 1(a), where reference is made to “the improvidence, ignorance, inexperience or lack of bargaining skill” of a party in order to justify contract avoidance) and the rules on hardship contained in Articles 6.2.1.-6.2.3. (particularly with regards to the rule authorizing courts to modify the contract terms). Of course, parties may also expressly exclude the application of specific rules they consider inappropriate. [↑](#footnote-ref-5)
5. In any case (even if no choice of a national law has been made), according to Article 13.2., the mandatory provisions of the law of the country where the Contractor renders the services which would be applicable even if the contract is governed by a foreign law (the so called “*lois de police”*, “overriding mandatory rules”) must be considered. [↑](#footnote-ref-6)
6. https://iccwbo.org/dispute-resolution-services/mediation/mediation clauses/ [↑](#footnote-ref-7)
7. Please check the validity of this provision under applicable law. For example, Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings leaves to Member States the decision on the effects of insolvency proceedings on current contracts to which the debtor is party (Article 7.2. e). With respect to restructuring proceedings, Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring framework, obliges Member States to ensure that creditors are not allowed to withhold performance or terminate, accelerate or, in any other way, modify executory contracts to the detriment of the debtor by virtue of a contractual clause providing for such measures, solely by reason of a request for the opening of preventive restructuring proceedings; a request for a stay of individual enforcement actions; the opening of preventive restructuring proceedings; or the granting of a stay of individual enforcement actions as such (Article 7.5). [↑](#footnote-ref-8)
8. Alternatively, if the Parties have previously entered into an NDA and wish to extend the terms of the NDA to this Agreement, a reference to the NDA should be included. [↑](#footnote-ref-9)
9. The Parties should check how withholding obligations on payment for services rendered by non-resident companies are provided for in any double taxation treaty between the countries of the Parties, if any, or in any applicable law in the country of the Client. If a double taxation treaty exists, the Contractor will normally be required to provide the Client with a certificate of tax residency for the purposes of the treaty. [↑](#footnote-ref-10)
10. In case this alternative is chosen, it is advisable to choose arbitration (Article 33.2.A) for the resolution of disputes. In fact, it is doubtful whether ordinary courts would apply general principles instead of a national law. [↑](#footnote-ref-11)
11. This model form has been prepared on the assumption that it would not be governed by a specific national law (as stated in Option A of Article 32.1). If the Parties prefer nevertheless to submit the Contract to a national law, they should carefully check in advance, if the clauses of the model conform to the mandatory provisions of the law they have chosen. [↑](#footnote-ref-12)
12. The ICC Mediation Rules (Publication 865) which replace the ICC ADR Rules, effective as of 1 January 2014, can be found on the [ICC website](https://iccwbo.org/dispute-resolution/dispute-resolution-services/adr/mediation/mediations-clauses/).

The above is model Clause C: Obligation to Refer Dispute to ICC Mediation Rules, while permitting parallel ICC Arbitration proceedings if required. Other options are available for the parties to select, such as model Clause A (Option to Use ICC Mediation Rules), model Clause B (Obli­gation to Consider ICC Mediation Rules) or model Clause D (Obligation to Refer Dispute to the ICC Mediation Rules, followed by ICC Arbitration if required). See also [Mediation Guidance Notes](https://iccwbo.org/dispute-resolution/dispute-resolution-services/adr/mediation/mediation-procedure/). [↑](#footnote-ref-13)
13. If the Parties would like to keep the arbitration proceedings confidential, they should add a clause regarding the confidentiality of the arbitration proceedings or of any other matters in connection with the arbitration. [↑](#footnote-ref-14)
14. The ICC Arbitration Rules, effective as of 1 January 2021, can be found on the [ICC website](https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/rules-procedure/2021-arbitration-rules/).

Parties are free to adapt the clause to their particular circumstances: standard clauses are available in the previous link. For instance, they may wish to stipulate the number of arbitrators, given that the ICC Arbitration Rules contain a presumption in favour of a sole arbitrator. Also, it may be desirable for them to stipulate the place and language of the arbitration and the law applicable to the merits. The ICC Arbitration Rules do not limit the parties’ free choice of the place and language of the arbitration or the law governing the contract. Parties should also consider the guidance provided for emergency arbitrator, expedited proceedings, publication of awards and multi-tier clauses. When adapting the clause, care must be taken to avoid any risk of ambiguity. Unclear wording in the clause will cause uncertainty and delay and can hinder or even compromise the dispute resolution process. Parties should also take account of any factors that may affect the enforceability of the clause under applicable law. These include any mandatory requirements that may exist at the place of arbitration and the expected place or places of enforcement. [↑](#footnote-ref-15)
15. [↑](#endnote-ref-2)
16. To be drafted by the Parties. [↑](#footnote-ref-16)
17. Choose all or some of the Services. [↑](#footnote-ref-17)