



**INL**  
**GENERAL CONTRACT CONDITIONS**

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### General Contract conditions

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The INL, with headquarters in Braga, is an international legal entity established by the Portuguese Republic and the Kingdom of Spain with the purpose of providing a basis for scientific and technological co-operation between its Member States, especially in nanoscience and nanotechnology, by carrying out both fundamental and applied research as well as research essentially related thereto.

The INL Statute was signed on November 25th, 2006 during the XXII Spanish-Portuguese Summit, being subsequently approved by the Assembly of the Portuguese Republic and by the Spanish Parliament and respectively published in the Diário da República of November 22nd, 2007 and in the Boletín Oficial del Estado of January 18en, 2008. INL has its own legal status, enjoying the capacity to issue its internal operational regulations.

The INL General Contract Conditions were adopted by the Council in accordance with the Statute of the International Iberian Nanotechnology Laboratory, at its Seventh session held on 7 June 2010, and amended at its Forty-First Session, held on 24 April 2020, effective from 24 April 2020.

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**INL**  
**GENERAL CONTRACT CONDITIONS**

**Definitions**

- The term “INL” shall mean the International Iberian Nanotechnology Laboratory
- The term “combination of firms” shall mean a consortium, joint venture or any other arrangement between legal entities for the joint execution of the contract but shall exclude any sub-contractors. The terms “party” and “contractor” shall include any and all members of the combination of firms.

- The term “confidential information” shall mean any information related to the contract which has been identified as confidential or which can be reasonably understood to be confidential.

- The term “contract” shall mean a contract, a purchase order or other agreement for the provision of supplies or services to INL.

- The term “contractor” shall mean the party other than INL who has entered into the contract.

- The term “country(ies) of origin” shall mean:

For supplies: the country(ies) of manufacture or last major transformation of the supplies (including sub-assemblies and components) by the contractor or his sub-contractor(s);

For services: the country(ies) in which the contractor is established.

- The terms “day”, “week” and “month” shall mean a calendar day, week or

- The term “equipment” shall mean any infrastructure, premises and equipment made available by INL for the performance of the contractor’s obligations under the contract but shall exclude any materials.

- The term “force majeure” shall mean any circumstance beyond the reasonable control of the party invoking force majeure, including acts of nature, fire and war, which prevent it, wholly or partially, from performing its obligations under the contract. Strikes and other labour conflicts which do not form part of an industrywide conflict shall not constitute force majeure. A default of a sub-contractor shall in no event constitute force majeure for the contractor if it is not due to any of the circumstances defined above as force majeure.

- The term “general conditions” shall mean the general conditions of INL contracts.

- The term “intellectual property” shall mean all intellectual property, including know-how, in forms such as drawings, designs, documents, inventions, software



programmes, reports, processes and protocols, and protected by means such as secrecy, patents, copyrights and trademarks.

- The term “laws” shall mean all INL rules and regulations relevant for the execution of the contract and all laws, treaties, rules, regulations and orders of any local, national or other authority having jurisdiction over the contractor.

- The terms “party” and “parties” shall mean a party who has, or the parties who have, entered into the contract.

- The terms “sub-contractor” and “sub-contracting” shall include sub-subcontractors and sub-sub-contracting respectively, as the case may be.

- The terms “supply(ies)” and “service(s)” shall include any and all parts thereof.

### **1. Applicability**

1.1 The general conditions shall apply to contracts which stipulate that they apply.

1.2 Any reference made to a clause is a reference to a clause in the general conditions.

1.3 Where a contract for the purchase of supplies includes the provision of services, the clauses concerning services shall apply to such services and where a contract for the provision of services includes the provision of supplies, the clauses concerning supplies shall apply to such supplies.

### **2. Entry into force of the contract**

The contract shall be signed by the authorized signatory(ies) of the parties, and shall enter into force upon signature by the last of the parties to sign or in the date they expressly foresee in the contract.

### **3. Performance of the contract**

3.1 By signing the contract, the contractor confirms his acceptance of its provisions and that he is fully conversant with all the requirements of the contract and all the conditions associated with the performance of his obligations under the contract, and that the contract price is sufficient to meet such requirements and obligations.

3.2 The contractor shall perform his obligations under the contract with skill, care and diligence and in accordance with professional standards and the state of the art.



3.3 Where the contractor seeks any permission or approval by INL, the granting thereof shall not release him from the performance of his obligations under the contract or from any liability.

3.4 The contractor shall forthwith notify INL in writing of any circumstance that threatens to affect or affects the performance of his obligations under the contract, failing which he shall in no event be entitled to claim compensation of costs, an extension of time or any other remedy in relation thereto. He shall take such measures as are required to mitigate the consequences of any such circumstance for the contract.

#### **4. Documents comprising the contract**

4.1 The contract shall comprise the documents listed below, where they exist, including any amendments thereto:

- the terms of the contract;
- the service level agreement;
- the delivery schedule;
- the technical specification;
- the other annexes to the contract, excluding the invitation to tender and the general conditions;
- the invitation to tender, excluding the general conditions;
- the general conditions;
- the contractor's bid.

In the event of any ambiguity or contradiction between these documents, they shall apply in decreasing order of priority, starting from the top.

4.2 Notwithstanding clause 4.1, the contract shall in no event be subject to the contractor's general conditions, whether or not they form part of his bid or are referred to in any correspondence between the parties.

4.3 If any provisions of the contract are or subsequently become invalid for any reason, the remaining provisions shall remain in full force and effect.

#### **5. Combination of firms**

5.1 If the contractor is a combination of firms, the contract shall be signed by the authorized signatory(ies) of each member of the combination of firms.

5.2 The contractor shall not without prior permission in writing by the INL change:

- the lead firm representing the combination of firms;
- the composition of the combination of firms;



- the percentage shares of the amount of the contract or of the obligations under the contract allocated to each member of the combination of firms.

5.3 INL may terminate the contract in whole or in part with immediate effect if the contractor carries out any of these changes without its permission.

5.4 Each member of the combination of firms shall be jointly and severally liable for the performance of the contractor's obligations under the contract.

## **6. Countries of origin**

6.1 Any change of the country(ies) of origin or the percentage shares of the amount of the contract allocated to such country(ies) of origin shall require the prior permission in writing by the INL procurement service.

6.2 INL may terminate the contract in whole or in part with immediate effect if the contractor fails to comply with this obligation.

## **7. Representatives and correspondence**

7.1 Each party shall be represented exclusively by, and all notices and correspondence concerning the contract shall be communicated exclusively by and to, its contact person(s) or the unit(s) of the parties appointed to deal with the matter concerned. Any communication by or to any other person(s) or unit(s) shall have no effect under the contract.

7.2 If a party's contact person(s) or unit(s) is (are) not named in the contract, that party shall forthwith upon signature of the contract notify the other party in writing of the contact person(s) or unit(s) appointed to represent it.

7.3 Each party shall notify the other party forthwith in writing of any change of contact person(s), unit(s) or address.

## **8. Sub-contracting**

8.1 The contractor shall not without prior permission in writing by INL sub-contract the performance of any part of his obligations under the contract to any other sub-contractor(s) than that (those) which is (are) named in the contract.

8.2 Any permission given by INL to sub-contract shall apply exclusively to the specified obligation(s) sub-contracted and to the specified sub-contractor(s) and may be subject to conditions, it being understood that in any event:

- supplies and services representing more than 50% of the contract price shall not be sub-contracted to a single sub-contractor;





- obligations to be performed on the INL site shall not be sub-subcontracted;
- the management of the contract shall not be sub-contracted.

8.3 Any sub-contracting shall imply the contractor's agreement that, in the event of a breach of the performance of any of his obligations towards the sub-contractor(s), INL shall be entitled to exercise his rights and perform his obligations under the sub-contract(s). To this end, the contractor shall include the necessary provisions in the sub-contract(s).

8.4 Any permission given by INL shall not release the contractor from his liability for the performance of the sub-contracted obligation(s) and the contractor shall hold INL free and harmless from, and indemnify it for any loss or damage, including legal costs, arising from any claim related to the performance of such obligation(s).

8.5 INL may terminate the contract in whole or in part with immediate effect if the contractor sub-contracts the performance of any part of his obligations under the contract without its permission or fails to comply with any of the conditions attached to any permission granted by INL.

## **9. Assignment**

9.1 The contractor shall not assign any part of his obligations under the contract without prior permission in writing by INL. Any such permission may be subject to conditions.

9.2 INL may terminate the contract in whole or in part with immediate effect if the contractor fails to comply with this obligation.

## **10. Compliance with laws**

10.1 The contractor shall comply with laws, and shall hold INL free and harmless from, and indemnify INL for any loss or damage, including legal costs, arising from their infringement.

10.2 INL may terminate the contract in whole or in part with immediate effect in the event of infringement of laws by the contractor.

## **11. Personnel**

11.1 The personnel assigned by the contractor to the contract shall at all times remain under the sole direction and responsibility of the contractor. The contractor shall ensure that authorizations for access to the INL site are used by his personnel for the exclusive purpose of the performance of the contractor's obligations under the contract.



11.2 INL may refuse access to its site to any personnel assigned by the contractor to the contract who fail to comply with laws or whose presence on the INL site is deemed undesirable by INL.

11.3 The contractor shall be liable for the consequences of such refusal of access for the performance of his obligations under the contract.

## **12. Use of images, logos and names of INL**

12.1 The contractor shall not use or make reference to any images of INL, the INL logos or any of the names under which INL is known without prior permission in writing by INL. Subject to clause 12.2, any permission shall expire upon termination of the contract.

12.2 INL may withdraw any permission granted pursuant to clause 12.1 at any time.

## **13. Confidentiality**

13.1 The contractor shall keep confidential and shall not without prior permission in writing by INL disclose confidential information to any third party, or use it for any purpose other than the performance of his obligations under the contract. The contractor shall limit the circle of recipients of confidential information on a need-to-know basis and shall ensure that the recipients are aware of and comply with the obligations defined in this clause 13.

13.2 Notwithstanding clauses 13.1 and 13.4, the contractor is entitled to disclose confidential information which he is required by law to disclose. He shall notify INL of such disclosure and shall ensure that the recipients are aware of and comply with the obligations defined in this clause 13.

13.3 The obligations specified in clauses 13.1, 13.2 and 13.4 shall not apply in respect of confidential information:

- which has become public knowledge other than as a result of a breach by the contractor of these obligations; or
- which, in a lawful manner, the contractor has obtained from a third party without any obligation of confidentiality; or
- which was generated by the contractor independently of the contract.

13.4 The contractor shall continue to comply with the obligations defined in clause 13.1 for a period of five years from the date of disclosure.



#### **14. Intellectual property**

14.1 The disclosure of intellectual property by INL to the contractor shall not create any right for him in respect of that intellectual property, other than a license to use the intellectual property in so far as necessary for the performance of his obligations under the contract.

14.2 The disclosure of intellectual property by INL to the contractor is without any warranty, express or implied, by INL and INL accepts no liability in relation thereto. The contractor shall be solely liable for the use by him of any intellectual property disclosed by INL.

14.3 Any supplies and services provided by the contractor shall be deemed to include a license to all intellectual property necessary for the free and unlimited use of such supplies and services, including for their repair, modification and replacement by INL or by any third party designated by INL, within the scope of INL's activities.

14.4 The contractor shall ensure that the use of intellectual property within the scope of clause 14.3 does not infringe third-party intellectual property rights and shall hold INL free and harmless from, and indemnify it for any loss or damage, including legal costs, arising from any claim related thereto.

14.5 Any intellectual property generated in the performance of the contract shall be vested exclusively in INL and the contractor shall execute all documents and perform all acts required by INL to ensure such vesting.

#### **15. Equipment and materials made available by INL**

15.1 – If the contract requires INL making available certain equipment and materials, the contractor shall use the equipment and materials exclusively for the performance of his obligations under the contract.

15.2 The contractor shall be solely liable for the use of the equipment and materials until their return to INL. INL accepts no liability for such equipment and materials, which it makes available in their existing condition and without any express or implied warranty.

15.3 - The contractor shall not be liable for any delay incurred in so far as it has resulted from any replacement or repair of the equipment, provided that he has made a fair use of it and mitigated their consequences for the performance of his obligations under the contract.

15.4 The contractor shall at his own expense and in accordance with professional standards maintain, and if lost or damaged, replace or repair the equipment and materials. He shall notify INL forthwith in writing of any replacement or repair carried out on the equipment and materials.



15.5 Upon completion of their use under the contract, the contractor shall forthwith and at his own expense return the equipment and any remaining materials to INL. He shall be liable for any use of materials in excess of that agreed, but shall not be liable for normal wear and tear of the equipment or normal deterioration of the materials.

15.6 Title to the equipment and materials shall remain vested in INL. The contractor shall take such measures as may be necessary to make known and protect INL's title in accordance with laws, including by indicating the same in a visible and legible manner on the equipment and materials.

#### **16. Activities on the INL site**

The contractor shall not perform any activity or establish premises on the INL site other than as stipulated in the contract.

#### **17. Monitoring**

In order to monitor the performance of the contractor's obligations under the contract, INL and any party designated by INL shall be entitled to visit the premises of the contractor and his sub-contractor(s). If INL requests that it or any party designated by INL witnesses any tests or measurements to be performed by the contractor or his sub-contractor(s), the contractor shall give INL reasonable prior notice in writing of the date(s) and place(s) of such tests and measurements. In the event of failure by the contractor to give such notice, INL shall be entitled to demand at any time that such tests and measurements be repeated at the expense of the contractor, who shall be liable for any delay resulting therefrom.

#### **18. Documents**

18.1 The contractor shall keep available for inspection by INL and any party designated by INL all documents prepared by the contractor and his subcontractor(s) under the contract. If so required by INL, the contractor shall provide copies of such documents for use by INL.

18.2 If so requested by INL, the contractor shall transfer the documents to INL upon termination of the contract.

#### **19. Delivery**

19.1 The contractor shall not without prior permission in writing by INL deliver supplies and provide services at any date(s) or place(s) other than as specified in the contract.

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19.2 The contractor shall complete all formalities necessary for the delivery of supplies and provision of services in accordance with the contract, and shall be liable for any costs or delay resulting there from.

19.3 Supplies shall be packaged in a manner suitable for safe transportation, handling and storage and which clearly indicates the contract reference.

19.4 Any delivery receipt issued by INL for supplies shall solely constitute evidence of the number of separate packages delivered and the condition of the external packaging. It shall not constitute evidence that a specific quantity of supplies has been received, or that the supplies are in proper condition or perform properly, or that they are in any other respect in conformity with the contract.

19.5 INL may refuse delivery of supplies in case of an incorrect number of packages, damaged packaging, manifestly damaged supplies or formalities not having been completed.

19.6 INL may refuse the delivery of the supplies and the provision of services concerned and terminate the contract in whole or in part with immediate effect if:

- INL receives information from the contractor that he will not be able to deliver the supplies or provide the services in conformity with the contract;

or

- the date of delivery of the supplies or the provision of the services is not in conformity with the contract and leaves insufficient time to carry out the acceptance procedure defined in clause 21;

provided that, as a result, the delivery of the supplies or the provision of the services loses its purpose for INL.

## **20. Changes required by INL**

20.1 INL may at any time change the date(s) and/or place(s) of delivery of the supplies and provision of the services by giving prior notice in writing to the contractor. Such changes shall only affect the delivery date(s) and/or place(s) of the supplies and services concerned.

20.2 INL shall compensate the contractor for all costs wholly and necessarily incurred by him as a result of any change requested by INL pursuant to this clause 20, except as provided in clause 20.3

20.3 If INL postpones the delivery of supplies, the contractor shall, during the period of postponement, store, preserve, protect and otherwise secure the supplies. These measures shall be free of charge for INL during a period of two months.



20.4 In addition to its entitlement pursuant to clause 20.1, INL may at any time suspend with immediate effect any part of the performance of the contractor's obligations under the contract. INL shall provide the contractor with available details of the expected duration of the suspension and shall give the contractor notice for him to resume the performance of his obligations under the contract.

## **21. Acceptance procedure**

21.1 The contractor shall notify INL in writing of the delivery of the supplies and the provision of the services. INL shall be entitled to carry out a detailed inspection, including acceptance tests and measurements to verify the conformity of the supplies and services with the contract.

21.2 The supplies and services shall be deemed accepted by INL from the earlier of the following events:

- issue of a written notice of acceptance by INL; or
- payment by INL of their full price.

21.3 If any supplies or services are not in conformity with the contract, INL shall so notify the contractor in writing. In that event, the contractor shall forthwith and at his own expense take such remedial measures, including replacement if necessary, as may be required to ensure their conformity, whereupon the procedure defined in this clause 21 shall apply anew.

21.4 Notwithstanding clause 21.3, in the event of non-conformity, INL may terminate the contract in whole or in part with immediate effect if as a result of the time required for the taking of remedial measures and taking into account the specific nature of the supplies or services concerned, their delivery or provision has lost its purpose for INL.

21.5 If a period of three months from the date on which the contractor has given the notification referred to in clause 21.1 lapses without either of the events defined in clause 21.2 occurring or INL advising the contractor in writing that the supplies or services are not in conformity with the contract, the supplies and services shall be deemed accepted by INL on the day following the end of that period.

21.6 Title to the supplies shall transfer to INL upon their acceptance by INL.

## **22. Contract price**

22.1 The contract price shall be net, firm and inclusive of all costs relating to the performance of the contractor's obligations under the contract and take into account INL's exoneration from VAT and import duties.



22.2 Where the contract provides for a price revision mechanism, no revision shall apply as a result of a delay for which the contractor is responsible within the period covered by the revision. Any price revision shall in any event be limited to the compensation of cost increases actually incurred by the contractor in the performance of his obligations under the contract within the period covered by the price revision.

### **23. Invoicing and payment**

23.1 The contractor shall submit his full or final invoice to INL in accordance with such instructions as INL may give but in any event not later than three months following the acceptance of the supplies and services pursuant to clause 21.

23.2 The invoice shall be paid by INL up to one hundred and twenty (120) days from its date of issue or up to one hundred and twenty (120) days from acceptance by INL of the supplies and services pursuant to clause 21, whichever occurs the later, provided that:

- the invoice is correct and has been submitted in accordance with clause 23.1;
- and
- the contractor has submitted all other documents which he may be required under the contract to submit to INL prior to payment of the invoice.

23.3 Where any amount is payable by the contractor to INL under the contract, INL may deduct the same from any amount payable by it to the contractor.

### **24. Bank guarantee**

24.1 If so required by INL, the contractor shall provide a bank guarantee for the performance of his obligations under the contract. The guarantee(s) shall be issued by a bank approved by INL, for the amount stipulated in the contract and in the exact format specified in Annex of these conditions.

24.2 No advance payment shall be payable by INL until the contractor has provided a bank guarantee pursuant to clause 24.1.

24.3 If the expiry date of the bank guarantee is linked to a date or to a milestone stipulated in the contract, the contractor shall, whenever the date or the date of the milestone changes, immediately extend the bank guarantee until the amended date or until the amended date of the milestone. The contractor shall provide INL with proof of the extension as soon as it has been obtained.

24.4 Failure to extend the bank guarantee shall entitle INL to draw on it. The contractor shall be entitled to repayment (without interest) of the amount drawn by INL within one month of:



- replacement by the contractor of the bank guarantee by a bank guarantee extended to the amended date or to the amended date of the milestone;
- or
- the amended date or the amended date of the milestone;
- provided always that in the meantime no event has occurred entitling INL to draw on the bank guarantee for other reasons than those defined in this clause 24.4.

## **25. Warranty**

25.1 Except where the law governing the contract provides for a longer period, the contractor warrants the conformity with the contract of the services and supplies, including their proper performance, for a period of two years from the date of their acceptance pursuant to clause 21.

25.2 The contractor shall forthwith, at his own expense, take all necessary measures to remedy any defect notified to him by INL during the warranty period. This obligation shall extend to all supplies under warranty at the time the defect is notified that are performing properly but are likely to suffer from the same defect. The contractor shall notify INL in writing as soon as such remedial measures have been taken, whereupon the acceptance procedure defined in clause 21 shall apply anew.

25.3 If the contractor fails to meet any of his obligations defined in clause 25.2, INL shall at the contractor's expense be entitled to carry out the remedial measures by itself or through a third party of its choice. In that event, the contractor shall provide such assistance and take such measures as may be necessary to enable INL or any third party to carry out the remedial measures. INL's entitlement shall be without prejudice to the contractor's obligations defined in this clause 25 and to any other right or remedy INL may have in such circumstances.

25.4 Except where supplies are replaced, the warranty period for any supplies and services affected by the remedial measures shall be extended by a period equal to the time that has elapsed between notification by INL of the non-conformity and acceptance of the supplies and services concerned pursuant to clause 21.

25.5 INL shall at the contractor's expense be entitled to dispose of any replaced supplies which have not been collected within one month of the date of replacement.

25.6 The contractor shall be liable for all costs, including of any expertise, transport or insurance, arising out of or related to his warranty obligations pursuant to this clause 25.





## **26. Force majeure**

26.1 If a party is subject to force majeure it shall immediately notify the other party in writing thereof, giving details, including the expected duration of the force majeure. It shall immediately notify the other party in writing when the force majeure ceases.

26.2 The party who is subject to force majeure shall, during the continuance of the force majeure and subject to clause 26.1, be released from the performance of its obligations to the extent that such performance is affected by the force majeure. Such party shall make all reasonable efforts to minimize the consequences of the force majeure on the contract.

26.3 Each party shall itself be responsible for all direct and indirect financial consequences affecting it as a result of or in connection with the force majeure. The occurrence of force majeure shall not entitle either party to any additional payment or compensation.

26.4 If the force majeure continues for a consecutive period of no less than two months, the other party shall be entitled to terminate the contract in whole or in part with immediate effect without any liability for either party, except in so far as has accrued prior to the date on which the termination of the contract takes effect.

## **27. Liability**

27.1 Each party shall hold the other party free and harmless from, and indemnify it for loss and damage, including personal injury and death and related legal costs, resulting from its acts or omissions in relation to the contract.

27.2 Except in case of gross negligence or willful misconduct on its part, a party shall not be liable to the other for loss of contract, loss of income or revenue, loss of customers or reputation or any other indirect or consequential loss or damage.

27.3 Each party's total liability in relation to the contract shall be limited to the highest of the following amounts:

- the contract price;
- 650.000,00€
- the insured amount pursuant to the liable party's applicable insurance policy; except for:
- liability pursuant to clause 10.1 or to clause 14.4;
- liability for personal injury or death; and
- liability resulting from gross negligence or wilful misconduct;

which shall not be limited.

27.4 The contractor shall take out insurance to cover his liability under the contract and shall provide evidence of his insurance cover if so required by INL.



## **28. Termination by either party**

In addition to the entitlement to terminate the contract pursuant to clause 26.4, a party may terminate the contract in whole or in part with immediate effect in the event of:

- gross negligence or willful misconduct by the other party in relation to the contract, including fraud, (attempted) corruption and misrepresentation;

or

- any breach of contract by the other party which has not been remedied within the period stipulated by the party notifying the breach and requiring remedial action to be taken. It is understood however that without prejudice to any other entitlement to terminate pursuant to the contract, if pursuant to the contract penalties are payable for a specific breach of contract, the entitlement to terminate as a result of such breach shall only accrue once the maximum amount of penalties specified in the contract has become due;

or

- the other party making a composition or arrangement with its creditors, or becoming bankrupt or insolvent, or having an administrator or receiver appointed, or in the event of any circumstance similar or analogous to any of these events, including the situation where any of these events is threatening to occur.

## **29. Termination at will by INL**

In addition to the entitlement to terminate the contract pursuant to clauses 5.3, 6.2, 8.5, 9.2, 10.2, 19.6 and 21.4, INL may at any time terminate the contract at will in whole or in part with immediate effect.

## **30. Consequences of termination**

30.1 In the event that the contract is terminated in whole or in part by the contractor pursuant to clause 28, or at will by INL pursuant to clause 29, INL shall compensate the contractor for all costs wholly and necessarily incurred by him in the performance of his obligations under the contract prior to the date on which the termination takes effect. For supplies, the total amount of such compensation shall not exceed the part of the contract price unpaid by INL at the date of termination. For services, the total amount of such compensation shall not exceed the amount payable for the provision of the services for a period of three months, calculated on the basis of the average monthly contract price paid by INL prior to the date on which the termination takes effect. The foregoing is without



prejudice to any amounts due for services provided by the contractor in conformity with the contract.

30.2 In the event that the contract is terminated in whole or in part by INL pursuant to clause 5.3, 6.2, 8.5, 9.2, 10.2, 19.6, 21.4 or to clause 28, the contractor shall compensate INL for all costs wholly and necessarily incurred by it as a result of such termination. Such costs shall include the additional costs of having any contractual obligation performed by a third party of INL's choice.

30.3 Subject always to clause 27, the liability defined in clauses 30.1 and 30.2 shall be without prejudice to any other liability which may arise pursuant to the contract, which shall be calculated independently.

### **31. Concessions and waivers**

No concession or waiver made by a party to the other in respect of any breach shall prejudice or restrict the former party from exercising its rights pursuant to the contract.

### **32. Clauses which survive termination of the contract**

Notwithstanding termination of the contract, its provisions shall continue to bind the parties in so far and for as long as may be necessary to give effect to their respective rights and obligations accrued prior to termination. Clauses 13, 14, 15, 24, 25, 27, 34 and 35 shall in any event survive the termination of the contract.

### **33. Communications in writing**

Whenever the contract stipulates that a communication is to be made in writing, the requirement shall be deemed to be met if it is made by letter, fax or electronic mail, it being understood that the burden of proving that the communication was made shall at all times remain with the issuing party. Written notification shall be deemed to have taken place on the date of receipt of such notification by the receiving party.

### **34. Governing law**

34.1 The provisions of the contract shall be interpreted in accordance with their true meaning and effect. Without prejudice to INL's status as an International Organization, reference shall be made to Portuguese substantive law where:

- a matter is not specifically covered by the contract; or



- a contract provision is ambiguous or unclear.

34.2 Such reference shall be made exclusively for the matter or contract provision(s) concerned, and shall in no event apply to any other provisions of the contract.

34.3 The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

### **35. Arbitration**

35.1 If any dispute under the contract fails to be settled amicably, and in face of the non-appliance of the mechanisms of settlement of disputes foreseen in Chapter IV of the INL Headquarter Agreement, the parties shall resort to the arbitration procedure as defined in clauses 35.2 to 35.8 inclusive, drawn up by INL in accordance with its status as an International Organization. Notwithstanding reference of any dispute to arbitration, the parties shall continue to perform their obligations under the contract.

35.2 Within thirty days of written notification by a party to the other party of its intention to resort to arbitration, the first party shall appoint an arbitrator. The second party shall appoint an arbitrator within three months of the appointment of the first arbitrator. The two arbitrators shall, by joint agreement and within three months of the appointment of the second arbitrator, select a third arbitrator, who shall subsequently be appointed by the parties to preside over the arbitration tribunal.

35.3 If the second party fails to appoint an arbitrator or the two arbitrators fail to agree on the selection of a third arbitrator, the second or, as the case may be, the third arbitrator, shall be selected by the President of the Administrative Tribunal of the International Labour Organization, and subsequently appointed by the parties, at the request of the first party to do so.

35.4 None of the arbitrators shall be drawn from amongst persons who are or have been in any way in or at the service of INL or of the contractor or of any subsidiary or affiliate of the latter. They shall act impartially in the execution of their duties.

35.5 The arbitration proceedings shall take place in Braga. The parties shall within thirty days of the appointment of the third arbitrator agree on the terms of reference of the arbitration tribunal, including the procedure to be followed.

35.6 The arbitration tribunal shall faithfully apply the contract and shall set out in the award the detailed grounds for its decision. The costs of the arbitration, including all reasonable fees expended by the parties, shall be borne by the unsuccessful party or parties and the award shall include an allocation of such costs. The arbitration tribunal shall have no authority to award interest.



35.7 The arbitral award shall be final and binding upon the parties, who hereby expressly agree to renounce any form of appeal or revision, whether ordinary or extraordinary, it being understood that each party may within two weeks from the date of the award request the arbitration tribunal to give a written interpretation of the arbitral award or to correct computation or typographical errors. The interpretation or correction shall be made known to the parties within two months from the date of the request and shall become part of the award. Until the date of the delivery by the arbitration tribunal of any requested interpretation or correction, the execution of the arbitral award shall be suspended.

35.8 Save to the extent required by law, the arbitral award shall not be published or its contents made known to any third party, unless each party gives prior written approval.

### **36. Amendments**

Any amendment to the contract shall only enter into force upon signature by the authorized representative(s) of each party.

A handwritten signature in blue ink, appearing to read "L. Mankel", is located at the bottom right of the page.

## ANNEX

### Bank Guarantee

We, [name] of [address and fax number], have been informed by our clients, [name] (“the contractor”), that they have entered into contract [contract reference] (“the contract”) of [date of conclusion of contract] with the International Iberian Nanotechnology Laboratory (“INL”). Pursuant to the contract, the contractor is required to deliver a bank guarantee to INL to guarantee the proper performance by the contractor of his obligations under the contract.

We, hereby guarantee irrevocably and unconditionally, as primary obligor and not merely as a surety, to pay to INL upon its first written demand the amount stipulated by INL, up to a maximum amount of [maximum amount]

We undertake to make this payment without any deduction, withholding, counterclaim, interplead, limitation, condition, set-off or any right of objection on our part. We agree that there shall be no obligation on INL to prove that the contractor is in breach or that INL has suffered any loss or damage, to show reasons for its demand, or first to make demand on or take any proceedings against the contractor.

We agree that our liability under this guarantee shall not be discharged in whole or in part or otherwise affected by any reason whatsoever, except by our payment to INL of the maximum amount stated above or by the expiry of this guarantee in accordance with that stated hereunder.

This guarantee shall remain valid and in full force and effect from the date hereof until/inclusive 30 days from [date] , whereupon it shall cease to have effect, save in respect of any demand notified to us prior to the expiry of the said period of 30 days.

We confirm that our obligations under this guarantee are enforceable against us under the laws of the courts that have jurisdiction over our place of establishment.

We agree that we shall not assign, charge or transfer this guarantee to any person under any circumstances.



Any notice or other communication under this guarantee shall be made by fax or by registered letter to the respective addresses and fax numbers set out above.

Date:

Signatures of authorized officer(s):

A handwritten signature in blue ink, appearing to read "L. Markel".