





# Standard Contract for Investment (CTI)

EN – IP – 12/2016

Address:	PRAYON, Technical Purchasing Department	<b>CONTRACT</b>  <b>PURCHASE ORDER:</b> <b>Document revision number: : 0</b>  <b>PROJECT NUMBER:</b>  <b>LOT NUMBER AND DESCRIPTION:</b>
	Rue J. Wauters 144	
	B – 4480 Engis	
	Belgium	
	 +32 4 273 95 74  +32 4 273 92 51  +32 471 77 66 02  <a href="mailto:ipolard@prayon.com">ipolard@prayon.com</a>	
Supplier:		
Address:		<b>SPECIAL INSTRUCTIONS:</b> <ul style="list-style-type: none"> <li>The Purchase Order number must appear on all correspondence and invoices</li> </ul>
Contact:		
Tel.:		
Fax:		
E-mail:		

Date:

Incoterms 2010: DDP Engis site

Payment terms: see section 15

Currency: EUR

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## 1. THE PARTIES

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This CONTRACT is concluded between:

### **PRAYON**

A company incorporated under Belgian law with VAT number BE0405747040 (RPM Liege), represented by Mrs Ingrid Polard, Head of the Technical Procurement Department, hereinafter "**PRAYON**"

and:

\_\_\_\_\_ a company incorporated under xxxxxx law with VAT number \_\_\_\_\_ represented by  
hereinafter "**Supplier**"

## 2. PURPOSE OF THE CONTRACT

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The Contract is awarded by PRAYON to the Supplier for lot \_\_\_\_\_ in the \_\_\_\_\_ project on the Engis site.

## 3. FORMATION OF THE CONTRACT

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The Contract is formed on the day of its signature by the two parties or, failing that, on the day of its acknowledgement of receipt by the Supplier, and states the date on which it takes effect.

This Contract and the PRAYON Purchase Order are an integral part of the Contract and are sent simultaneously to the Supplier.

The Supplier must acknowledge receipt of each written order within 8 calendar days of notification thereof by returning a copy of the purchase duly initialled, dated and signed by a duly authorised Representative, either by post or by e-mail to Mrs Ingrid Polard.

By the same token, the Contract shall be deemed to be concluded upon the start of performance of the order by the Supplier.



Acceptance of the Contract by the Supplier implies that the Supplier waives its Sales General Terms and Conditions and adopts PRAYON's Purchasing General Terms and Conditions.

#### 4. CONTRACTUAL DOCUMENTS

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The documents listed below constitute the Contract. They must be interpreted in respect of each other. In the event of ambiguities and/or anomalies between the documents appended to this Contract, the documents shall take precedence in the order listed below. However, it is agreed between the parties and expressly by the Supplier that PRAYON's documents always take precedence over others, and the most recent version of a document (as expressly approved in writing by PRAYON) always takes precedence over earlier versions of the same document.

No.	Document description	Revision / Date	Issued by
1	This document, "PRAYON Contract Lot .... "	Rev:	PRAYON
2	Non-Disclosure Agreement (NDA)	Date....	PRAYON
3	PRAYON's General Conditions	Rev.: .....	PRAYON
4	Technical Specifications ~~~ Rev.:	N/A	PRAYON
5	Plans	N/A	PRAYON
6	Health & Safety Plan (PSS) or ADRAC	.....	PRAYON
7	General Safety Rules	.....	PRAYON
8	Special conditions for the project	N/A	PRAYON
9	Civil Liability Insurance Clause	Rev.:.....	PRAYON
10	AEO: Authorized Economic Operator	Rev.: ....	PRAYON
11	Latest offer from the Supplier (excluding the Supplier's general conditions).	Ref....	SUPPLIER

#### 5. CORRESPONDENCE

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Any correspondence pertaining to this Contract must be sent to:

Technical Procurement Department:

Mrs Ingrid Polard  
Head of the Technical Purchasing Department  
Rue Joseph Wauters 144  
B-4480 Engis  
Belgium  
Telephone: +32 4 273 95 74  
Fax: +32 4 273 92 51

For technical matters:

Mr XXX  
Senior Project Engineer  
E-mail: [XXX@prayon.com](mailto:XXX@prayon.com)  
Telephone: +32 4 273 94 52  
Mobile: +32(0) 497 59 12 08

For downpayment requests and invoices:



The Engis site or its subsidiary  
Accounts Department  
Rue Joseph Wauters 144  
B-4480 Engis  
Belgium  
Telephone: +32 4 273 92 35  
E-mail: [cptelecincoming@prayon.com](mailto:cptelecincoming@prayon.com)

All documents must reference the Purchase Order number, the Contract reference, and must be written preferably in French, otherwise in English.

The provision of all Contractual documents is an integral part of the Supplier's obligations. The Supplier will only be released from said obligations after submitting said documents to PRAYON by the stipulated dates and under the stipulated conditions.

## 6. CONDITIONS FOR PERFORMANCE

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### 6.1 Kick-off meeting

Within no more than five calendar days after the signature of the Contract, a kick-off meeting will be held on the premises of PRAYON, either at its initiative or at the Supplier's initiative. During the meeting the attendees will specify relations between the parties and the list of contacts (with names) will be drawn up.

### 6.2 Conditions for performance

The Supplier is responsible to PRAYON for the smooth performance of the Contract awarded to it. Upon signature of the Contract, the Supplier will appoint a Project Leader.

If the project leader is no longer able to perform his duties, the Supplier must immediately inform PRAYON and take all steps to ensure that the smooth performance of the project is not compromised. The Project Leader appointed by the Supplier must be replaced within 7 calendar days of the position becoming vacant. The name and titles of the new Project Leader must be communicated to PRAYON.

For the sake of convenience and safety, some of the assembly staff, including the Site Manager or Supervisor, must speak French or English.

#### 6.2.1 Site meeting

The Supplier's special attention is drawn to its obligation to collaborate, coordinate and inform in terms of applying health, safety and hygiene rules arising under legal provisions, regulatory provisions, applicable collective agreements and arising under PRAYON's applicable General Safety Rules.

The Supplier will be required to attend site meetings planned by PRAYON during the equipment assembly, commissioning, and performance and reliability testing phases.

Any non-justified absence from such meetings will be subject to penalties as defined in section 14.4.

### 6.3 Quality assurance

The performance of this Contract is subject to quality assurance rules in accordance with the clauses indicated in the Specifications or according to ISO 9001.

The Supplier will transfer to its subcontractors the quality assurance clauses applicable to this Contract and will remain fully responsible for the application by said subcontractors.

#### **6.4 Transfer and Subcontracting**

The Supplier may not transfer any the Contract, either in whole or in part, without the prior written authorisation of PRAYON.

The Supplier is required to personally perform the obligations incumbent upon it under the order, which it cannot have without PRAYON's prior express and written authorisation.

If such authorisation is given, the Supplier is required to submit to PRAYON the list of its subcontractors. PRAYON may, at its discretion, refuse to approve any subcontractor it deems to be unsatisfactory. This decision is final and does not have to be justified.

In all circumstances, the Supplier remains exclusively responsible to PRAYON for the performance of the Contract.

### **7. PERSONNEL**

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#### **7.1 Competence, duty service and training for Supplier teams**

The Supplier shall assign teams to the performance of the Works and Services which have the experience, competence, qualifications, authorisations and certifications required for the correct performance of the Works and Services.

The Supplier is responsible for managing and inspecting the Works and Services performed by its teams, which remain under the Supplier's full hierarchical authority.

Indications or requests made by PRAYON with respect to the performance of the Works and Services may only be sent to the Supplier's operational Representative(s). This situation creates no relationship of subordination between said Representative(s) and PRAYON.

#### **7.2 Reception on-site and official language of the site**

If the Works and Services are performed in whole or in part on a PRAYON site, the Supplier must ensure that its teams comply with the internal rules of the site and must ensure that all relevant personnel wear any identifying elements required by PRAYON, and will do so for the entire duration of their presence on-site. The Supplier's operational Representative(s) in charge of the teams and its safety officer present on the site must fluently speak the official language of the site where the Works and Services are performed, and must be able to pass on - and ensure that the Supplier's teams comply with - all instructions, rules and procedures applicable on-site.

#### **7.3 Measures to combat undeclared work**

For the performance of the Works and Services, the Supplier declares that its personnel and the personnel of any subcontractors assigned to the performance of the Works and Services are lawfully employed and declared in respect of the applicable legislation.

Moreover, if the Supplier and its subcontractors, if any, intend to deploy foreign individuals for the performance of the Works and Services, the Supplier certifies that such individuals will, during their activities on a PRAYON site, be authorised to work in the country where the site is located and will have the necessary work permits and residence documents.

The Supplier will ensure compliance with the provisions of Articles 7.1 and 7.2 by its subcontractors, if any, and will obtain from said subcontractors the declarations and certifications stipulated this Article 7.3.

#### 7.4 LIMOSA

If the Supplier is a company whose registered office is not located in Belgium and if an employee of the Supplier based abroad is assigned to the performance of Services in Belgium, the said employee of the Supplier must be declared to the Belgian authorities (LIMOSA declaration). The Belgian authorities will issue a "LIMOSA-1 acknowledgement of receipt". This acknowledgement of receipt must be submitted by the employee of the Supplier in question to the safety officer upon his arrival at the PRAYON site and must be kept on his person at all times by the employee of the Supplier in question during his stay in Belgium. Registration and declaration can be effected and processed on the relevant website of the Belgian authorities: [www.limosa.be](http://www.limosa.be).

### 8. TECHNICAL MODIFICATIONS DURING PERFORMANCE OF THE CONTRACT

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PRAYON reserves the right to apply to the services covered by this Contract any modifications it deems appropriate or necessary.

PRAYON can prescribe technical modifications or accept modifications proposed by the Supplier: such modifications pertain to the services defined in the technical specifications.

To that end, any modification envisaged by PRAYON during the performance of this Contract will be subject to a request confirmed by letter sent to the Supplier.

If the envisaged modifications entail an increase or decrease in agreed prices or delivery times, they must be subject to a prior agreement stipulating the increase or decrease in prices and, where appropriate, the new timetable for performing the services.

Any impact on the project corresponding to the application of the modification will be stipulated under the conditions applicable at the time of the initial order.

The negotiated prices will be firm and not subject to revision.

Save for an express reservation on its part, the Supplier is then required, if said modification has an impact on the prices or delivery times, to indicate the nearest date by which it will be able to submit a detailed estimate indicating the increase or reduction in price as well as the modifications to delivery times. Under no circumstances may such an estimate be submitted to PRAYON more than one month after the date of the request.

Within 15 days of the date of receiving the estimate, PRAYON undertakes to confirm the impact, reject the modification or change the nature thereof. The latter case will be treated as a new request.

Payment for such modifications will be made in accordance with the payment terms stipulated in the amendment.

### 9. PRICES

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#### 9.1 Flat-rate price

9.1.1 The total net price (excluding VAT) negotiated for the flat-rate part of the Contract or the entire Contract is a fixed and firm price that is not subject to revision. --- It is:

€ - in letters (            euros)

9.1.2 In addition to the stipulations set out in the Contractual documents, this price includes:

- all requests, work permits and authorisations needed to perform the Contract;
- all expenditure pertaining to compliance with the General Safety Rules and Instructions as well as the health and safety measures defined in the Health and Safety Plan (PSS).

- all expenditure pertaining to administrative management and reproduction costs of plans and other documents, travel costs and accommodation costs.
- Costs are itemised as follows: see offer with reference:            or fill in the table:

Pos.	Reference	Description	Price in euro, excl.
1			
2			
3			
		<b>Total:</b>	

The itemisation of costs and the general flat rate will include at least the following items:

- Price of studies, plans and engineering
- Price of equipment and all sub-units with a price for each unit
- Documentation, service instructions, manufacturer's declaration
- Costs of inspections and acceptance by an authorised organisation + reports
- EC declaration for the supply
- Transport DDP Engis
- Supervision for assembly, commissioning and performance tests
- Commissioning
- Spare parts for two years and delivery times for each part
- Maintenance Contract for two years

## 9.2 Firm prices

The prices defined in the order are fixed and are not subject to increase. In the case of an increased scope, the hourly rates and unit prices stipulated in section 9.3 will be used to calculate supplements. PRAYON reserves the right to launch a new call for tenders to cover the new needs.

If the unit prices are not defined in the offer, the Supplier will provide prior to performance an offer that must be validated by PRAYON's Technical Procurement Department.

The prices mentioned above are all-in prices. They include on-site materials according to Incoterms 2010 and all costs and taxes (except VAT) incurred by the Supplier for performing the Contract as well as travel costs, accommodation costs, wages and insurance for the Supplier's personnel until Final Acceptance.

## 9.3 Unit prices

If, upon signature of the Contract, the parties have agreed on unit prices for just one part of the project, the final price will be calculated on the basis of quantities actually measured.

The total amount specified in section 9.1 will therefore be updated.

Add table with unit prices for each specialist (welder, mechanic, Supervisor, engineer, etc.)





## 10. OPTIONS

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PRAYON may, in line with the firm and non-revisable prices and with the dates indicated below, order the following options:

Option no.	Description	Unit price, excl. VAT	Qty	Total price excl. VAT
<b>Total:</b>				

These options can be the subject of a separate order with agreed prices.

The Supplier undertakes not to reject the addition of options.

## 11. DELIVERY TIMES

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The delivery date indicated on the Contract and the PRAYON order, as well as the delivery times indicated in clause 15.1, are firm.

The Supplier acknowledges that it will be deemed, without any further formality, to have defaulted on delivery if the delivery deadlines are exceeded.

PRAYON reserves the right to postpone the initially planned date of delivery as defined in section 15.1 for reasons attributable to PRAYON, informing the Supplier at least one month in advance in writing.

Both Parties will meet after such notification to redefine a new schedule.

If said deadlines are not met, as defined in section 15.1, PRAYON reserves the right to cancel the order in question even if no settlement has been legally decided, and to do so without prejudice to any damages which PRAYON may be prompted to demand from the Supplier as compensation for the damage that PRAYON has suffered due to said default.

PRAYON also reserves the right to Contract with another Supplier of its choice for the provision of supplies or equipment that are the subject of the Contract in question.

In such case, the difference between what PRAYON will pay to said new Supplier and what PRAYON should have paid for the performance of the order in question, as well as the expenses entailed by said new purchase, will be payable by the defaulting Supplier.

## 12. CONTRACT exclusions

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The following items are excluded from the services and/or performance: **XXXX**

## 13. PERFORMANCE COMMITMENT AND RELIABILITY OF THE FACILITY

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### 13.1 Performance tests

The performance tests make it possible to check that the equipment which is the subject of this Contract is capable of achieving the guaranteed performance as defined in section 13.2.



The performance achievement certificate is the document signed by the Supplier and PRAYON and serves as material proof that the tests were passed.

This certificate will be issued and provisional acceptance will be decided only if the performance stipulated in section 13.2 and 13.2.1 has been achieved.

The Supplier has two tests for achieving guaranteed performance.

The Supplier will bear all the costs of its personnel taking part in these tests.

After each test, the Supplier and PRAYON will jointly draft a report stipulating the results of the test.

If the guaranteed performance has not been achieved upon completion of the first test, the Supplier must inform PRAYON of the reasons for such non-achievement and the modifications, measures or resources it plans to deploy prior to a new test.

If performance has not been achieved upon completion of the second test, PRAYON reserves the right to request the application of penalties provided in section 14.2 and to call on the bank guarantee.

### **13.2 Performance commitment**

The Supplier for this Contract commits to the following performance of its facility:

For provisional acceptance, the following parameters must be validated for XX consecutive days:

To be completed by PRAYON

#### **13.2.1. Performance commitment for Commissioning**

For commissioning, in addition to training PRAYON management and personnel, the following parameters must be checked for a period of 8 hours:

To be completed by PRAYON

### **13.3 Equipment reliability commitment**

The equipment availability rate is calculated on a continuous operating basis in 24/7 mode for the entire year.

No more than two days of downtime is tolerated for reasons attributable to the Supplier's equipment.

A maximum of one annual stop will be attributable to PRAYON during the equipment maintenance period.

Downtimes taken into account will be shutdowns directly attributable to equipment supplied by the Supplier.

In the event of failure to comply with this reliability commitment, the Supplier will deploy the resources needed to meet its commitment. The equipment guarantee will be extended by periods of three months until the commitment is met.

The guarantee period may not exceed 36 months.

## 14. PENALTIES

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### 14.1 Late penalties

In the event of late delivery attributable to the Supplier, PRAYON may, at its discretion and without prior notice, either cancel all or part of the order by simply notifying the Supplier, or automatically apply, as a penalty clause, a final withholding equivalent to 1% of the total amount of the order per week of delay, not to exceed 10%, and without prejudice to damages to compensate for actual prejudice suffered.

Any event attributable to PRAYON or which would constitute a case of force majeure and would be likely to entail the missing of Contractually agreed deadlines must be notified to PRAYON by registered letter within 10 days on penalty of forfeiture of the Supplier's right to suggest an extension to the performance deadline. In any case, such extension of the delivery deadline must be set out in a written amendment.

### 14.2 Performance-related penalties

In the event of failure to meet its performance commitments defined in section 13, the Supplier undertakes at its expense to modify the equipment until the expiry of the guarantee period. The Supplier must effect all necessary modifications to the equipment in order to achieve the objective.

All expenses pertaining to any such equipment requalification tests shall be borne by the Supplier.

If, despite everything, performance requirements are not met, PRAYON may apply compensatory penalties of up to 15% of the amount of the order.

Such penalties apply to each performance requested and may be combined.

### 14.3 Penalties for failure to comply with PRAYON's safety rules

For each instance of non-conformity with PRAYON's safety instructions, PRAYON will demand of the Supplier a provision of 0.5% of the flat-rate price per case per day, not to exceed 5%, until such time as total conformity is achieved.

### 14.4 Penalties for absence from PRAYON site meetings

A flat-rate amount of one thousand euros (€1,000) will be applied to each unjustified absence of the Supplier's Supervisor from site meetings scheduled at PRAYON's initiative.

### 14.5 Penalties for failure to comply with Contractual unit prices

If the Supplier fails to comply with the Contractually stipulated unit prices and/or hourly rates in its billing and/or in the management of supplements, it undertakes to immediately correct its prices and to pay compensation equivalent to 10% of the amount of the value of the unit prices impacted.

In all cases, the combination of all penalties may not exceed 15% of the general flat-rate amount of the order, as stipulated in section 9.1.1.

## 15. PAYMENT TERMS & CONDITIONS

### 15.1 Payment Terms

Prior to payment, all invoices will be subject to PRAYON's approval according to the terms defined below. Invoices must include mandatory information, such as order reference number, progress report, quantities and delivery dates.

Contractual deadlines are calculated on the basis of the date of notification of this order.

No.	Description of the payment terms	Planned date	% of the Contract value	Accumulated amounts (€)	Penalties *
1	<ul style="list-style-type: none"> <li>• <b>Payment of the downpayment subject to the following conditions:</b> <ul style="list-style-type: none"> <li>- Submission of an unconditional order acknowledgement of receipt, and the signed Contract</li> <li>- Submission of insurance certificates</li> <li>- Submission of the performance schedule</li> <li>- Sworn statement (Annex 1)</li> <li>- Submission of the Special Safety Plan AEO certificate, signed NDA and proof of civil liability insurance</li> <li>- Submission of a bank guarantee compliant with Annex 2 and the conditions of the Contract</li> </ul> </li> </ul>		XX%		
2	<ul style="list-style-type: none"> <li>• <b>After submission of the workload</b> schedules and PID (30 days after confirmation of the Purchase Order)</li> </ul>		XX%		P
3	<ul style="list-style-type: none"> <li>• <b>After on-site inspection</b> and before delivery</li> </ul>				
4	<ul style="list-style-type: none"> <li>• <b>After delivery</b> of all equipment to the PRAYON site and the issuance of the LIMOSA declaration for foreign workers present on the PRAYON site.</li> </ul>		XX%		P
5	<ul style="list-style-type: none"> <li>• <b>After successful Commissioning</b> and restart of the equipment.</li> </ul>		XX%		
6	<ul style="list-style-type: none"> <li>• <b>Upon provisional acceptance:</b> <ul style="list-style-type: none"> <li>Submission of full documentation as defined in section 22.1</li> <li>Performance and reliability tests passed</li> <li>List of spare parts closed,</li> <li>Plans and documentation submitted (As Built, etc.)</li> </ul> </li> </ul>		XX%		P
7	<ul style="list-style-type: none"> <li>• <b>Upon final acceptance:</b> <ul style="list-style-type: none"> <li>Release of the final acceptance bank guarantee</li> <li>24 months after the date of provisional acceptance</li> </ul> </li> </ul>				



\*Penalties apply to the payment term when the Penalty box is marked with a letter P.

**15.2 Payment conditions**

Unless stipulated otherwise in the order, invoices will be issued by the Supplier at the end of the service provision.

Unless stipulated otherwise in the special conditions, payments are made 90 days after the end of the month in which the invoice is dated.

When staggered payments are planned, they are payable in accordance with the performance schedule as stipulated in the order's special conditions. The percentage of downpayments will be deducted from the amount, excluding taxes, of the price set out in the order.

In any case, PRAYON may, at its discretion, demand that the downpayments paid be covered by a security or any other guarantee that PRAYON deems satisfactory.

The payment, including payment in full, in no way implies that PRAYON waives any rights which it could enforce in respect of the Supplier.

In the event of non-performance by the Supplier of any of its obligations under the order, all of its debts and claims in respect of PRAYON are considered as resulting from a single Contractual commitment. Consequently, PRAYON will be authorised either to effect withholdings from any invoice sent by the Supplier, even those not pertaining to the order giving rise to non-performance, or to offset its own claims, whether or not pertaining to the order that gave rise to non-performance.

**16. SCHEDULE**

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**16.1** The dates communicated by PRAYON are to be considered as the Contractual dates in force for the performance of the Contract.

**16.2** The schedule for the options contains the following milestones:

Description of options:	Final completion date:	Penalties:

**17. BANK GUARANTEE**

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The Supplier undertakes to send to PRAYON, against payment of the downpayment invoice, an irrevocable and unconditional bank guarantee releasable upon first request in an amount of XX% of the total amount of the order under the Contract.

100% of the bank guarantee will be released upon final acceptance provided that such final acceptance is complete and satisfactory, and provided the list of reservations has been finalised and closed.

The original of the bank guarantee must be sent to the Technical Procurement Department.

No payment will be made by PRAYON to the Supplier, unless and until PRAYON has received such a bank guarantee. Such bank guarantees will not expire before the date of provisional acceptance and the date of final acceptance of the Equipment.

All bank guarantees must be irrevocable and unconditional and must be callable upon first request by PRAYON, and/or could be extended if PRAYON so requests of the Supplier.

## 18. TRANSFER OF OWNERSHIP AND RISKS

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The risks pertaining to the products delivered are transferred in application of Incoterms 2010, as specified in the order.

Any reservation of ownership clause not expressly accepted by PRAYON in the special conditions pertaining to the order is deemed not to exist.

## 19. FORCE MAJEURE

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The term 'case of force majeure' refers to any unstoppable and unforeseeable cause outside the control of the parties that hinders the full or partial performance of the Contract. The fact of the performance of the Contract being rendered unusually difficult or onerous does not constitute a case of force majeure.

To be considered eligible, the case of force majeure must be reported to the other part by e-mail or fax within 48 hours following the start of the event and confirmed immediately by letter.

Examples of force majeure include strikes, serious social unrest, accidents, fires, explosions, floods, rebellions, revolutions, wars, blockade, embargos, export or import bans or any other act by a government or public authority, and serious accidents involving industrial facilities preventing their operation.

The party invoking force majeure must endeavour to limit the impact thereof on the performance of the Contract and will resume such performance once the force majeure event has ceased.

If, pursuant to such force majeure event, the Contract cannot be performed within a reasonable period of time, either party may terminate the Contract without compensation.

The Supplier affected by a reported case of force majeure as stipulated above may not be exempted from obligations pertaining to delivery times and in so far as they are directly impacted by the case of force majeure.

## 20. TERMINATION

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Except in the event of force majeure, the Supplier must answer for full or partial non-performance of the services and non-compliance with its obligations.

PRAYON may terminate ipso jure the Contract in the event of Supplier default and demand of the Supplier compensation for any additional expenses incurred by such default and remedy for any resulting prejudice, within the framework of its Contractual responsibility, without such termination entitling the Supplier to any compensation whatsoever.

The Supplier will be informed of termination of the Contract by registered letter. Termination does not exempt the Supplier from late penalties incurred on the date of termination.



In the absence of Supplier default, PRAYON may at any time terminate the Contract in full or in part via payment to the Supplier of the expenses incurred by it for the performance thereof on the date of termination and, where appropriate, compensation to be mutually agreed and within the legally stipulated limits.

Within 15 days of receiving the letter informing it of termination, the Supplier must make available to PRAYON, or a third party designated by PRAYON, the documents used for performing the services, as well as all data, books, manuals, copies of plans, information, etc. established for and by it in connection with the Contract, and transfer to PRAYON all rights arising from subContracting arrangements concluded by the Supplier in connection with the Contract.

In the event of composition with creditors, bankruptcy or liquidation of the Supplier, the Contract will be terminated ipso jure.

PRAYON may terminate ipso jure the Contract in the event of merger, absorption, major change of shareholders in the Supplier by paying to the Supplier the expenses incurred by the Supplier for the performance of the Contract on the date of termination and, where appropriate, compensation to be defined by mutual agreement.

## 21. CERTIFICATES REQUIRED BY LAW

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The Supplier undertakes to provide to PRAYON, on its own initiative and at the intervals required by the relevant legislation, and in any case shortly after any request made by PRAYON, any compliant certificate and/or attestation required by the relevant legislation, in particular with regard to taxation, labour law, social security contributions and insurance.

Failure to supply such documents on the required date can prevent the acceptance of the Contractual event following the date of observation of such failure, as figuring in the timetable established in section 15, and/or result in withholding of payment.

## 22. ACCEPTANCE OF THE FACILITY

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### 22.1 Provisional acceptance

Tests must result in acceptance of the equipment, taking the form of approval for commissioning of the equipment. Provisional acceptance will pertain to all of the equipment and all the products enabling its operation. This service is an integral part of the amount of the order.

Otherwise, a non-conformity report will be produced and the Supplier will be responsible for achieving conformity. Once conformity has been achieved, PRAYON undertakes to resume its acceptance tests within no more than three weeks after reception of the new opinion on submission for acceptance.

PRAYON's decision will be based on the gravity of the reasons that led to rejection or repeated rejections.

Provisional acceptance will be issued after delivery of the equipment, commissioning and delivery of all documents below required under the Contract, provided the tests were satisfactory.

Upon completion of its services, the Supplier will send a written request to PRAYON to produce a provisional acceptance Certificate. The provisional acceptance Certificate will be produced by the PRAYON Project Leader and sent to the Supplier, which will append a copy to the relevant invoice.

To validate provisional acceptance, the following document will be required; if they are not provided, the payment corresponding to this milestone (section 15.1) will not be made.

- EC declaration of conformity
- EC mark of conformity on the machine
- Operating instructions in French
- Technical documentation in French needed for producing the certification file for the entire facility
- The individual equipment plans and the plan for the entire facility
- Load calculations
- Equipment assembly instructions
- Operating instructions
- List of spare parts (prices and delivery times)
- Maintenance and servicing instructions
- Electrical diagrams
- Operating instructions

## 22.2 Final acceptance

Final acceptance will be announced 24 months after the date of provisional acceptance; it denotes the end of the Supplier's Contractual obligations.

For final acceptance, PRAYON will check that the service conforms to the Contract and that all reservations have been closed and finalised.

During the guarantee period, which runs from provisional acceptance and final acceptance, the Supplier shall remain obliged to execute all modifications, all developments and all necessary settings, and to replace all parts of the equipment acknowledged as defective at the expense of the Supplier in order to comply with PRAYON's Contractual conditions and Specifications as stipulated in section 4.

Once the deadline agreed by PRAYON has expired, if the Supplier has not effected the necessary developments, settings or replacements, PRAYON may proceed with said operations at the Supplier's expense; the Supplier will retain full liability.

Once all of these operations have been performed successfully, final acceptance will be announced, taking the form of a final acceptance certificate produced by the PRAYON project leader.

## 23. **GUARANTEE PERIOD AND AFTER-SALES SERVICE**

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### 23.1 Guarantee period

As of the date of provisional acceptance of the equipment, the Supplier will remain responsible for ensuring that its products, systems and services conform to the specifications and good practice for a **guarantee period of 24 months** for the requested services and no more than 36 months after delivery of the equipment if provisional acceptance is not given for a reason attributable to PRAYON.

PRAYON's acceptance or validation of the technical documents provided by the Supplier may not, under any circumstances, serve as a waiver of any recourse PRAYON might have against the Supplier.

During the guarantee period, the Supplier will be responsible for any and all damage that could occur, not just to the components and equipment that were the subject of the services under this Contract, but also, following an expert survey, to the components and equipment not concerned by the services but which present defects or wear caused directly or indirectly by its services.

The release of the equipment guarantee is also subject to compliance with the reliability and availability requirements defined in section 13 of this Contract.



During the guarantee period, if a hidden defect is discovered (such as a design error, inadequate reliability, etc.) or if the Supplier does not meet its obligations (non-conformity report or failure to eliminate reservations within the required time period), PRAYON may notify the Supplier of its default situation. When the default causing the situation ceases to exist, PRAYON will notify the Supplier of the end of said situation. The guarantee period will then be extended by the length of the default situation.

The default situation does not release the Supplier from any of its guarantee obligations. PRAYON may, after giving notice, perform all or part of the services needed to meet the requirements stipulated in the specifications; this will be done at the Supplier's expense.

All of the material consequences of a default situation must be borne by the Supplier.

To enable the release of the guarantee, PRAYON may proceed, in the event of a dispute, with an expert survey of the equipment, the cost of which will be borne by the Supplier.

### **23.2 Organisation of after-sales service**

The organisation of after-sales service conforms to the requirements defined by PRAYON.

As a rule, the Supplier undertakes to have available the spare parts needed to repair the equipment within 48 hours.

In all cases, the time required to repair the equipment may not exceed 72 hours.

The Supplier has a maintenance obligation to PRAYON with a view to enabling the best use of the equipment/system and will be subject to the establishment of a separate Contract.

The Supplier will ensure the option of maintaining services for the equipment maintenance for a period of at least ten (10) years.

### **23.3 Spare parts**

The Supplier undertakes, on its own behalf and on behalf of those of its subcontractors which took part in the production of the equipment, to sell to PRAYON spare parts and replacement equipment at the current market price for a period of ten years as of the date of Final Acceptance.

It will also provide free of charge to PRAYON the detailed manufacturing plans if the manufacture of parts of its own design is halted or will indicate substitution options.

The Supplier undertakes to provide, for a **period of at least 10 years**, identical or interchangeable spare parts needed for the correct operation of the equipment.

This list, with figures, will also indicate the average delivery times.

## **24. INSURANCE**

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The Supplier and, where appropriate, its subcontractors must each take out and maintain the following insurance policies:

- a 'statutory' insurance policy for industrial accidents and accidents on the way to/from work affecting the Supplier's personnel or the personnel of its subcontractors;
- a policy to cover the pecuniary consequences of any damage caused to third parties due to a negligence committed in connection with the order;

- a policy covering the pecuniary consequences of damage caused to third parties during the performance of the order by the Supplier, its Agents and Representatives. This policy must cover at least €1,500,000 per claim in case of physical, material and/or moral damage. Mandatory cover for 'pure' moral damage with a minimum limit of €250,000.

This policy must contain the following clauses:

- The guarantee will apply without restriction or reservation to all services in PRAYON's plants and/or on its sites.
- Provided the civil liability of the insured is incurred, the policy will also take effect in the event of accidents caused by the personnel, equipment and/or goods made available to the Contractor by the principal.
- PRAYON's personnel are third parties with respect to the Supplier.

The term 'third party' means not only natural persons or corporate entities not linked directly or indirectly to the order, but also the parties themselves as well as their personnel and Representatives.

The Supplier may not use the insurance policies it has taken out to elude obligations incumbent upon it personally pursuant to its insurers terminating the policy or due to any other exception that renders the policy inoperative.

The Supplier must be able to justify at any time the validity of the policies covered in this article.

## 25. CONFIDENTIALITY

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Each Party undertakes to treat as strictly confidential all information communicated to it by the other Party in connection with the performance of the Contract and not to use such information for purposes other than those stipulated in this Contract without the prior agreement of the other Party.

This obligation remains applicable until such time as the information enters the public domain and, in any case, for a period of five years following the date of acceptance.

## 26. PROGRESS REPORT

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Once per month and until final acceptance, the Supplier undertakes to send to PRAYON a written progress report including any problems and identifying critical items likely to have an impact on the purpose of the Contract.

### 26.1 Timetable

Within two (2) weeks after confirmation of the order and signature of this Contract, the Supplier will issue an acceptable timetable that will be updated monthly and maintained until delivery of the equipment at the PRAYON site.

The timetable will be produced and developed in order to make it possible to determine the critical development path, the various durations, and the start and stop dates for each stage.

The timetable will be subject to monthly examination in printed format, in PDF format, sent by e-mail to the PRAYON Purchaser.

PRAYON reserves the right to reject the submitted timetable. The timetable will be compatible with the general Project schedule and will clearly indicate the issue dates for shop drawings, sub-assembly photos, etc. to show the development of the Project.



## 27. CONTROL AND INSPECTION

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The Supplier is required to control the quantity and quality of the services in accordance with the requirements of the Contract.

PRAYON is entitled to inspect work performed by the Supplier and the materials used at any time and reserves the right to intervene during the performance of work in order to ensure compliance with the Contract.

The Supplier must give PRAYON free access to any and all areas where a task relating to the Contract is being performed. PRAYON may, at any time, issue comments or guidelines in respect of said task.

Likewise, when PRAYON so requests, the Supplier will authorise the inspection and testing of products and services on the Supplier's premises. When necessary, PRAYON will be authorised to perform inspection visits on the Supplier's premises and will, accordingly, enjoy free access to any place or any document pertaining to the performance of the Contract.

The presence of PRAYON Representatives at the place of work and the verifications and, where appropriate, approval of PRAYON, do not release the Supplier of any of its Contractual responsibilities. The Supplier may not, under any circumstances, engage the liability of PRAYON during inspection visits.

PRAYON reserves the right to audit the existence of the Supplier's quality system. It may also request the production of a quality assurance plan specifically for the service.

By the same token, the Supplier undertakes to inform PRAYON, in advance, of any modification in raw materials or the origin thereof, any change in formulation, production site, production method or process, packaging, storage period, or any other change that could have an impact on the quality or performance of the service.

The work performed by the Supplier's personnel on PRAYON sites will be performed under the direction and supervision of the Supplier's management, with its own equipment and in accordance with the safety rules applicable to the activity in question.

The Supplier acknowledges that it has been informed by PRAYON of the specific risks that could arise from the site activity during the performance of work and its obligation to ensure, via all appropriate means, the safety of personnel of which it is in charge during its presence on the site, and to have its personnel follow the safety rules applicable on the site, as per the internal rules and memos of which it has been made aware.

It is up to the Supplier to make the personnel of which it is in charge aware of said documents.

Any person who is not connected to PRAYON, its subcontractors or Suppliers during the performance of one of their Contracts may only visit a PRAYON site with the written permission of a duly mandated authority. Proceedings may be taken against said person and against the company that took part in the intrusion.

## 28. SUPPLIER DEFECTS

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If PRAYON observes serious shortcomings likely to affect the quality and conformity of the service, or notes a delay in the performance of the order that will inevitably lead to a postponement of the contractual deadlines, the Supplier, at the request of PRAYON, must modify and/or expand the team and resources allocated to the order in order to mitigate the shortcomings noted.

If this request remains ineffective, even after sending notice, PRAYON may, upon the expiry of the notice, and without prejudice to the possible termination of the Contract:

- either impose on the Supplier technical support that will be invoiced to it, without the Supplier being able to avail itself of said technical support to absolve itself of any of its obligations and/or responsibilities;
- or perform all or part of the service by itself or via subContracting at the Supplier's expense.

These conditions are applicable to the period covered by the guarantee.

## 29. CONFORMITY

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Since the Supplier delivers its supplies and/or performs its service under its own full responsibility, it guarantees that the products and services conform to the Contractual requirements specific to the usage for which they are intended. They must meet the usual quality criteria as well as applicable standards and legislation.

If the product supplied is covered by Regulation No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation and Authorisation and Restriction of Chemicals (REACH), then the Supplier alone is responsible for performing its duties and obligations required under this Regulation. The Supplier will indemnify PRAYON against any expenses, costs, claims or liability of any kind, direct or indirect, resulting from a failure by the Supplier to meet its duties and obligations as required under this Regulation.

The products will be delivered in a fully complete state with all instructions, recommendations, certificate of conformity (EC), material certificates and other indications needed to be used correctly and under conditions of total safety.

Any products or services which do not meet all of the above requirements will be considered non-compliant.

## 30. INTELLECTUAL PROPERTY

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All tools, models, materials, plans, specifications and other informational elements provided by PRAYON in connection with the Contract will remain the property of PRAYON at all times and may only be used by the Supplier for the purposes of performing the Contract. The Supplier must keep the documents and other informational elements confidential and return them to PRAYON when PRAYON so requests.

The Supplier will indemnify PRAYON against any legal action, claim or opposition on the part of third parties invoking a right to industrial property which the performance of the Contract allegedly prejudices.

In this case, all expenses and compensatory payments incurred by PRAYON will be borne by the Supplier, with the Supplier also undertaking to intervene deliberately in respect of any authority which might have been invoked against PRAYON.

The Supplier will not produce offers and will not provide to third parties parts produced with PRAYON tools and materials or on the basis of models, plans, specifications or design data from PRAYON, without the latter's prior written agreement.

Inventions, patents, drawings, trademarks and models or other intellectual property rights resulting from the performance of the Contract will be transferred and will become the property of PRAYON solely by virtue of the Contract, unless the Supplier can establish that they are solely the result of its inventive activity independent of the Contract.

The Supplier will perform all formalities and will sign all documents needed to transfer ownership.

## 31. RESPONSIBILITIES

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The service performed by the Supplier's personnel is performed under the supervision and responsibility of the Supplier, with its own equipment and in accordance with ad hoc safety rules.

During the performance of the service the Supplier is responsible for damage caused to third parties, whether its fault or the fault of its Agents, Representatives, subcontractors, Suppliers.

It is also responsible for damage of any kind caused to goods and materials during the performance of the order.

The Supplier assumes, in respect of PRAYON, full responsibility for defects impacting the work performed.

The Supplier shall assume all pecuniary consequences incurred by PRAYON due to non-compliance with applicable legislation and regulations by the Supplier and/or the Supplier's Agents, Representatives, subcontractors, Suppliers.

### 32. WAIVER

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Non-execution, including even repeated instances thereof, of any of the clauses in this Contract is simply a matter of tolerance and in no way implies that PRAYON has waived its right to subsequently enforce compliance with the clause in question.

### 33. SETTLEMENT OF DISPUTES

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Any dispute arising during the performance of the Contract or the follow-up thereto, and not resolved amicably, shall be heard by the Commercial Court of Liège (Belgium).

However, the parties may agree to have recourse to arbitration when the Supplier is of foreign nationality. In such a scenario, disputes arising in connection with the Contract shall be finally settled in accordance with the Rules of Conciliation and Arbitration of the Chamber of Commerce of the purchaser's country and by a single arbitrator or, in the absence of agreement within 15 days of the decision to have recourse to arbitration, by three arbitrators, one of whom will chair the arbitral tribunal, which will be appointed in accordance with said rules. The parties state they will comply with said rules. The place of arbitration is the capital of the purchaser's country.

The procedures for settling disputes do not suspend the performance by the parties of their Contractual obligations.

The parties also state that in the event of recourse to arbitration, the procedure may not be undertaken until such time as the performance of the service has been completed.

### 34. DISPUTES WITH THIRD PARTIES

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If a third party initiates legal action against PRAYON due to the performance of the Contract by the Supplier or due to the products and services provided under the Contract, the Supplier must, at its expense and at PRAYON's request, join it to ensure the defence of the authority in question. Any legal decision or arbitral award handed down will be considered, for all practical purposes, as enforceable against the Supplier in the event PRAYON subsequently enforces the guarantee against it.



**35. APPLICABLE LEGISLATION**

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This Contract is governed by Belgian law to the exclusion of the Vienna Convention.

**36. SIGNATURES**

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SUPPLIER:	PRAYON:
Name: Title: Date:	Name: Title: Date:

\*\*\*\*\* End of Contract \*\*\*\*\*



## ANNEX 1

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To be completed by the Supplier of the Contract and returned with the unqualified acknowledgement of receipt of the order

Subject: Sworn statement

I, the undersigned,..... , in my capacity as legal Representative of the company....., acting as subcontractor of the company..... on the following site: (name and place .....  
.....) declare on my honour that the work performed on the above-mentioned site will be performed by personnel

who are lawfully employed with respect to the legal requirements set out in the labour code.

I acknowledge that this certificate may be produced in court and that any false representation on my part may expose me to civil and/or criminal penalties.

Done on....., at.....,

Signature



## ANNEX 2

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### BANK GUARANTEE TEMPLATE

Bank Name

PRAYON,  
Rue J. Wauters 144  
4480 Engis  
Belgium

On

At

Dear Sir/Madam,

#### **Subject: Performance guarantee - first-call**

We, [Bank: name and registered office],

have familiarised ourselves with the commitments made by XX to PRAYON SA, established at Rue Joseph Wauters 144, 4480 Engis, hereinafter the "Beneficiary" under an equipment supply Contract dated .....(date), for XXXX on the PRAYON site located at ..... (hereinafter the "Contract").

On behalf of the company XXX, we undertake irrevocably in respect of the Beneficiary to pay it unconditionally all sums up to a maximum of XXX% of the order placed under the Contract as a guarantee of completion of the above-mentioned commitments of the company XXX.

This guarantee shall take effect on the thirtieth day after the signature of the Contract.

It will expire on the date of the final acceptance report in accordance with Article 22.2 of the Contract.

Any call under this guarantee must be sent to us by registered letter indicating the amount due and must reach us prior to the expiry of this guarantee.

We will pay the Beneficiary upon its first request and solely on the basis of the Beneficiary's statement that the sum called is due owing to a failure by the company to meet its Contractual obligations, without the Beneficiary being required to produce any proof or justification or any other formalities.

In its capacity as the main debtor, and not as a simple surety or issuer of collateral security, our [Bank] will be required to effect, under the aforementioned conditions and within five clear working days as of reception of the notification(s), all payments to the Beneficiary under this guarantee, without being entitled to invoke any objection or exception on its part or on the part of the company.

This guarantee is governed by Belgian law.

In the event of dispute, the courts of Liège shall have sole jurisdiction.



