



DRAFT OF CONTRACT B26-00241-TZ
ENGLISH TRANSLATION IS FOR INFORMATION ONLY

BY AND BETWEEN

**THE COMMISSARIAT À L'ÉNERGIE ATOMIQUE ET AUX ÉNERGIES
ALTERNATIVES (FRENCH ATOMIC ENERGY AND ALTERNATIVE ENERGIES
COMMISSION),**

a public scientific, technical and industrial research institution,

whose registered office is located at Bâtiment Le Ponant D - 25 rue Leblanc, Paris 15th
District, registered with the Trade Register of Paris under number R.C.S PARIS B 775
685 019,

represented by Madame Julie GALLAND, in his capacity as Director of DRT,

hereinafter referred to as “**CEA**”

on the one hand,

AND

The [redacted] company,
whose registered office is located at [redacted],
registered with the Trade Register of [redacted] under the number [redacted],
represented by Mr [redacted], in his capacity as [redacted],

hereinafter referred to as « the Contractor »

on the other hand,

It is jointly stated and agreed as follows:

ARTICLE 1 - PURPOSE

The purpose hereof is to set the conditions under which CEA/Grenoble entrusts the Contactor who accept the supply of the **300 mm Dry selective Si-Si Geetching tool**, hereinafter referred _____ (commercial name).

This contract includes the following options:

- Mandatory quotation*:

- OPT1 : Process 7 (etching of spacer SiCO)
- OPT2 : Process 8 (etching of spacer et SADP)
- OPT3 : Training of maintenance Level 1

- Optional quotation*:

- OPT4 : Heat exchangers, cooling systems and chillers
- OPT5 : Power supply transformer
- OPT6 : Training of advancing maintenance
- OPT7 : Preventive and corrective maintenance services and necessary spare parts

The CEA lifts options at the latest on the date of notification of the contract.

Failure to exercise all or part of the options shall not entitle the contractor to any compensation.

The basic equipment and options are hereinafter referred to together as "the Equipment".

**to be finalized in the final contract*

ARTICLE 2 – CONTRACTUAL DOCUMENTS

Insofar as their provisions are not contrary to the provisions of this contract and its appendices which prevail, the following documents apply by decreasing order of priority:

- The Safety recommendations and their appendices (corresponding reference documents);
- the consultation file referred to as B26-00241-TZ, which is an integral part of the specifications referred to as LETI/DPFT/SPAT/25-035, plans...) hereinafter referred to as the "specifications";
- the rules applicable to External Companies in terms of discipline, health and safety at work on the CEA center (Contract Holders or Subcontractors), index A and the rules of procedure ;
- CEA's General Purchasing Conditions (Conditions Générales d'Achat du CEA (issue of january 2022) ;
- Standards, DTUs-documents techniques unifiés (unified technical documents or professional practices) ;
- The Contractor's proposal with reference _____ dated on _____, as a complement.

The Contractor hereby acknowledges and accepts the aforementioned documents.

The Contractor's general sales conditions, excluding those resulting from mandatory legal provisions, are not binding, whatever their form.

ARTICLE 3 - CONTACTS

3.1 - Correspondants of the CEA

Technical contact :

Maximilien Saint-Cricq LETI/DPFT/CIPE
Tél : 04.38.78.95.17 E-mail : maximilien.saint-cricq@cea.fr

Mathieu Stigliani LETI/DPFT/SPAT/LGRA
Tél : 04.38.78.16.65 E-mail : mathieu.stigliani@cea.fr

Commercial contact :

Thomas ZEMERLI Service des Marchés et Achats
Tél : 04.38.78.11.86 E-mail : thomas.zemerli@cea.fr

Anne MANGIN Service des Marchés et Achats
Tél : 04.38.78.05.26. - E-mail : anne.mangin@cea.fr

Supplier accountancy : Tél : 01 69 08 47 50

Email : SFC-fournisseurGRE@CEA.fr

Email : RELANCES@cea.fr

3.2 – CEA Grenoble forwarding agents (for foreign suppliers outside the European Union)

For customs clearance formalities, the Contractor shall contact:

ZIEGLER

23 Rue de Brotterode
38950 - St Martin le Vinoux
France

Vos correspondants : cea.grenoble@zieglergroup.com

Tel : +33 4 76 56 57 12

3.3 – Contractor Technical and commercial contacts

Technical contact :

_____ Tél : _____
E-mail : _____

Commercial contact :

_____ Tél : _____
E-mail : _____

ARTICLE 4 -DELIVERY SCHEDULE

T₀ being the date of notification of the present contract, the Contractor must respect the following deadlines *[to be completed by the tenderer]* :

T₁ being the date of arrival of the Equipment at the Grenoble site:

- Provision of Appendix H in CEA format, and final plans with maintenance areas in .dxf or .dwg format, corresponding to the final configuration of the Equipment: T₀ + 2 months

- Availability of the Equipment : T₀ + _____ month,

- Assembly, commissioning and tests: T₁ + _____ month,

- Acceptance of the Equipment following the satisfactory completion of the tests defined in the specifications: T₁ + [REDACTED] month.

*to be finalized in the final contract

ARTICLE 5 – PACKAGING - TRANSPORT - DELIVERY

The Equipment is packed under the Contractor liability.

The “Incoterm” selected is FCA (FACTORY - COUNTRY) [REDACTED]
(According to the ICC Incoterms 2020 rules).

The Contractor shall inform the CEA of the place where the Equipment is to be collected, free of any handling constraints.

The transfer of risks takes place when the Equipment is made available.

ARTICLE 6 - DOCUMENTS TO BE HANDED OVER ON DELIVERY

The Contract Holder shall hand over to the CEA, on delivery of the Equipment, all of the related documentation: CE certificate of conformity, operating instructions, user manual with plans and wiring diagrams, maintenance handbook, servicing instructions, and safety instructions in French or in English.

Safety instructions must be submitted in French.

Failing this, article 35 of CEA's General Purchasing Conditions shall apply.

ARTICLE 7 – ASSEMBLY/FITTING – TESTING – COMMISSIONING

Article 32 of CEA's General Purchasing Conditions shall apply.

The Contract Holder shall assign to assembly/fitting, commissioning and on-site testing qualified staff and suitable means for ensuring proper performance of those tasks, for inspecting them, and for conducting the relevant testing for proper operation.

At the end of this work, the procedures for acceptance of the Equipment are implemented.

ARTICLE 8 - ACCEPTANCE

Acceptance is granted after complete delivery of the Equipment and at the end of installation and commissioning operations, and after satisfactory tests, subject to compliance with the requirements specified in the specifications and in accordance with the provisions of Chapter 11 of the CEA General Purchasing Conditions.

This Reception shall be the subject of a report drawn up by the CEA and signed jointly by the representatives of the CEA and the Holder.

The transfer of ownership of the Equipment shall take place on the date of signature of the acceptance report.

ARTICLE 9 - TRAINING

The Contract Holder undertakes, under the conditions described precisely in the Specifications, to give training on:

- The use and the security of the Equipment for 4 persons during ____ days,
- first-level maintenance for 4 persons during ____ days,
- advanced maintenance for 2 persons during ____ days.

ARTICLE 10 - WARRANTY

The Equipment is guaranteed for two (2) years as of the date of acceptance for any faulty material, manufacturing defect, or operating defect, pursuant to the technical specifications of the Specifications.

This warranty covers parts (excluding consumables), labour, transport, and travel.

During the warranty period, the Contractor undertakes to perform repair work at the latest within 2 hours after receiving an email from the CEA requesting assistance. These services shall be provided every day, from Monday to Friday from 8 a.m. to 5 p.m.

It is taken as understood that, before sending a mail the Contractor technical manager will first be contacted by telephone with a view to troubleshooting or diagnosing the problem.

The Contractor staff in charge of performing repair work shall have unrestricted access to the Equipment provided that they comply with the health and safety clauses described in the CEA's general terms and conditions, and that the operations do not cause abnormal disruption for users.

In the event of repair at the Contractor premises, the Contract Holder is responsible for the safekeeping and use of the Equipment, which is the property of the CEA, from the time it is taken in charge at the CEA site and after signature of a report issued by the CEA and signed jointly by the Parties.

The risks will once again be transferred to the CEA when the Parties sign the joint report on the return of the Equipment to the Grenoble site.

The Contractor is responsible for all costs associated with transporting the Equipment to and from Grenoble.

Penalties during the warranty period

The times of availability of the Equipment during the warranty period shall comply with the specifications indicated in the Specifications.

Should at least one of the two parameters (Availability or MTBF¹), observed during the warranty period not comply with the specifications, the warranty period is automatically extended for a term of 3 MONTHS.

During such an extension, the Contract Holder shall take all of the corrective actions necessary to comply with the specifications. If, at the end of the period of extension of the warranty, the specifications are still not complied with, the warranty shall be extended again for further periods of 3 MONTHS until the specifications are complied with.

ARTICLE 11 - MAINTENABILITY

The Contractor undertakes to be able to provide preventive and corrective maintenance for the Equipment at the end of the warranty period for a minimum period of 10 years. The CEA reserves the right to entrust the Contractor with the maintenance of the Equipment under a subsequent and specific contract that will specify the terms and conditions of performance (including the duration).

In which case, the financial terms and conditions of such a contract may not be less advantageous to the CEA than those established in the Contractor's proposal dated [redacted] reference [redacted].

¹ MTBF: Mean Time Between Failure

CEA's General Purchasing Conditions mentioned in Article 2 shall be applicable to the contract for maintenance of the Equipment.

ARTICLE 12 – TOTAL AMOUNT OF THE CONTRACT

The fixed, all-inclusive price of the contract is € _____ * excluding tax (_____ euros excluding tax).

This price includes packaging, installation, commissioning at CEA/Grenoble, the standard contractual warranty, and user training in operation and safety.

This price breaks down as follows:

| Section | Description | Items in the commercial offer | Amounts in € without taxes* |
|---------------------------|--|--------------------------------------|------------------------------------|
| Standard Equipment | Standard equipment with all the characteristics required in technical specifications | | |
| Options* | Option 1: Process 7 (etching of spacer SiCO) | | |
| | Option 2: Process 8 (etching of spacer et SADP) | | |
| | Option 4: Heat exchangers, cooling systems and chillers | | |
| | Option 5: Power supply transformer | | |
| | Option 7: Preventive and corrective maintenance services and necessary spare parts | | |
| Total Equipment | | | |
| | Option 3: Training of maintenance Level 1 | | |
| | Option 6: Training of advancing maintenance | | |
| Total Training | | | |
| TOTAL GENERAL | | | |

***to be finalized in the final contract**

ARTICLE 13 -INVOICING CONDITION

13.1 Equipment billing

Invoices for Equipment, including basic equipment and associated basic services as well as **options X, X, X, X, exercised*** where applicable, shall be issued according to the following schedule:

***To be finalized in the final contract, depending on the options selected by the CEA upon notification of the contract**

- **30%** of the pre-tax amount of the Equipment and taxes relating to **the main supplies identified** as being the property of the CEA and possibly inspected.

The Contractor shall remain liable for this amount until acceptance has been declared.

- **70%** of the amount excluding VAT for the Equipment and taxes relating to **Acceptance**, including 5% as a retention guarantee, the terms and conditions for which are specified in Articles 15 and 16 below.

13.2. Billing for optional services used

The fixed, flat-rate price for optional services used is _____ * € excluding tax (_____ euros excluding tax).

This price breaks down as follows:

| | Billing schedule |
|---|--|
| Option 3* : Training for maintenance Level 1 | 100% of the training cost excluding tax and any applicable taxes, upon completion of the corresponding services. |
| Option 6* : Training for advanced maintenance | 100% of the training cost excluding tax and any applicable taxes, upon completion of the corresponding services. |

ARTICLE 14 -PENALTIES

In addition to the provisions of CEA's General Purchasing Conditions relating to penalties, which apply insofar as they are not contrary to the following provisions, CEA may apply penalties in the following cases and conditions.

14.1- In the event of failure to meet contractual deadlines and time limits, the Contract Holder shall be liable to pay penalties for lateness of 1 000 € HT exclusive of VAT of the contract per calendar day late.

The penalties applied under this paragraph shall be limited to a ceiling of 10% of the amount exclusive of VAT of the Contract.

14.2- In addition, apart from the cases referred to in the above paragraph, in the event that CEA gives the Contract Holder formal notice to comply with its obligations within a period specified in the formal notice, and in the event that the Contract Holder fails to comply with this period, CEA will apply a penalty of 1 000 euros per calendar day of delay.

14.3- Penalties are automatically applicable without prior notice or other legal or judicial formalities regarding invoicing. Penalties are cumulative and their application is independent of other sanctions to which the delay may give rise, in particular the possible termination of the contract. In the event of termination, penalties shall apply until the date of notification of termination. Penalties do not release the Contractor from liability.

ARTICLE 15 - WARRANTY RETENTION

Under this contract, a retention deposit payable by the Contractor is provided for. The sole purpose of this deposit is to cover any reservations made upon acceptance of the Equipment covered by the Contract and, where applicable, any malfunctions or defects reported during the warranty period.

The amount of the retention bond is set at x% of the amount of the Equipment, plus, where applicable, the amount of any conditional or optional options or tranches.

A bank guarantee may be provided in lieu of the retention guarantee. This substitute guarantee shall be for the total amount of the Equipment excluding VAT and related taxes, including any modifications made during performance. The amount of the substitute guarantee may not exceed that of the retention guarantee it replaces.

When the Contract Holder is a joint venture (GMES), the substitute guarantee shall be provided by the representative for the total amount of the contract excluding VAT and related taxes.

ARTICLE 16 -TERMS AND CONDITIONS FOR COLLECTION AND REFUND OF THE SECURITY DEPOSIT

The retention guarantee is deducted from the final payment term specified in the "INVOICING TERMS" section of the contract.

However, this final payment may be settled in full, against the provision of a personal and joint guarantee for the same amount, or a first demand guarantee. The guarantee or first demand guarantee will be released at the end of the guarantee period specified in this contract, provided that the reservations have been lifted.

The retention guarantee shall be refunded within thirty days of the expiry of the guarantee period. However, if malfunctions or defects have been notified to the Contractor during the guarantee period and have not been remedied before the expiry of that period, the retention guarantee shall be refunded within thirty days of the effective date of their removal.

Institutions that have provided their guarantee or first demand guarantee shall be released no later than one month after the expiry of the guarantee period. However, if reservations have been notified during the warranty period to the contract holder and to the institutions that have provided their guarantee or first demand guarantee and if they have not been lifted before the expiry of this period, the institutions shall be released from their commitments no later than one month after the date of their lifting.

ARTICLE 17 – TERMS OF PAYMENT

With a company under foreign law

Invoices are sent in one copy to :

CEA of Saclay
S3C - accounts payable PC 75
91191 GIF-SUR-YVETTE Cedex
FRANCE
Phone: +33 (0)1 69 08 47 50

All invoices issued bear the reference of the present contract.
Payments shall be made within 30 days from the date of receipt of the invoice, after delivery or execution.

or with a company under foreign law if the Holder so wishes (Chorus Portal optional).
It is specified that the use of the Chorus portal is optional for companies under foreign law. If the Holder opts for this method of invoicing, this choice is irreversible, for all future invoices and for all contracts concluded with the CEA.

Invoices can be sent to the CEA via the State's Chorus Pro Portal (<https://chorus-pro.gouv.fr>).

In order to be taken into consideration, each invoice issued by the Contractor under this Contract must comply with the regulations relating to electronic invoicing specified in particular by the Instruction of February 22, 2017 relating to the development of electronic invoicing and include the following information in particular:

- the CEA's SIRET number: 775 685 019 00587

- the GRE-C service code that will be used to direct the invoice processing;
- the commitment number (SAP contract/order number) composed of 10 digits
- Invoicing address :

CEA de Saclay
S3C - Comptabilité fournisseur PC 75
91191 GIF-SUR-YVETTE Cedex
FRANCE

The payment period is 30 (thirty) days from the date of receipt of the invoice by the CEA subject to acceptance by the CEA of the services in accordance with market conditions.

Supporting documents attesting to the CEA's acceptance (PV) or to an event that triggered an invoicing term must be sent at the same time as the invoices.

In the event that an invoice is issued for all or part of the firm and optional services, the Licensee must break down the amount invoiced by detailing the firm part and each option.

Any invoice that does not comply with the terms of the contract will be returned to the issuer.

ARTICLE 18 – TAX AND CUSTOMS SYSTEM

18.1 - Tax system

This contract shall be subject to VAT at the rate applying at the time of the operative event.

The importation of equipment subject to the contract falls within the scope of French VAT under the provisions of Articles 32 and 60 of Directive 2006/112/EC.

In accordance with the provisions of Article 201 of the same Directive, the importer is liable for VAT at the rate applicable at the time of the chargeable event. The importer will pay the customs duties and VAT due on importation directly to the French Customs.

Depending on the option chosen, the transport service will be included in the amount of the VAT base, pursuant to Article 292 of the General Tax Code. This consists of the value defined by customs legislation, in accordance with Article 71 of the Customs Code of the Union.

18.2 – Customs system

The Contractor undertakes to deliver the goods to the CEA after customs clearance for export, and to take responsibility for obtaining any export licenses for the goods covered by this contract.

The holder undertakes to indicate on the commercial documents the customs nomenclature number as well as the origin of the goods and the country of last origin.

The CEA, Public Research Establishment, may benefit from exemption from customs duties for scientific instruments and apparatus, spare parts, components, accessories and specific tools (EC Regulation 1186/2009), provided that the objective technical characteristics and expected results are exclusively or mainly suitable for carrying out scientific activities and that the imports in question are non-profit-making.

Accordingly, the Holder undertakes to provide, in good time, all the documents necessary for the CEA to submit the request for exemption from customs duties.

Otherwise, the amount of customs duties unduly paid by the importer shall remain the exclusive responsibility of the Holder.

The customs clearance of the goods will be handled by the authorized customs representative of the CEA/Grenoble, ZIEGLER, située 23 rue de Brotterode, 38950 Saint Martin le Vinoux since the departure of the goods with the LTA (airway bill) numbers in case of air transport or a copy of the bill of lading in case of sea transport, and the invoice accompanying the transport.

ARTICLE 19 - COMPLIANCE BY THE CONTRACT HOLDER WITH TAX AND SOCIAL/WELFARE LEGISLATION

The Holder undertakes to give to CEA :

- at the conclusion of the present contract and every six months from its notification until the end of the execution, the documents required by Article D.8222-5 (if established in France) or Article D.8222-7 (if established abroad) of the Labour Code and, where applicable, the list of names of foreign employees who may be employed (Articles D.8254-2 to D.8254-5 of the Labour Code);
- attestations and certificates issued by the competent authorities and bodies proving that the applicant has fulfilled his tax and social obligations (Order of 22 March 2019 establishing the list of taxes, contributions or social contributions giving rise to the issue of certificates for the award of public contracts).

The Holder must ensure that its suppliers and subcontractors also comply with these provisions when the contract is concluded and throughout its performance.

The Holder incurs penalties if he does not respect them (cf. article 21.1 of the CEA General Conditions of Purchase).

ARTICLE 20 — INSURANCE

The provisions of article 38 of the GCP apply in full to this contract.

ARTICLE 21 — APPLICABLE LAW

It is expressly agreed that performance of the present Contract shall be governed by French law.

Any dispute arising between the Contractor and the CEA in connection with this contract shall fall within the exclusive jurisdiction of the Grenoble Administrative Court.

ARTICLE 22 — TERM AND EXECUTION OF THE CONTRACT

The Contractor is requested to return this contract duly signed for notification by the CEA.

Executed in Grenoble in one copy,

On the

For the Contract Holder,

For the CEA,