

## **GENERAL TERMS AND CONDITIONS**

The following General Terms and Conditions shall apply to all contracts between the CONTRACTOR and GRANTECAN, save as otherwise agreed in the specific contracts.

Additionally, specific changes may be made to these general clauses in the separate contracts.

### **1.- REPRESENTATIVES**

1.1.- GRANTECAN is entitled to supervise the state of performance of the contract, and for this purpose, in addition to the general aim of cooperation, GRANTECAN will appoint its representatives for the contract.

1.2.- The CONTRACTOR shall be bound to give any information relevant for the contract at the request of such representatives. The said information will for all purposes be treated as confidential information, save if otherwise specifically agreed.

1.3.- The CONTRACTOR, subject to any applicable security rules, will grant access and assistance so that the representatives may perform their tasks.

1.4.- The CONTRACTOR shall appoint its representatives for all matters specified in the contract, to represent the CONTRACTOR in its dealings with GRANTECAN.

1.5.- All communication between the CONTRACTOR and GRANTECAN about the contract will be conducted through the representatives appointed by each party.

### **2.- PERIODIC REPORTS**

2.1.- The CONTRACTOR will, at the times set-out in the contract, provide the representatives appointed by GRANTECAN with periodical reports detailing the state of performance of the works.

### **3.- COMMUNICATIONS BETWEEN THE CONTRACTOR AND GRANTECAN.**

3.1- All communications between the CONTRACTOR and GRANTECAN that affect the terms and conditions of the contract must be made and confirmed in writing.

### **4.- EQUIPMENT, SUPPLIES AND TECHNICAL DOCUMENTATION.**

4.1- If, in performance of the contract, GRANTECAN supplies the CONTRACTOR with:

- a) machinery, tools and/or other equipment.
- b) documentation, samples and/or models,
- c) finished or unfinished parts or components,

the CONTRACTOR will be responsible for all and any part of such things and for their proper maintenance.

4.2- The CONTRACTOR shall not use such material for any purpose other than that specified in the contract, save if previously agreed.

4.3- The CONTRACTOR will be liable for loss, destruction or damage of all or any part of the material and equipment required for the execution of the works until the termination of the contract or the reception of the works. The CONTRACTOR shall repair the damage at his expense or pay its worth, unless the damage has been caused by GRANTECAN's staff or is due to unpredictable events or to *force majeure* or wear-and-tear due to normal use. Furthermore, the CONTRACTOR must keep an inventory of the items under his control being the property of GRANTECAN. Such equipment shall be returned to GRANTECAN at the time of termination of the contract.

## **5.- JURISDICTION**

5.1.- GRANTECAN and the CONTRACTOR undertake to negotiate in good faith any disagreement that may arise in the performance of the contract.

5.2.- Disagreements may be submitted to arbitration by a committee composed of a representative chosen by GRANTECAN, a second representative chosen by the CONTRACTOR and a third member, who will chair the commission, to be chosen by the former representatives. Agreements shall be made by simple majority and shall be final.

5.3.- In case of doubt or dispute, both parties agree to expressly submit themselves to the jurisdiction of the Courts of Santa Cruz de Tenerife, with express waiver of their respective jurisdictions.

## **6.- INFRACTIONS**

6.1.- Each party will not be responsible for any infraction of the laws in force incurred by the other party due to this contract.

## **7.- EMPLOYMENT RELATIONS**

7.1- The parties maintain employment or service relations only with their own staff. Cooperation in the works that are the object matter of the contracts between the CONTRACTOR and GRANTECAN to which this general terms and conditions apply does not modify their employment situation.

## **8.- CONFIDENTIALITY OF INFORMATION**

8.1.- Both parties undertake not to disclose, in any way, the scientific, technical, or commercial information belonging to the other party that the former may have come to know in the carrying out of the works in the contract, provided such information is not already public. To these effects, the parties may sign a specific Confidentiality Agreement to regulate this matter in detail.

8.2.- The data and reports obtained in the performance of the works in the contract, and the final results, shall be confidential for the CONTRACTOR. If the CONTRACTOR wishes to use the partial or final results, partially or wholly, in order to publish them or make them known in an article or lecture, etc. the CONTRACTOR must request in writing the consent of

GRANTECAN through the representative appointed by GRANTECAN for the surveillance of the contract. The lack of response by GRANTECAN to this request in 30 days will be considered as an acceptance of the request.

## **9.- PRICE AND MODE OF PAYMENT**

9.1- The price that is set out in the contract is net of tax. Therefore invoices issued by the CONTRACTOR to GRANTECAN shall be increased in the amounts due for any applicable taxes.

9.2.- GRANTECAN may advance, if agreed in the contract, up to 35% of the contract price. The remaining payments shall be made periodically according to the terms and conditions expressly agreed in the contract.

9.3.- Periodic payments agreed in the contract plus the advanced sum, if any, may not at any time exceed 90% of the total contract price. The remaining 10% shall be withheld as security that shall be paid only once the contract is finalised and GRANTECAN has consented to final reception of the works.

9.4.- The established payments shall be made by GRANTECAN to the CONTRACTOR by means of a transfer to the current account number indicated on the contract and whose holder is the CONTRACTOR, within thirty days after the reception and acceptance of the corresponding invoice.

## **10.- EXPENSES**

10.1.- At the justified request of the CONTRACTOR, GRANTECAN may consent to expenses additional to those provided for in the contract, due to travel or acquisition of material.

10.2.- These payments shall be first agreed and authorised by both parties.

10.3.- Rejection by GRANTECAN of the CONTRACTOR's proposal for additional expenses shall not discharge the later from its contractual obligations towards GRANTECAN.

## **11.- TRANSFER OF CONTRACT**

11.1.- No transfer of all or any part of the contract to third parties may be made without the previous specific written agreement between the CONTRACTOR and GRANTECAN.

## **12.- SUBCONTRACTING**

12.1- The CONTRACTOR may subcontract parts of the works in the contract to third parties, having first obtained the written consent of GRANTECAN.

12.2.- The CONTRACTOR will be, to all effects, solely liable and responsible for all subcontracts authorized within this contract.

12.3.- The terms and conditions agreed by the CONTRACTOR when subcontracting shall guarantee GRANTECAN's rights in the main contract.

### **13.- CHANGES TO THE SPECIFICATIONS**

13.1.- GRANTECAN reserves the right to, at any time, modify the specifications, models or plans of the works in the contract. The CONTRACTOR shall, within thirty days, notify GRANTECAN of any objections to the requested changes.

13.2.- The CONTRACTOR shall, within a reasonable length of time, calculate the effect of such changes on the price and/or date of delivery of the works. GRANTECAN will notify in writing its decision to the CONTRACTOR.

13.3.- GRANTECAN may accept changes to the works proposed by the CONTRACTOR or by the subcontractors.

13.4.- The acceptance of such changes shall be signed by both parties.

13.5.- Rejection by whichever party of the changes proposed by the other party or of the conditions consequential to such changes shall not discharge either party from its duty to fulfil the contract as originally agreed.

### **14.- ACCEPTANCE OR REJECTION OF THE WORKS**

14.1.- The contract shall specify the nature of the works to be executed by the CONTRACTOR and the procedure for their acceptance by GRANTECAN's representatives. The technical specifications of the works and the tests required for their acceptance shall also be defined in the contract.

14.2.- The finished works, or any parts thereof, as set-out in the contract, shall be accepted by GRANTECAN's representative as soon as possible, and in any case no later than a month after delivery. This time will be used to make sure that the specifications have been observed.

14.3.- In case of rejection of the works, the CONTRACTOR will be given eight (8) days, before such materials are removed from the inspection site, to notify GRANTECAN of its objection to the rejection of the works. Any dispute shall be solved through the procedure set out by the JURISDICTION clause in these General Terms and Conditions or specified in the contract.

14.4.- If the acceptance tests are performed outside the CONTRACTOR's facilities, the rejected article/s shall be removed from the site by the CONTRACTOR, at its own expense, within 15 days from reception of the notice of rejection. In case of breach of this duty of removing the articles within the indicated deadline by the CONTRACTOR, GRANTECAN shall not be liable to the CONTRACTOR for loss of or damage to the rejected articles. The articles shall then be removed by GRANTECAN, and the CONTRACTOR shall bear the expense and the risk.

14.5- Once the acceptance tests have been completed, the persons who have conducted the said tests shall write a report which shall be signed by representatives of both parties.

### **15.- PENALTY FOR DELAYS**

15.1- The following penalty shall be imposed by GRANTECAN for late completion and delivery to GRANTECAN of the elements set out in the contract after the agreed dates:

15.2- 0.3‰ per day of delay, from 1 to 40 days of delay and 1‰ for each additional day of delay of the value subject to penalty and up to a limit of 10% of the total price of the contract.

15.3.- The value subject to penalty shall be the price of the part of the contract affected by the delay which can not be given its proper destiny. If the delay affects the whole object matter of the contract the value subject to penalty shall be the total contract price.

15.4.- Such penalties shall be deducted from the contract price.

15.5.- In addition to the aforementioned penalty, GRANTECAN may claim damages for the damage and loss caused by the delay, except in the case that the delay has been caused by reasons of *force majeure* or other conditions not attributable to the CONTRACTOR.

## **16.- RESCISSION OF THE CONTRACT.**

### **16.1. UNILATERAL RESCISSION OR BREACH OF CONTRACT BY GRANTECAN.**

16.1.1.- The following circumstances shall be deemed to be a breach of contract by GRANTECAN:

- a) The winding up of GRANTECAN and its ceasing to exist, save if its whole assets are transferred to another entity or company and such entity or company assumes GRANTECAN's obligations to the CONTRACTOR.
- b) Bankruptcy or suspension of payments by GRANTECAN.
- c) Breach of its financial duties.

In such cases, as in the case of unilateral rescission by GRANTECAN, which must be duly notified in writing to the CONTRACTOR, the parties, by agreement, shall establish the sum to be paid by GRANTECAN to the CONTRACTOR for work performed. Furthermore, GRANTECAN shall compensate the CONTRACTOR for loss of profits derived from the cancellation. The calculation of the amount of such compensation shall be based on evidence provided by the CONTRACTOR and accepted by GRANTECAN. In case of dispute, the procedure set out by the JURISDICTION clause in this General Terms and Conditions or in the contract shall be followed.

16.1.2.- The total amount of the compensation may not, in any case, exceed the total contract price less the sums already paid.

16.1.3.- All parts and materials bought by the CONTRACTOR and paid by virtue of the above provision shall be packaged and delivered to GRANTECAN, together with those being the property of GRANTECAN and in possession by the CONTRACTOR, as soon as the sums mentioned by the above paragraphs have been paid.

### **16.2.- UNILATERAL RESCISSION OR BREACH OF CONTRACT BY THE CONTRACTOR.**

16.2.1.- The following circumstances shall be deemed to be a breach of contract by the CONTRACTOR:

- a) The winding up of the contractor.
- b) Breach by the CONTRACTOR of its duty to provide the personnel agreed in the contract and the schedules thereto, when, in GRANTECAN's view, such omission may impair or delay the execution of the works.
- c) Works not executed by the CONTRACTOR in accordance to the provisions of the contract and of the program or within the dates agreed for partial or total completion, save if such breaches are justified due to *force majeure*.

- d) Suspension of works for reasons due to the CONTRACTOR, causing irreparable defects.
- e) Serious defects in the execution of the works.
- f) Breach of the CONTRACTOR's financial duties.
- g) When the total penalties imposed to the contractor equal 10% of the final balance.

In this cases, GRANTECAN shall only pay the contractual value of the portions of the works delivered before the reception of the notice of rescission or accepted under specifically agreed cancellation conditions. If the sums received by the CONTRACTOR exceed the price of the work already performed, the CONTRACTOR shall reimburse GRANTECAN with the excess.

16.2.2.- In case of unilateral rescission by the CONTRACTOR, the CONTRACTOR shall give GRANTECAN due written notice.

16.2.3.- In case of breach or of unilateral rescission by the CONTRACTOR, GRANTECAN is entitled to claim damages. The calculation of the amount of such damages shall be based on evidence provided by GRANTECAN and accepted by the CONTRACTOR. This calculation shall not exceed in any case the total price of the contract. In case of dispute, the procedure set out by the JURISDICTION clause in this General Terms and Conditions or in the contract shall be followed.

16.2.4.- All parts and materials bought by the CONTRACTOR and paid by GRANTECAN shall be packaged and delivered to GRANTECAN, together with those being the property of GRANTECAN and in possession by the CONTRACTOR.

16.3. Each party must inform the other party, in a reliable way, about the non-fulfilment observed. In the case of non-fulfilment of the predicted assumptions in the general condition 16.1.1.c for GRANTECAN or 16.2.1.b., c., d., e., or f. for the CONTRACTOR, the party that has committed non-fulfilment will have a time limit of 30 days, starting from the reception of that notice, to rectify the infraction or give a plan of rectification to be accepted by the other party. In this case, the notified resolution will have no effect.

## **17.- EXTENSION**

17.1.- The contract may be extended by specific agreement of the parties, for the time and price agreed.

## **18.- RIGHTS TO PATENTS**

18.1- The CONTRACTOR shall be the owner of any invention made in the carrying out of the contract, and is entitled to protect such invention by means of a patent or other copyright afforded by law. Written notice must be immediately given to GRANTECAN, who shall be bound to maintain full secret and confidentiality.

18.2.- In case the CONTRACTOR obtains a patent over any invention made in the carrying out of the contract, GRANTECAN shall, free of charge, have a right to an irrevocable, non-exclusive license for the use of the invention in the erection and operation of the GRAN TELESCOPIO DE CANARIAS, provided such use does not entail a financial damage for the CONTRACTOR in its dealing with the patent with third parties.

18.3.- In case the CONTRACTOR does not wish to patent or wishes to abandon a patent for an invention, GRANTECAN must be notified at once. At the request of GRANTECAN, the CONTRACTOR must transfer free of charge to GRANTECAN all rights. In such cases, the CONTRACTOR may use the invention for its own activities provided such use does not entail a financial damage for GRANTECAN in its dealing with the patent with third parties.

18.4.- GRANTECAN, once having notified in written the CONTRACTOR, shall also be entitled to patent the invention in any country where the CONTRACTOR does not wish to do so.

## **19.- GUARANTEES AND INSURANCE**

19.1.- The CONTRACTOR, at the signature of the contract, shall be bound to obtain a firm bank guarantee by means of a Banker's reference fulfilling the following,

- a) the Responsibility covered by the guarantee, can be enforceable wholly or partly and indistinctly to the company that is guaranteed or to the guarantor and to the free choice of the beneficiary of the guarantee.

and with specific renunciation to the benefits of the following,

- b) the guarantee can be enforceable to the guarantor without the necessity of going against the assets of the company that is guaranteed.
- c) the responsibility of the given guarantee affects to the total of the assets of the guarantor or the company that is guaranteed, without the possibility to offer just a part of its assets to support the guarantee in case of being enforced.
- d) the obligation of payment of the guaranteed amount is enforceable from the very moment in which the guarantor is required by the company that is guaranteed, to face the commitment agreed by means of the guarantee, without possibility of excuses or arguments which would delay the payment. It is enforceable immediately.

The banker's reference should be legally registered by a Stockbroker, a Foreign Exchange Dealer, a Business Agent, or Public Notary equivalent to the (10)% of the total price of the contract.

This final guarantee will be presented at the moment of the signature of the contract and will remain in force until GRANTECAN decides its cancellation once the Final Reception has taken place.

19.2.- This guarantee will secure compliance by the CONTRACTOR of all his duties and obligations within the contract, and specially:

- a) Penalties imposed for breach of contract.
- b) Compensation for damages caused by the CONTRACTOR or its subcontractors to GRANTECAN or to third parties for any reason attributable to them.
- c) Of damages to third parties caused by CONTRACTORS or subcontractors.

19.3.- The CONTRACTOR, at the signature of the contract, is bound to have a civil liability all-risks insurance, being GRANTECAN the beneficiary, that guarantees the loss, breakdowns, damages of all sort, caused to GRANTECAN or on the construction site, including damages caused by atmospheric electricity, earthquakes and tidal waves, soil movement where the

construction is taking place or that affect the construction in a direct way, and floods or whatever catastrophic risks covered by the consortium of compensation of insurance. The capital to be insured will be the one detailed in the specific contract to account for the construction executed and the effect of the insurance will last until the preliminary reception of the construction.

19.4.- The CONTRACTOR shall have subscribed chargeable to him, at the beginning of the construction and to the satisfaction of GRANTECAN, an insurance of extracontractual civil liability by a minimum capital of 100.000.000 (A HUNDRED MILLION) pesetas. Its effect will last until the date of final reception of the construction.

19.5.- GRANTECAN will inform immediately to the CONTRACTOR of any circumstance from which the execution of the retention done may derive or from the banker's reference of final guarantee. In the case in which GRANTECAN decides to keep partially or totally the guarantee or to execute the banker's reference, it should be notified in written to the CONTRACTOR, specifying the reasons for such retention. The CONTRACTOR will have 15 days to object to the retention of the guarantee. In case of dispute, it will be resolved in accordance to what is established in clause 5.2. of the General Terms and Conditions, in a minimum time period of other 15 days. In the case this is not possible, they will proceed in accordance to what is established in point 3 of the same clause 5 mentioned before without prejudice of being GRANTECAN free to proceed to execute the lent guarantee then.

## **20.- FORCE MAJEURE**

20.1- It will be considered an unpredictable event or *Force Majeure* any event of nature or any unpredictable or inevitable action made by a man, that without fault or negligence of any of the parties, prevents a party from the fulfillment of any or all the obligations in it's charge, or the appropriate execution of the mentioned obligations as agreed with what is specified on this contract.

20.2.- The following events will be considered an unpredictable event or *Force Majeure* on a declarative and non-restrictive basis: Earthquakes, war, floods, transport catastrophes directly affecting the construction, fire, sabotages, cyclones, authority acts, strikes only when they occur internally.

20.3- When any of the parties, due to an unpredictable event or *Force Majeure*, stops discharging its liabilities, it shall be released from the consistent responsibility to the mentioned nonfulfilment regarding compensation for damage caused to the other party, provided that this event fulfills the following conditions:

- a) That the party that suffers the unpredictable event or *Force Majeure* has not contributed to create or to worsen the consequences deriving from it.
- b) That the party that suffers the unpredictable event or *Force Majeure* immediately informs the other party and adopts the urgent measures directed to avoid the extension of its prejudicial effects.
- c) That the party that suffers the unpredictable event or *Force Majeure* sufficiently credits the existence, duration and effect of the event that supposes the claimed *Force Majeure* or unpredictable event.

20.4. The party that does not suffer the unpredictable event or *Force Majeure* will refrain from claiming compensations or applying penalizations for the nonfulfilment due to those events provided that the conditions foreseen in the previous paragraph take place.



**21.-NINTH.- APPLICABLE LAW**

21.1.-This contract shall be entirely governed by Spanish Law and by the mandatory and directly applicable rules of the EC Law and International Treaties applicable in Spain.

**22.- PREVENTION OF LABOUR RISKS**

22.1.- THE CONTRACTOR and subcontractors shall be bound to the fulfilment of the regulations on prevention of labour risks and shall cooperate to its application. For that purpose, the necessary means of coordination regarding the protection and prevention of labour risks and the information about them to the correspondent workers within the terms foreseen by Law shall be established.

22.2.- Regarding the works to be carried out at the Observatorio del Roque de Los Muchachos, the CONTRACTOR shall fulfil the following clauses:

22.3.- THE CONTRACTOR shall be responsible for the elaboration, during the detail design, of the Safety and Health Research and the Security and Health Plan for the execution of the works and the fulfilment of the former by the CONTRACTOR and its subcontractors. The Security and Health Plan shall always be available on the construction site.

22.4.- THE CONTRACTOR shall nominate and announce GRANTECAN three months in advance before the predicted date of beginning of the execution works of construction at the Observatorio del Roque de Los Muchachos, the competent technician that will act as coordinator to the effects of what is established by the regulations on prevention of labour risks (Law 21/1995, November 8<sup>th</sup>, Prevention of Labour Risks) and the Rules by which the minimum regulations on Safety and Health concerning construction work (Real Decreto 1627/1997, October 24<sup>th</sup>).