

GENERAL TERMS AND CONDITIONS (Commissioning Supervision Services)



and Conditions shall apply to the exclusion of any general or specific conditions communicated by Seller.

1 Definitions

1.1 This agreement (the "**Agreement**") is constituted by (i) these General Terms and Conditions and (ii) the relevant Purchase Order and (iii) all Annexes attached to the Purchase Order. In the event of any conflict between the terms of these General Terms and Conditions, the relevant Purchase Order and the Annexes, the following order shall prevail: 1/ the relevant Purchase Order, 2/ these General Terms and Conditions and 3/ the Annexes.

1.2 As used in these General Terms and Conditions and unless the context requires otherwise, the following words and expressions shall have the following meanings:

- (a) "**Annexes**" means any and all annexes attached to the Purchase Order;
- (b) "**Buyer**" means the company by whom an order is placed;
- (c) "**Commissioning Supervision Services**" or "**Services**" means the services related to the supervision commissioning of the Goods, and which are further described in this Agreement, including but not limited to (as the case may be) (i) submission and implementation of the procedures and requirements for the commissioning and Commissioning Tests, (ii) the supervision of the Commissioning Tests and start-up and of the compliance by Buyer's personnel with the commissioning procedures and requirements; (iii) all decisions as to advancing to the next stage of the commissioning procedure and/or performing new tests, verifications or corrections;
- (d) "**Commissioning Tests**" means tests aimed at demonstrating whether the Goods are in accordance with their technical specifications and may be operated safely and as intended and specified, as further detailed in this Agreement;
- (e) "**Goods**" means the goods or equipment specified in the Purchase Order;
- (f) "**Parties**" means Buyer and Seller and "**Party**" means either of both;
- (g) "**Purchase Order**" means a purchase order for the Services;
- (h) "**Seller**" means the party which accepts to provide the Services pursuant to this Agreement.

2 Seller Acceptance

These General Terms and Conditions and the relevant Purchase Order (together with all Annexes thereto and all documents referred to therein) contains the entire agreement between the Parties with respect to its subject matter. By confirming at any time any Purchase Order by Buyer, or performing at any time a delivery of Services pursuant to a Purchase Order by Buyer, Seller acknowledges these General Terms and Conditions and irrevocably agrees to be bound by them. These General Terms

3 Object of the Agreement

Under the terms of the Agreement, Seller shall sell to Buyer and Buyer shall purchase from Seller the Services as specified in this Agreement. Seller shall, within the limits of its scope, provide everything required, whether of a temporary or permanent nature, for the complete supply of the Services and for the remedying of every defect in the Services and shall ensure that, when completed, the Services shall be fit for the purposes for which it is intended as set forth in the Agreement.

4 Change Orders

Buyer may at any time request changes to the Services. Upon receiving any such request, Seller will promptly advise Buyer of the impact, if any, on the price and delivery schedule specified in this Agreement. If Buyer issues a written authorisation to proceed with the change, then the Agreement will be considered to be amended to incorporate such changes. If Seller is unable or unwilling to meet the requested changes, Buyer shall have the right to purchase the Services elsewhere.

5 Delivery of Services

5.1 Delivery of the Services shall be in accordance with the terms set out in the relevant Purchase Order.

5.2 The commissioning of the Goods and the performance of the Commissioning Tests shall be carried out by the Buyer's personnel under the control of the Seller as provider of the Commissioning Supervision Services.

5.3 The procedures and requirements for the assembly, erection on site, interconnection and Commissioning Tests, if not included in the Purchase Order, shall be submitted by Seller for approval by Buyer at the latest one (1) month prior to the planned assembly start date.

5.4 Upon successful completion of the Commissioning Tests, Buyer shall issue a certificate confirming acceptance of the results.

5.5 Seller shall not subcontract the whole or any part of the Commissioning Supervision without the prior written consent of Buyer. Any subcontracting shall be at the Seller's sole risk and cost and under its entire responsibility and liability.

5.6 The Services shall be delivered according to the agreed delivery schedule set forth in this Agreement. Unless expressly stated otherwise, all delivery times are binding.

5.7 In case of non-compliance with the agreed delivery schedule, Buyer shall be entitled, at its sole discretion, without limitation to any other rights or remedies provided by law, either to (a) a price reduction of one per cent (1%) per week, as of the third (3rd) week of delay, such reduction being limited to a maximum of ten per cent (10%) of the total price specified in the Purchase Order or (b) terminate the Agreement with immediate effect, without any indemnity being due by Buyer.

5.8 Seller shall immediately notify Buyer in case Seller becomes aware that it is likely that it will not be able to comply with the agreed delivery schedule.

5.9 Buyer reserves the right to request changes to the time schedule. Upon receiving any such request, Seller will promptly advise Buyer of the impact, if any, on the price specified in the Purchase Order. If Buyer issues a written authorisation to proceed with the change, then the Purchase Order will be considered to be amended to incorporate such changes. If Seller is unable or unwilling to meet the requested revised delivery schedule, Buyer shall have the right to terminate the Agreement with immediate effect, without any indemnity being due by Buyer.

6 Warranty

6.1 Seller guarantees performance (execution) of the Agreement.

6.2 Seller guarantees that the Services furnished to Buyer will not infringe any patent or copyright. Seller agrees to hold Buyer harmless against any claim, action or suit that may be brought against Buyer for patent or copyright infringement related to the Services and Seller also agrees, on receipt of our first written demand, to indemnify Buyer and hold Buyer harmless against all judgments, decrees, damages, costs and expenses recovered against Buyer or sustained by Buyer on account of any such actual or alleged infringement.

6.3 Seller warrants that Services provided by Seller will (i) be made as described in the Agreement, (ii) comply with the applicable National and European legal and safety requirements and regulations applicable at time of the Agreement, and (iii) be performed with all reasonable skill, care and due diligence and in accordance with good engineering practice.

6.4 Seller will correct defects in Services provided by Seller and reported to Seller within 18 calendar months after completion of such Services. Services corrected in accordance with this Clause 6 shall be subject to a new warranty of 18 calendar months from the date of completion of correction

6.5 Seller indemnifies and holds Buyer harmless against third party claims in connection with faulty Services, including court and attorney fees.

Notwithstanding the above, Seller shall not be liable for any defects in Services caused by: workmanship made or, furnished or specified by Buyer; non-compliance with Seller's requirements; any modification not previously authorized by Seller in writing.

7 Price

Seller shall sell to Buyer the Services at the prices set out in the relevant Purchase Order. The prices are expressed in the currency mentioned in the relevant Purchase Order. Prices are firm and valid for the duration of the Agreement. Seller shall bear, and the Agreement is deemed to include, all taxes, levies, imposts, duties, charges, fees, contributions, deductions or withholdings, of any kind or nature, whether corporate or individual, and any interests, penalties or expenses in respect thereof, levied in connection with this Agreement, except V.A.T. If any, transport costs, insurance costs, customs duties will be covered by the Incoterm 2010 (English version) chosen in the relevant Purchase Order.

8 Payment

Buyer shall pay correctly rendered invoices within sixty (60) days as of the end of month in which the invoice is received, according to the payment term as set out in the Purchase Order. If a Party does not pay a sum of money when it falls due the other Party is entitled to the legal interest upon that sum from the time when payment is due to the time of payment. Buyer may set off any amounts owing to it by Seller, whether or not Seller disputes such

amounts, against any amounts Buyer owes Seller. Seller agrees that any credit balance will be paid to Buyer upon Buyer's written request.

9 Suspension of Performance

Buyer may, by written notice to Seller, suspend further performance of the Agreement. Such notice shall specify the date and the estimated duration of the suspension. Such suspension shall not exceed more than ninety (90) calendar days. Upon receiving any such written notice of suspension, Seller shall suspend further performance of the Agreement. When Buyer withdraws the suspension by written notice to Seller before the ninety (90) calendar days expire, Seller will resume performance of the Agreement and will notify Buyer of the new delivery date. When the ninety (90) calendar days expire, Seller will give written notice to Buyer within fifteen (15) days after the ninety (90) calendar days of suspension have past that automatic cancellation is applicable. For every calendar day of suspension, a penalty fee of 0,02% of the total price (or that part on hold) may be charged by Seller to Buyer, invoiced per month. If Seller wishes to exercise its right to charge such penalty fee, the respective invoice must be issued and received by Buyer at month end. Payment of such penalty fee shall be made within sixty (60) days as of the end of month in which the invoice is received.

10 Early Termination

10.1 Either Party shall be entitled, without prejudice to any other rights it may have, to terminate the Agreement forthwith, wholly or partly, by notice in writing to the other party, without a court intervention or additional formality (*de iure*) and without any indemnity being due, if: (a) the other Party is in default of any of its obligations under the Agreement and fails, within 30 (thirty) days of the date of the terminating Party's notification in writing of the existence of the default, either to rectify such default if it is reasonably capable of being rectified within such period or, if the default is not reasonably capable of being rectified within such period, to take action to remedy the default, or, (b) on the occurrence of an Insolvency Event in relation to either Party. "**Insolvency Event**" in relation to a Party means any of the following: (i) a meeting of creditors of a Party being held or an arrangement or composition with or for the benefit of its creditors being proposed by or in relation to such party; (ii) a charge holder, receiver, administrative receiver or similar person taking possession of or being appointed over or any distress, execution or other process being levied or enforced on the whole or a material part of the assets of a Party; (iii) a Party ceasing to carry on business or being unable to pay its debts within the meaning of the laws of Belgium; (iv) a Party or its directors giving notice of their intention to make an application to the court for the appointment of an administrator; (v) a petition being presented (and not being discharged within 28 days) or a resolution being passed or an order being made for the administration, opening of the insolvency procedure or the winding-up, bankruptcy or dissolution of a Party; or (vi) the happening in relation to a Party of an event analogous to any of the above in any jurisdiction in which it is incorporated or resident or in which it carries on business or has assets.

10.2 In case of early termination, each Party shall be entitled to recover from the other Party or such other Party's representative all costs and damages incurred by the terminating Party as a result of such termination.

11 Force Majeure

The Agreement shall be suspended, without liability, in the event and to the extent that its performance is prevented or delayed due to any circumstance beyond the reasonable control of the Party

affected, including but not limited to: Acts of God, war, armed conflict or terrorist attack, riot, fire, explosion, accident, flood, sabotage, governmental decisions or actions (including but not limited to prohibition of exports or re-exports or the failure to grant or the revocation of applicable export licenses) or labour trouble, strike, lockout or injunction. If either Party is delayed or prevented from performance of its obligations by reason of force majeure for more than hundred and eighty (180) consecutive calendar days, either Party may terminate the then unperformed portion of the Agreement by notice in writing given to the other Party, without liability.

12 Insurance

12.1 Seller represents that it has, and for so long as this Agreement is in force, will maintain at its own cost and expense, from a reputable insurance company, adequate and sufficient insurance for the type of business engaged into by Seller in compliance with all applicable regulations and in accordance with the standard expected for a company operating similar activities, taking into account the specifics of the contractual relationship with Buyer.

12.2 Seller shall provide Buyer with certificates of insurance evidencing such coverage, upon Buyer's first written request therefore.

13 Relationship of the Parties

Each Party is and shall perform its obligations under the Agreement as an independent contractor and, as such, shall have and maintain complete control over all of its respective employees, agents and operations. Neither Party nor anyone employed by it shall be, represent, purport to act or be deemed to be the agent, representative, employee or servant of the other Party.

14 Confidentiality

Seller shall keep confidential and not disclose to others without Buyer's prior permission in writing the terms of the Agreement, any computer programs, software, firmware, specifications, drawings, technical descriptions, designs, trade or business secrets, or information, whether of a technical or commercial nature relating to Buyer's products and/or business acquired pursuant to the Agreement and to use same only for the purposes specified in the Agreement. Notwithstanding the foregoing, Seller shall have the right to disclose such confidential information to its Sellers or sub-contractors for the purpose of performing its obligations under the Agreement, subject to such Seller or sub-contractor being bound by a written undertaking of confidentiality equivalent to that set out in this Clause 14. Nothing contained in this Clause 14 shall apply to prevent Seller from disclosing information: (a) in its possession (with full right to disclose) prior to receiving it from Buyer, (b) which is public knowledge, (c) which it may independently receive, with no restriction on disclosure, from a third party, or (d) which is independently developed by an employee who has not had access to Buyer's confidential information. The obligations set out in this Clause 14 shall apply for a period of twenty (20) years from the date of the Agreement.

15 Intellectual Property

15.1 All Buyer's intellectual property used by Seller shall at all times remain vested in Buyer and may not be used by Seller for any purpose other than the performance of Seller's obligations under the Agreement unless otherwise authorized in writing by Buyer.

15.2 Seller agrees that all original works created pursuant to this Agreement, including, but not limited to, all research results, computer programs, reports, findings, conclusions, inventions, discoveries, work papers, notebook records, improvements of

Buyer's intellectual property and any other information, shall without further compensation be the exclusive property of Buyer immediately upon their creation. Seller hereby agrees that all of the work performed hereunder is a work made for hire (WFH) at the time of creation. Upon request by Buyer, Seller, without further compensation or reimbursement, shall assign such inventions and discoveries to Buyer. Further, Seller agrees to do any and all acts and to execute, or cause to be executed, any and all applications, assignments or other instruments necessary to enable Buyer, at its expense, to apply for, prosecute and obtain patents in any country for said inventions and discoveries, in order to assign and transfer to Buyer the entire right, title and interest thereto, and in order to protect and enforce said patents in proceedings and litigation.

16 Miscellaneous

No waiver by either Party with respect to any breach or default or of any right or remedy and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the Party to be bound. If any provision of the Agreement is held to be invalid in whole or in part, the validity of the remaining provisions shall not be affected. In such event, the Parties shall, if possible, substitute for such invalid provision a valid provision corresponding to the spirit and purpose thereof. Seller shall not assign novate, transfer, charge or otherwise deal with the Agreement or any of its rights, liabilities or obligations thereunder without Buyer's prior written consent. Buyer at his sole discretion and by notice shall have the right to assign, novate, charge or transfer any of its rights and/or obligations under the Agreement without Seller's prior written consent being required. The Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with Belgian law, excluding the UN Convention on Contracts for the International Sale of Services (CISG). Any dispute arising out of or in connection with the Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce, by one (1) or more arbitrator(s) appointed in accordance with said Rules, which Rules are deemed to be incorporated by reference into this Clause. The place of arbitration shall be Brussels, Belgium. The language to be used in the arbitral proceedings shall be English.