

# GENERAL CONDITIONS OF CONTRACT – Spare Parts and Services

## 1. RECITALS

These general terms and conditions of sale set forth, in conjunction with the documents listed below (hereinafter jointly called the "Contract"), all of the rights and obligations applicable between the Supplier (or "Seller", or any other equivalent vocabulary used in the offer) and the Customer (or "Purchaser", or any other equivalent vocabulary used in the offer). **The Customer's terms and conditions of purchase are expressly excluded.** The Contract consists of the following documents, in the following order of precedence (in the event of contradiction, the first listed document shall prevail over the others): (1) the order acknowledgement issued by the Supplier; (2) the Supplier's offer; (3) these general conditions, (4) the order issued by the Customer. The Contract shall become effective upon signature or where the Supplier has expressly accepted the Customer's order, or at the latest after receipt of the down payment.

## 2. COOPERATION OF THE PARTIES

### **2.1. Supplier's Obligations**

The Supplier shall provide the parts and/or services as identified in the Contract (hereinafter "Parts" and "Services").

The Supplier agrees to: provide the Parts and/or Services in accordance with the conditions specified in the Contract, in a professional manner and in accordance with recognized good practices; meet the technical standards applicable as of the date of the Contract in the country of delivery, or any other standards that may be expressly and unequivocally discussed and agreed to between the Parties. Any new technical standard, law or regulation applicable to the Parts or Services, which becomes mandatory during the execution of the Contract, may lead to a price adjustment or a revision of time schedule or any other impacted conditions.

The supplier guarantees that the Parts are free from liens, encumbrance, or privileges except for the Supplier's retention of title as provided in Article 6.2. The Supplier warrants that the Parts and Services will not infringe any patent, copyright, know-how or other proprietary right of any third party, when operated in accordance with the purpose and scope of the Contract. However, the Supplier cannot be held responsible for such infringement if it results from the use of the Services and/or Parts in connection with equipment not supplied by the Supplier, or in a country that was not initially agreed to, or according to instructions, designs or specifications provided by the Customer. The Customer shall promptly give to the Supplier a notice in writing, if any circumstance arises which with reason is likely to result in a claim under the above warranties. The Supplier shall use its best efforts to remedy such actual breach, which includes removing any lien or encumbrances on the Parts or, at the Supplier's choice, replace or modify the Parts or Service that infringes the rights of third parties.

### **2.2. Customer's Obligations**

The Customer shall provide to the Supplier within a reasonable time with regards to the agreed timeframes for performance: (1) all information relevant to the execution of the Contract, such as, but not limited to: clear and reliable specifications, composition and characteristics of the final product, environmental conditions and any other relevant characteristics of the site (2) all the resources and material necessary for the performance of the Contract, such as, but not limited to: representative samples in sufficient quantities, installation facilities listed at 4.2 and/or specified in the offer if installation is done by the Supplier, qualified staff to be trained by the Supplier if a training service is agreed to in the Contract, qualified representatives, who will participate in project meetings specified in the Contract in accordance with the time schedule defined; and (3) unhindered access to the subject Customer site.

In accordance with the applicable Incoterm, the Customer shall, at its own risks and expenses, obtain all permits, authorizations, licenses, documents and certificates needed for the importation and delivery of Parts and/or performance of the Services.

The Customer shall promptly inform the Supplier in writing, if it requires compliance with specific standards different from those contained in the offer. The Customer shall assume responsibility for the procurement, cost, delivery, installation, quality and performance of materials not supplied by the Supplier or no longer under the Supplier's warranty.

The Supplier shall not be held liable for damages suffered by the Customer due to non-compliance with the obligations listed above.

## 3. PRICE AND PAYMENT

### **3.1 Prices- Incoterms**

Unless otherwise agreed to in writing, prices are specified FCA (Supplier's premises) Incoterms 2010, in the currency of the country where the Supplier is operating. Prices are net, excluding taxes, customs duties, or any other taxes or duties, which must be borne and paid by the Customer. The Customer will have to provide to the Supplier the "Sales & Used Tax Exemption Certificate". Should the Supplier, its assignees or subcontractors be required to pay any of such taxes, the Customer shall reimburse them in full in the same currency as the paid taxes, within thirty (30) days from the date of presentation of the corresponding documents. In case the performance of the Contract is substantially delayed at the request of the Customer or for reasons due to the Customer, the prices may be revised by the Supplier to impact a fair and balanced increase in costs of performance of the Contract, including but not limited to, an increase in the cost of raw materials, labor, or any cost related to changes in applicable laws and regulations.

### **3.2. Payment**

The payment terms shall be as confirmed in the order acknowledgement and in accordance with the agreed payment schedule. Payments are made to the Supplier without set offs of any potential claim. In order to secure payment, the Supplier may request from the Customer a bank guarantee, or any other mechanism, to be issued on the terms and templates provided by the Supplier. Any guarantee from the Supplier as may be requested by the Customer, shall comply with the terms and templates of the Supplier.

### **3.3. Late payment**

Any delay in payment will result in (1) from the date the payment is due until the date the payment is made in full, the application of an interest at a rate equal to the most recent refinancing rate of the Federal Reserve Bank in New York increased by eight (8) points, or the highest rate permitted by the applicable law (2) the right of the Supplier to require immediate payment of all outstanding amounts and to suspend or interrupt the performance of its obligations and/or terminate the Contract; In case of delay in payment, the Customer shall also be liable ipso jure of a minimum fixed indemnity of forty (40) euros for recovery costs or the equivalent of same in the currency in which the project is quoted as set forth in Supplier's offer. Any additional costs due to late payment will be charged to and shall be paid by the Customer.

## 4. DELIVERY AND INSTALLATION

### **4.1. Delivery Conditions**

Unless otherwise agreed to in writing, delivery shall be in accordance with the FCA Incoterms 2010 (premises of the Supplier). Delivery may be partial, the Supplier's option. The Customer must open the boxes and inspect the Parts upon arrival, and give notice in writing of any potential claim for apparent defects or non-compliance within a maximum of five (5) days after delivery.

### **4.2 Installation conditions and conditions related to site where Services are performed**

If the parties agree that the unloading and/or installation have to be performed by the Supplier, the Customer agrees to (1) provide and maintain access to the site, and prepare the site for the Services, with adequate health and safety conditions, (2) provide all relevant information regarding the conditions of access, as well as the guidelines related to health and safety, (3) provide free of charge, the adequate resources and materials such as, but not limited to: facilities and utilities available on-site (eg. forklifts, machinery, energy, office space, sanitary facilities...), and the provision of an adequate and qualified staff and in a suitable timeframe (4) provide an adequate space for unloading, moving and handling the Parts. If the site has anomalies such as, but not

limited to, inadequate health and safety conditions, the Supplier may suspend the Services without liability, until the site is compliant.

### **4.3. Time Schedule**

All timeframes shall be as specified in the Contract, and are indicative unless otherwise agreed to in writing.

Timeframes shall start to run upon receipt by the Supplier of the agreed advance payment and/or applicable payment guarantee, as well as data required for the performance of the Contract.

### **4.4. Delays due to Customer**

The Customer's delay in providing the data needed for the performance of the Contract (including the items specified in 2.2 above) or any other delay attributable to the Customer or outside the control of the Supplier, may result in the extension of the initially agreed time schedules for the provision of Parts and/or performance of Services, for a period at least equal to the delay.

The Supplier shall be entitled to receive reimbursement by the Customer of all costs and expenses resulting from such delays (including but not limited to storage costs, waiting time of Supplier's staff and/or demobilization/remobilization of same). In case of delay due to the Customer, the Customer will nevertheless be required to make payment in accordance with the payment schedules originally agreed to by the parties.

## 5. LIQUIDATED DAMAGES

Unless expressly and unequivocally agreed to in the Contract between the Parties, no penalty for delay, under-efficiency or any other failure to perform can be claimed to the Supplier. However, if such penalties were expressly agreed to in writing between the parties, they may be applied provided that the Customer has incurred damages, as a result of a delay or low performance exclusively due to the Supplier. These penalties shall be considered as liquidated damages and shall be the Customer's sole and exclusive remedy and the Supplier's sole and exclusive liability in case of delay and/or low efficiency. Unless otherwise agreed between the parties, the cumulative liquidated damages for any reason whatsoever will not exceed five percent (5%) of the Contract price.

In the event that the Supplier provides integration services of equipment or materials that are not within the Supplier's scope of supply, the Supplier will be liable only of an obligation of means as it relates to the whole installation. Therefore, any commitment from the Supplier, in terms of time schedule, minimum efficiency level or any other level of performance, is conditioned to the fact that the equipment not supplied by the Supplier, reach the level of performance required and specified. Same shall apply where the Customer has appointed a subcontractor to be used by the Supplier.

## 6. TITLE AND RISK

### **6.1. Transfer of risks**

Risks shall be transferred in accordance with the Incoterm agreed to in the Contract, or, if none has been expressly agreed to, in accordance with FCA (Supplier's premises) Incoterm 2010. Until final payment has been made, the Customer shall insure the Parts for which it has risk of loss or damage for the full replacement value of the Parts. The Supplier shall pack the Equipment in a manner suitable to protect it during transportation. The Customer shall inform the Supplier of any specific need or request for the packaging. Any temporary storage due to Customer or made at Customer's request shall be at Customer's risks and costs.

### **6.2. Transfer of ownership**

Unless otherwise agreed to, and notwithstanding the transfer of risks, the Supplier shall retain title on the Parts until complete payment, including principal, interests and accessories.

## 7. ACCEPTANCE

A specific test and acceptance process may be specified in the Supplier's offer. Unless otherwise specified in writing, the Customer shall unpack and inspect the Parts promptly upon their arrival at the delivery destination and shall within five (5) business days after delivery give written notice to the Supplier of any claim for damages, defects or nonconformity, together with photographic evidence of the damage to the Parts. Failure to make such claim or give such notice within the stated period shall constitute an irrevocable acceptance of the Parts and an admission that such Parts have been received by the Customer in good condition, free of damage and that they fully comply with all the terms and conditions of the Contract.

## 8. WARRANTIES

### **8.1 Warranty on Parts**

The Supplier warrants that the Parts will be free from defects in material or workmanship for a period of one (1) year from the date of shipment.

During the warranty period, the Supplier shall, at its costs and option, repair or replace any defective Part due to a defect in material or workmanship; the Customer shall, immediately after discovery of the defect, notify it in writing to the Supplier. The notification shall contain a description and evidence of the defect. The Customer shall provide all facilities and access to the Supplier in order to observe these defects and to remedy them. Furthermore, the Customer shall not carry out or have a third party carrying out repairs or modifications that it deems necessary, unless this is expressly agreed to with the Supplier. If no defect for which the Supplier is liable is found after such notification of the Customer, the Supplier is entitled to a compensation for the costs incurred. The Customer shall arrange at its own cost for any dismantling and reassembling of equipment not supplied by the Supplier to the extent that this is necessary to remedy the defect. Unless otherwise agreed to, the Customer shall bear any additional cost, which the Supplier incurs for repair, dismantling, installation and transport as a result of the equipment being located, and Services having to be provided, in a place other than the original site.

Unless otherwise agreed to in writing, the costs and risks of loss or damage to repaired or replaced Parts during transport shall be borne in accordance with the same incoterm used for delivery of the Equipment. Any defective part, which is replaced by the Supplier, shall thereupon become the property of the Supplier.

Common wear parts and consumables are excluded from the warranty. Wear parts are those parts which require repair or replacement due to deterioration resulting from repetitive use (e.g. abrasion, corroding, ageing, fatigue, etc.) Examples of wear parts include but are not limited to, seals, guiding parts (bearings, rollers, etc.), shock absorbers, or springs. Electrical motors, electric/electronic components will be guaranteed under the terms of the manufacturer's warranty.

The Supplier shall not be held liable for defects or damages arising from any of the following reasons: bad maintenance of the Parts or the equipment on which they are installed, modification/replacement/repair of the Parts or the equipment without the written consent of the Supplier or incorrectly carried out by the Customer, non-compliance with operating manual and directions for use provided by the Supplier, unqualified or not properly trained personnel, normal wear and tear, exposure to conditions outside the range of the environmental specifications, or chemical, electronic or electrical influences which were not contemplated in the Contract, non-observation of the guidelines relating to the power supply or operation of the Equipment, a faulty design or parameter specified by the Customer, non-compliance of the products or packaging to the specifications defined beforehand concerning the rate or dimensional tolerance.

### **8.2 Warranty on Services**

The Supplier warrants that the activities included in the Services will be executed using the degree of skill and care required by customarily accepted good professional and technical practices. Supplier shall re-perform any activity included in the Services which are proved not to be in conformity with the required degree of skill and care as stated above, provided that the Customer notifies the Supplier in writing of any alleged deficiency within three (3) months upon completion of the concerned activity or within the expiry date of the warranty on Parts set out in Article 8.1, whichever occurs first.

The Supplier shall not be responsible for any deficiencies in the activities included in the Services caused by: (1) design parameters stipulated by persons other than the Supplier; (2) information supplied by the Customer; (3) work performed by workmen or other persons not under the Supplier's direct control.

**THIS CLAUSE 8 SETS FORTH THE EXCLUSIVE REMEDIES FOR ALL CLAIMS BASED ON FAILURE OF, OR DEFECT IN THE PARTS AND SERVICES, WHETHER THE FAILURE, OR DEFECT ARISES BEFORE OR DURING THE WARRANTY PERIOD, AND WHETHER A CLAIM, HOWEVER INSTITUTED, IS BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES AND GUARANTEES WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.**

#### **9. LIABILITY AND INSURANCE**

The Supplier may be liable only for damages directly caused by the Supplier's own negligence. In cases of personal injury, the Supplier's liability will be determined in accordance with applicable law.

**THE SUPPLIER SHALL NOT BE LIABLE FOR LOSS OF PROFIT, LOSS OF USE, LOSS OF PRODUCTION, LOSS OF, OR DAMAGE TO RAW MATERIALS OR FINAL PRODUCTS OR ANY OTHER INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES WHETHER CLAIMED IN THE CONTRACT, TORT (INCLUDING NEGLIGENCE) UNDER STATUTE OR OTHERWISE.**

Unless otherwise agreed to in writing, the total liability of the Supplier, on all claims of any kind, whether in contract, warranty, indemnity, tort (including negligence), strict liability, or otherwise, arising out of the performance or breach of the contract, or use of any part of the Parts or Services, shall not exceed (ten) 10% of the Contract price.

All liabilities of the Supplier under the Contract shall terminate upon expiration of the related warranty period. Each party undertakes to carry out and maintain the adequate insurances covering all of its responsibilities under the Contract as well as the risks inherent to its obligations. Either party may have to provide the certificates upon the other parties' request.

#### **10. FORCE MAJEURE**

Neither party will be held liable if its performance or its obligations under the Contract is delayed, prevented or made unreasonably onerous due to a force majeure event, such as, but not limited to, natural disasters, acts of war, terrorism, riots, blockades, embargoes, governmental decisions or actions (including, but not limited to, the prohibition of export or re-export, or revocation of applicable export license) fire, flood, interruption or delay in the supply of energy, raw materials or transportation, external labor conflict to the affected party, defects or delays due to subcontractors when caused by such circumstances ("Force Majeure"). Upon the occurrence of an event of Force Majeure, the affected party has the right to suspend the execution of their contractual obligations, upon notice to the other party, and shall take all reasonable steps to mitigate it. If the event that Force Majeure continues for more than six (6) months, the Contract may be terminated upon written notice, without prejudice to the payment of amounts due to the Supplier prior to the occurrence of the Force Majeure.

#### **11. INTELLECTUAL PROPERTY, SOFTWARE**

##### **11.1. Parts and Services**

Copyrights, patents, patent applications or any other intellectual property rights (the "Intellectual Property Rights") over any documents, projects, studies, plans, design, innovation, software and components related to Services and/or Parts (even if they have been specifically developed to address the Customer's specific needs) are and shall remain the exclusive property of the Supplier. The price of the studies, Parts and/or Services does not include the transfer of Intellectual Property Rights nor the expertise associated with them. Consequently, the Customer expressly undertakes not to manufacture or have third parties manufacture Parts or components of the Parts, nor perform the Services.

The Supplier grants to the Customer a limited non-exclusive, non-transferable, right to use the Intellectual Property Rights that are necessary for the use by the Customer of the Parts and/or Services sold. No other right, express or implied, in relation to the Intellectual Property Rights is granted to the Customer.

##### **11.2. Software**

The Supplier grants to the Customer a non-exclusive license to use application made by the Supplier for the intended operation of the Parts ("Supplier's software"). In respect of applications/software provided by third parties ("Third Parties' Software"), the Customer's right of use shall be limited to the extent that may follow from separate license agreements between the Customer and such third parties.

Unless otherwise specified in the offer or in separate license agreement and to the exception of line monitoring systems, the Customer's license to use the Supplier's Software shall be royalty-free. The Customer shall require the Supplier's written approval for any transfer of license. The Supplier may distribute future updates and upgrades of the Supplier's Software on terms to be separately agreed upon. For avoidance of doubt, the Supplier shall not be responsible to provide any update, upgrade or security patch on Third Party Software and more generally, the Supplier shall not be responsible for any damage, cost or loss resulting from any defect or breach of Third Party Software, or resulting from any defect or breach related to the Customer's network.

The Supplier shall not be obliged to provide the Customer with the source code for the software products. The Customer shall not be entitled to download, reverse engineer or compile software products and shall only be allowed to make copies of the software for backup purposes.

If the Customer changes any software products without the Supplier's consent, the Supplier may void any warranty affected thereby.

#### **12. CONFIDENTIALITY – REMOTE ACCESS – PERSONAL DATA**

The parties reciprocally undertake a general obligation of confidentiality regarding all confidential information whether oral or written, in whatever format it may be (discussion reports, plans, exchanges of computerized data, activities, installations, drafts, expertise, products, etc.) exchanged in the context of the preparation and execution of the Contract to the exception of information that is already in the public domain, or subsequently comes into the public domain otherwise than through the fault or breach by one of the parties.

The Customer expressly authorizes the Supplier to (i) have a remote access to the Supplier's equipment through the Customer's internet connection and/or the Customer's internal network (ii) update at any time and at its full discretion such remote access system for IT security purposes and (iii) collect, store and analyze all the Supplier's equipment's data (including related Customer's production data) by using such remote access system or a local direct access managed by the Supplier's personnel or through line monitoring systems. The Supplier shall have a free right to use (including for purpose of developing or improving Supplier's equipment and services), the results of such data analysis, at any time during and after the expiry of the Contract, to the extent that such data are anonymized. The Supplier shall not use, transmit or communicate any drawings or data identified by the Customer as confidential, to unaffiliated third parties without the Customer's prior consent.

Each party shall comply with data protection and privacy laws to the extent such party processes (i.e. collects, stores, transfers, etc.) any personal data relating to an identified or identifiable natural person ("Personal Data"). Should Personal Data be processed by the Supplier in connection with the Services, the Customer guarantees that all privacy rights of individuals affected by the data processing activities (including but not limited to the Customer's operators) are duly respected and implemented.

The parties may enter into a separate data processing agreement to fully document their respective obligations relevant to this agreement.

#### **13. MODIFICATIONS AND CANCELLATION**

Any change, addition or amendment to the Contract requested by the Customer is subject to the express written consent of the Supplier. The Supplier will inform the Customer in case such change results in increased costs, timeframes or modification of any other contractual term. The Customer may then confirm or refuse his change request within three (3) days. If the Customer does not confirm, the terms of the Contract will remain unchanged. Unless otherwise agreed to in writing, any increase in price due to such change shall be paid in accordance with the Contract terms and the agreed payment schedule. The order cannot be canceled by the Customer without the prior written agreement of the Supplier. Any request for cancellation of all or part of the order by the Customer, will result in the reimbursement by the Customer of expenses incurred by the Supplier at the time of cancellation, including the costs of staff demobilization. Unless otherwise agreed to, the payments already made to the Supplier, shall remain with the Supplier.

#### **14. EXPORT CONTROL - COMPLIANCE WITH LAW**

The Customer acknowledges that no good supplied by the Supplier shall be sold, supplied, transferred or exported, directly or indirectly by the Customer, its agents or affiliates to any country, entity or person, that is embargoed or sanctioned by the United Nations, the United States of America, the European Union and/or other countries' applicable export control laws, unless all necessary authorizations have been granted, and the goods are only used for their intended purpose. The Supplier reserves the right to withdraw fully or partially from any offer or agreement to supply items, for export control reasons such as but not limited to: inability to receive payments from the Customer, or if necessary permits are not obtained or revoked, or more generally, if in the Supplier's view the Customer is not conforming with the provisions of this article, or if there are other indications that the Customer does not comply with relevant laws and regulations. The Supplier shall not be held liable for such withdrawal. The Customer undertakes to cooperate and provide to the Supplier with any information needed for the Supplier to comply with its export control obligations including the name and destination of the end-user of the purchased products.

#### **15. LAW AND JURISDICTION**

The Contract shall be governed and construed in accordance with the laws of the country where the Supplier is incorporated, without regards to its conflict of laws provision and without regards to the United Nations Convention on Contracts for the International Sale of Goods which shall not apply. Any dispute arising from the Contract or relating to its validity or interpretation, including any claim regarding the breach thereof, whether sounding in contract, tort or otherwise, shall be finally, irrevocably and exclusively resolved by arbitration under the then in effect Arbitration Rules of the International Chamber of Commerce, by a sole arbitrator appointed in accordance with such rules. The seat of arbitration shall be the city where Supplier has its registered office within the country of incorporation. The language to be used in the arbitral proceedings shall be English. Any arbitration award rendered shall be binding, final and conclusive upon all parties, and judgment thereon may be entered in any Court having jurisdiction thereof. The prevailing party shall be entitled to recover reasonable attorney's fees and costs. The Parties undertake and agree that all arbitral proceedings conducted with reference to this arbitration clause (including any information disclosed during such proceedings as well as any decision or award that is made or declared during such proceedings) will be kept strictly confidential.

Nothing in the Contract or any purchase order shall prevent Supplier from protecting or enforcing its Intellectual Property Rights and/or rights regarding confidential information on any urgent or interim basis or otherwise before any court of competent jurisdiction. **THE PARTIES EXPRESSLY WAIVE THEIR RIGHT TO ANY TRIAL BY JURY, IF ANY.**

#### **16. GENERAL**

The Supplier is free to assign all or part of its rights and obligations arising from this Contract, to one of its affiliated company, without the prior consent of the Customer. The Customer may not assign all or part of its rights and obligations arising from this Contract without the prior written consent of the Supplier.

The Supplier shall have the right to subcontract all or part of its contractual obligations.

All notices to be given hereunder shall be in writing and shall either be personally delivered, or sent by facsimile or by mail with return receipt requested.

The action or failure to act by Supplier or Customer to enforce any one or all of the rights granted to either party shall not act as a waiver of that right.