

# GENERAL CONDITIONS OF PURCHASE

## TABLE OF CONTENT

### CHAPTER I: COMMON PROVISIONS

<b>1.</b>	<b>GENERAL PROVISIONS .....</b>	<b>7</b>
1.1	DEFINITIONS .....	7
1.2	APPLICATION SCOPE.....	11
1.3	NOTICE .....	11
1.4	GOVERNING LAW .....	12
1.5	CONTRACTUAL LANGUAGE .....	12
1.6	CONSTITUENT DOCUMENTS OF THE AGREEMENT AND PRIORITY OF DOCUMENTS.....	12
1.7	ENTIRE AGREEMENT .....	12
1.8	CONCLUSION OF THE AGREEMENT - EFFECTIVE DATE.....	12
1.9	AMENDMENT AND WAIVER.....	13
1.10	ASSIGNMENT .....	13
1.11	SUBCONTRACTING - PURCHASING .....	14
1.12	JOINT AND SEVERAL LIABILITY .....	14
1.13	NO EXCLUSIVITY .....	15
1.14	NO JOINT VENTURE, PARTNERSHIP OR ASSOCIATION – PARTIES’ AUTHORITY.....	15
1.15	SEVERABILITY .....	15
1.16	CONTRACTOR’S REPRESENTATIONS AND WARRANTIES.....	15
<b>2.</b>	<b>SCOPE OF THE AGREEMENT AND GENERAL OBLIGATIONS OF THE CONTRACTOR.....</b>	<b>16</b>
<b>3.</b>	<b>COMPLIANCE WITH TIME OR DELIVERY SCHEDULE .....</b>	<b>17</b>
3.1	TIME OR DELIVERY SCHEDULE .....	17
3.2	PLANNING AND RESOURCES .....	17
3.3	DELAY – EXTENSION OF TIME OR DELIVERY SCHEDULE - COSTS.....	17
3.4	LIQUIDATED DAMAGES FOR DELAY .....	18
3.5	OTHER REMEDIES .....	19
<b>4.</b>	<b>PRICE AND FINANCIAL GUARANTEES .....</b>	<b>19</b>
4.1	GENERAL PROVISION.....	19
4.2	TAXES, CUSTOMS DUTY, OTHER DUTIES .....	20
4.3	FINANCIAL GUARANTEES.....	20
<b>5.</b>	<b>THE CLIENT .....</b>	<b>20</b>
5.1	ACCESS TO THE SITE .....	21
5.2	PUTTING AT DISPOSAL OF SPACE.....	21
5.3	CLIENT’S TOOLS AND FACILITIES .....	21
5.4	CLIENT’S ENGINEER.....	21
5.5	INSTRUCTIONS .....	22
<b>6.</b>	<b>THE CONTRACTOR .....</b>	<b>22</b>
6.1	DUTY TO INFORM THE CLIENT .....	22

6.2	DUTY TO VERIFY CLIENT'S INFORMATION .....	22
6.3	NO LIABILITY FOR CLIENT'S APPROVAL .....	23
6.4	CONTRACTOR'S REPRESENTATIVE .....	23
6.5	WORK OF OTHER CONTRACTORS .....	23
6.6	REVENUES OF THE PRODUCTS, SERVICES OR WORKS .....	23
6.7	ETHICS AND SUSTAINABLE DEVELOPMENT .....	24
6.8	OBTAINING OF CONSENTS, PREPARATION OF PERMITS AND HOMOLOGATION BY A CONTROL BODY.....	24
6.9	REACH REGULATION .....	25
6.10	EMBARGO .....	26
<b>7.</b>	<b>SITE CONDITIONS .....</b>	<b>26</b>
<b>8.</b>	<b>TECHNICAL DOCUMENTATION.....</b>	<b>26</b>
8.1	SUBMISSION OF TECHNICAL DOCUMENTATION .....	26
8.2	CONSEQUENCES OF COMMENTS ON TECHNICAL DOCUMENTATION.....	27
8.3	INSPECTION OF DOCUMENTATION .....	27
8.4	ERRORS IN TECHNICAL DOCUMENTATION .....	27
8.5	AS-BUILT DOCUMENTS.....	27
<b>9.</b>	<b>MANUFACTURING AND CONSTRUCTION .....</b>	<b>28</b>
9.1	GENERAL PROVISION.....	28
9.2	GENERAL RIGHT TO INSPECT AND TEST DURING MANUFACTURING AND CONSTRUCTION .....	28
9.3	RIGHT TO INSPECT BY OTHERS DURING MANUFACTURING AND CONSTRUCTION.....	28
9.4	DEFECTS DISCOVERED DURING MANUFACTURING OR CONSTRUCTION .....	29
9.5	PACKING, COVERING AND INSPECTION ON COMPLETION .....	29
<b>10.</b>	<b>DELIVERY OF PRODUCTS OR EQUIPMENT ON SITE .....</b>	<b>29</b>
10.1	GENERAL PROVISION.....	29
10.2	PACKING AND MARKING .....	29
10.3	WAREHOUSING .....	30
10.4	TRANSPORT .....	30
10.5	CLEARANCE THROUGH CUSTOMS .....	31
10.6	DELIVERY .....	31
<b>11.</b>	<b>TRANSFER OF TITLE .....</b>	<b>32</b>
11.1	OWNERSHIP OF PRODUCTS, SERVICES OR EQUIPMENT.....	32
11.2	OWNERSHIP OF SITE WORK.....	32
<b>12.</b>	<b>CONTRACTOR'S TOOLS AND UTILITIES .....</b>	<b>32</b>
12.1	CONTRACTOR'S TOOLS .....	32
12.2	ELECTRICITY, WATER AND GAS .....	33
<b>13.</b>	<b>STAFF AND LABOUR .....</b>	<b>33</b>
13.1	GENERAL PROVISIONS .....	33
13.2	CLIENT'S INSTRUCTION RIGHT .....	34
13.3	CONTRACTOR'S STAFF AND LABOUR ON SITE.....	34
13.4	PROFICIENCY OF LANGUAGES.....	36
13.5	SUBCONTRACTORS.....	36
13.6	REMEDIES .....	36



<b>14.</b>	<b>HEALTH, SAFETY AND ENVIRONMENT .....</b>	<b>36</b>
14.1	SERVICES AND WORKS.....	36
14.2	PRODUCTS.....	36
14.3	OTHER PROVISIONS RELATED TO DELIVERY OF PRODUCTS OR PERFORMANCE OF WORKS.....	37
14.4	WASTE, HAZARDOUS MATERIALS AND ENVIRONMENTAL LIABILITIES.....	38
<b>15.</b>	<b>INVOICING AND PAYMENT .....</b>	<b>38</b>
15.1	FORM OF INVOICES .....	38
15.2	INVOICING SCHEDULE.....	39
15.3	IMPORTATION OBLIGATIONS.....	39
15.4	PROGRESS REPORTS WITH RESPECT TO AGREEMENT WITH FIXED UNIT PRICES.....	39
15.5	TIMING OF PAYMENTS AND PAYMENT MODALITIES .....	39
15.6	DISPUTES WITH RESPECT TO AMOUNTS INVOICED .....	40
15.7	SET-OFF .....	40
15.8	ADJUSTMENT OF INVOICES.....	40
15.9	AUDIT ON COSTS .....	40
<b>16.</b>	<b>DATA PROTECTION .....</b>	<b>41</b>
16.1	GENERAL.....	41
16.2	PROCESSING OF PERSONAL DATA.....	41
16.3	CONTRACTOR WARRANTIES .....	42
<b>17.</b>	<b>INTELLECTUAL PROPERTY .....</b>	<b>43</b>
17.1	BACKGROUND INTELLECTUAL PROPERTY.....	43
17.2	PROJECT INTELLECTUAL PROPERTY .....	43
17.3	WARRANTY .....	44
17.4	INDEMNIFICATION .....	44
17.5	CLAIMS.....	45
17.6	ESCROW AGREEMENT .....	45
<b>18.</b>	<b>CONFIDENTIALITY .....</b>	<b>45</b>
<b>19.</b>	<b>VARIATIONS.....</b>	<b>46</b>
19.1	CLIENT'S POWER TO VARY .....	46
19.2	ORDERS FOR VARIATIONS TO BE IN WRITING.....	47
19.3	EVALUATION OF VARIATIONS.....	48
19.4	CONTRACTOR'S RECORDS OF COSTS AND TIME EVALUATION OF VARIATION .....	48
19.5	NOTICE AND CONFIRMATION OF VARIATION .....	48
19.6	PROGRESS WITH VARIATIONS .....	48
19.7	IMPROVEMENTS .....	48
<b>20.</b>	<b>LIABILITY AND RESPONSIBILITY, RISKS, CARE AND CUSTODY LIABILITY .....</b>	<b>49</b>
20.1	GENERAL RESPONSIBILITY .....	49
20.2	DEFENSE OF CLAIMS .....	50
20.3	NUCLEAR RESPONSIBILITY.....	51
20.4	LIMITATION OF LIABILITY .....	51
<b>21.</b>	<b>INSURANCE TO BE TAKEN OUT BY CONTRACTOR.....</b>	<b>52</b>
21.1	GENERAL PROVISIONS WITH RESPECT TO INSURANCE .....	52
21.2	INSURANCE COVERS – MINIMUM REQUIREMENTS.....	52



<b>22.</b>	<b>FORCE MAJEURE.....</b>	<b>53</b>
22.1	DEFINITION OF FORCE MAJEURE EVENTS.....	53
22.2	NOTICE OF FORCE MAJEURE.....	53
22.3	CONSEQUENCES OF FORCE MAJEURE.....	54
22.4	OPTIONAL TERMINATION.....	54
<b>23.</b>	<b>SUSPENSION OF SUPPLY OF PRODUCTS AND/OR PERFORMANCE OF SERVICES OR WORKS .....</b>	<b>55</b>
23.1	ORDER TO SUSPEND.....	55
23.2	RESUMPTION OF WORKS .....	56
23.3	PROLONGED SUSPENSION .....	56
<b>24.</b>	<b>REMEDIES FOR CONTRACTOR'S DEFAULT .....</b>	<b>56</b>
24.1	EVENT OF DEFAULT AND NOTICE.....	56
24.2	SUSPENSION .....	57
24.3	SUBSTITUTION WITHOUT TERMINATION .....	57
24.4	TERMINATION FOR CONTRACTOR'S DEFAULT .....	57
24.5	CLIENT'S RIGHT OF REJECTION OF THE PRODUCTS, SERVICES OR WORKS.....	59
24.6	FURTHER PROVISIONS WITH RESPECT TO REMEDIES.....	60
<b>25.</b>	<b>TERMINATION FOR CLIENT'S CONVENIENCE OR CLIENT'S DEFAULT.....</b>	<b>60</b>
25.1	NOTICE OF TERMINATION FOR CLIENT'S CONVENIENCE.....	60
25.2	NOTICE OF TERMINATION DUE TO CLIENT'S DEFAULT .....	60
25.3	REMOVAL OF CONTRACTOR'S TOOLS .....	61
25.4	PAYMENT IN CASE OF TERMINATION FOR CLIENT'S CONVENIENCE OR DUE TO CLIENT'S DEFAULT .....	61
25.5	TRANSFER OF TITLE AND RIGHTS .....	62
<b>26.</b>	<b>CLAIMS, DISPUTES AND LITIGATIONS .....</b>	<b>62</b>
26.1	CONTRACTOR'S CLAIMS,.....	62
26.2	DISPUTES AND LITIGATIONS .....	63

## CHAPTER II: SUPPLY OF PRODUCTS

<b>27.</b>	<b>APPLICATION OF CHAPTER II.....</b>	<b>64</b>
<b>28.</b>	<b>SCOPE OF SUPPLY .....</b>	<b>64</b>
<b>29.</b>	<b>PLACE OF THE SUPPLY .....</b>	<b>64</b>
<b>30.</b>	<b>QUALITY OF THE PRODUCTS .....</b>	<b>64</b>
<b>31.</b>	<b>ACCEPTANCE.....</b>	<b>65</b>
<b>32.</b>	<b>DEFECTS.....</b>	<b>65</b>
32.1	DEFECTS LIABILITY PERIOD .....	65
32.2	NOTIFICATION OF DEFECT .....	66
32.3	REMEDIES .....	66



### CHAPTER III: PERFORMANCE OF SERVICES

<b>33.</b>	<b>APPLICATION OF CHAPTER III.....</b>	<b>67</b>
<b>34.</b>	<b>SCOPE OF THE SERVICES .....</b>	<b>67</b>
<b>35.</b>	<b>REPORTS AND PROGRESS.....</b>	<b>67</b>
35.1	REPORTS .....	67
35.2	REVISED PLANNING IN CASE OF DELAY .....	67
35.3	SERVICES INVOLVING INTERVENTIONS ON CLIENT'S EXISTING EQUIPMENT.....	68
<b>36.</b>	<b>QUALITY OF THE SERVICES .....</b>	<b>68</b>
<b>37.</b>	<b>ACCEPTANCE.....</b>	<b>68</b>
<b>38.</b>	<b>DEFECTS.....</b>	<b>68</b>
38.1	DEFECTS LIABILITY PERIOD .....	68
38.2	DEFECTS ON PRODUCTS OF THE CLIENT .....	69
38.3	NOTIFICATION OF DEFECTS.....	69
38.4	REMEDIES .....	69

### CHAPTER IV: WORKS

<b>39.</b>	<b>APPLICATION OF CHAPTER IV .....</b>	<b>70</b>
<b>40.</b>	<b>SCOPE OF WORKS .....</b>	<b>70</b>
<b>41.</b>	<b>COMMENCEMENT, TIME SCHEDULE, DELAYS AND SUSPENSION.....</b>	<b>71</b>
41.1	NOTICE TO PROCEED.....	71
41.2	TIME SCHEDULE .....	71
41.3	REPORTS .....	71
41.4	REVIEWED PLANNING IN CASE OF DELAY .....	71
41.5	WORKS INVOLVING INTERVENTIONS ON CLIENT'S EXISTING EQUIPMENT.....	71
<b>42.</b>	<b>SETTING OUT.....</b>	<b>72</b>
<b>43.</b>	<b>SITE DATA .....</b>	<b>72</b>
<b>44.</b>	<b>MANMADE OBSTACLES .....</b>	<b>73</b>
<b>45.</b>	<b>FOSSILS AND OTHER ARTICLES OF ARTISTIC, ARCHAEOLOGICAL OR HISTORICAL VALUE.....</b>	<b>73</b>
<b>46.</b>	<b>CONTRACTORS' OPERATIONS ON THE SITE .....</b>	<b>73</b>
<b>47.</b>	<b>EQUIPMENT, MATERIALS AND WORKMANSHIP.....</b>	<b>73</b>
47.1	MANNER OF EXECUTION.....	73
47.2	QUALITY OF MATERIALS .....	74
47.3	SURPLUS EQUIPMENT.....	74



<b>48.</b>	<b>DELIVERY OF EQUIPMENT TO THE SITE.....</b>	<b>74</b>
<b>49.</b>	<b>END OF ERECTION AND COMMISSIONING .....</b>	<b>74</b>
49.1	END OF ERECTION AND COMMISSIONING.....	74
49.2	READY FOR ACCEPTANCE TESTS .....	75
<b>50.</b>	<b>ACCEPTANCE TESTS .....</b>	<b>75</b>
50.1	OBLIGATIONS TO PROCEED WITH ACCEPTANCE TESTS – NOTICE - PROGRAMME.....	75
50.2	UTILITIES AND FACILITIES FOR ACCEPTANCE TESTS.....	75
50.3	REPEAT TESTS .....	75
50.4	TESTS RESULTS - TEST CERTIFICATE.....	75
50.5	MODIFICATION .....	76
50.6	POSTPONEMENT.....	76
50.7	USE BY CLIENT BEFORE PROVISIONAL ACCEPTANCE .....	76
50.8	CONSEQUENCES OF FAILURE TO PASS ACCEPTANCE TESTS .....	76
<b>51.</b>	<b>DEFECTS BEFORE PROVISIONAL ACCEPTANCE .....</b>	<b>77</b>
<b>52.</b>	<b>PROVISIONAL ACCEPTANCE .....</b>	<b>77</b>
52.1	CONDITIONS FOR PROVISIONAL ACCEPTANCE .....	77
52.2	DEFECTS AFTER PROVISIONAL ACCEPTANCE – DEFECTS LIABILITY PERIOD.....	78
52.3	CONTRACTOR TO SEARCH .....	79
<b>53.</b>	<b>FINAL ACCEPTANCE .....</b>	<b>80</b>
	<b>APPENDIX A : EMBARGO POLICY .....</b>	<b>81</b>
	<b>APPENDIX B : HEALTH AND SECURITY STANDARDS FOR SERVICES AND WORKS.....</b>	<b>83</b>



## Chapter I: Common Provisions

### 1. General provisions

---

#### 1.1 Definitions

In the Agreement the following words and expressions shall have the meanings stated:

**“Acceptance Tests”** means the tests as set forth in GC 50 which have to be passed successfully as one of the conditions to obtain the Provisional Acceptance.

**“Agreement”** means the agreement concluded between the Client and the Contractor, under which the latter undertakes to supply the Products and/or perform the Services and/or Works and consisting of the documents listed in GC 1.6.

**“Background Intellectual Property”** means Intellectual Property Rights and know-how existing prior to the date of conclusion of the Agreement and/or developed independently from the performance of the Agreement.

**“Best Engineering and Construction Practices”** means the relevant internationally recognized best practices, codes, standards, methods and acts that would be expected to accomplish the desired result in a manner consistent with the Law, safety, environmental and health protection, and the exercise of that degree of skill, diligence and prudence which would be expected from a skilled and experienced design, engineering or construction contractor engaged in the same type of undertaking under the same or similar circumstances and applying the codes and standards generally adopted by design, engineering or construction contractors in the design, engineering and construction of the Works.

**“Client”** means Laborelec or any other entity named as such in the PO and the legal successor(s) in interest to this entity.

**“Client’s Engineer”** means the engineering company appointed as engineer in accordance with GC 5.4 (as well as its legal successor), to which the Client has entrusted various tasks in relation with the supply of the Products and/or performance of the Services and/or Works.

**“Client’s Representative”** means the Client’s competent general representative to whom it shall delegate all authority necessary to act on its behalf under the Agreement. Any action of the Client’s Representative shall bind the Client as though it had been taken by the Client.

**“Consent(s)”** means all such approvals, consents, authorizations, notifications, concessions, acknowledgments, agreements, licences, third parties licences, permits, import permits, decisions, way leaves and similar items, either in the name of the Client or the Contractor, required to be obtained for the performance of the Agreement from any Public Authority, including those required for the import, handling, transportation, storage, commissioning or putting into service of any Products, Equipment, Works and Contractor’s Tools, but excluding the Permits.

**“Contractor”** means the entity or entities and the legal successor(s) in interest to this entity or these entities, named as contractor, supplier, service provider, vendor or named otherwise in the



SC and which is according to the Agreement in charge of the supply of the Products and/or performance of the Services and/or Works.

**“Contractor’s Tools”** means all equipment, appliances, facilities, buildings, connections, vehicles and other things of whatsoever nature required to supply the Products, and/or perform the Services and/or Works but does not include Equipment or other elements intended to form or forming part of the Products , Services or Works.

**“Contractor’s Representative”** has the meaning given to such term in GC 6.4.

**“costs”** means all duly justified and documented direct expenses (excluding any losses such as but not limited to loss of profit, loss of revenue, cost of capital) and costs, including overhead costs.

**“Country”** means the state where the Products, Services or Works shall be delivered.

**“Data Protection Legislation”** means any Law related to the protection of personal data applicable to the performance of the Services or Works or the supply of the Products pursuant to this Agreement.

**“Day”** or **“day”** means a calendar day, i.e. any twenty-four (24) hour period beginning and ending at 12:00 midnight in the Country, unless specified as starting from a specific hour.

**“Decennial Liability”** has the meaning given to such term in GC 20.1 (iv).

**“Defect”** means any defect (including when the Products, Services or Works are not fit for the purposes for which they are destined) or deficiency or lack of performance or unusual wear and tear (even if apparent before acceptance or Provisional Acceptance) in any part of the Products, Services or Works, including non-compliance of the Equipment, Products, Services or Works with the Agreement or the Law.

**“Defects Liability Period”** means the period, specified as such in the Agreement, during which the Contractor is liable to Make Good any Defect in respect of the Products, Services or Works in accordance with the Agreement without prejudice to the Client’s right to exercise any other remedies in accordance with the Agreement.

**“Effective Date”** means the date on which the Agreement enters into force and effectiveness in accordance with GC 1.8.

**“End of Erection”** has the meaning given to such term under GC 49.

**“Ending Value”** has the meaning given to such term in GC 25.4.

**“Environmental Liabilities”** means all losses, damages, and expenses (including, without limitation, the reasonable costs of investigation, testing, containment, removal, clean-up, abatement and reasonable attorneys’ fees and costs), whether or not quantified in amount, relating to the presence in the environment of Hazardous Materials attributable to the performance of the Agreement or to the violation by the Contractor, its agent(s), employee(s) or its Subcontractor(s) or their agent(s) or employee(s) of any Law regarding protection of the environment or the physical health of persons.

**“Equipment”** means machinery, apparatus, materials, articles and things of all kinds to be provided by the Contractor under the Agreement to become permanent part of the Works.





**“Event of Default”** has the meaning given to it in GC 24.1.

**“Final Acceptance”** means the acceptance of the Works by the Client as stated in the Final Acceptance Certificate.

**“Final Acceptance Certificate”** means a certificate issued by the Client to approve Final Acceptance of the Works under the conditions set out in GC 53.

**“Final Technical File”** means the package containing all the as-built Technical Documentation as referred to in GC 8.5.

**“Force Majeure”** or **“Force Majeure Event”** means any event as defined in GC 22.

**“General Conditions”** or **“GC”** means these general conditions of purchase.

**“Hazardous Material”** means any pollutant, contaminant, solid waste, hydrocarbon product, toxic or hazardous substance, fluids or waste, any flammable, explosive or radioactive materials regulated under, or subject to, the Law.

**“Hidden Defect(s)”** means any Defect(s) that becomes apparent after the Defects Liability Period and that was existing at the acceptance of Products or Services or Provisional Acceptance of Works.

**“Intellectual Property Rights”** means any and all patents, utility models, design rights, author’s rights or copyright (including any rights in computer software and program), database rights or topography rights (whether or not any of these are registered and including applications for registrations of any such thing) and any rights or forms of protection of a similar nature or having equivalent or similar effect to any of those which may subsist anywhere in the world.

**“Lapse of Consent”** or **“Lapse of Permit”** means any Consent and/or Permit (a) ceasing to remain in full force and effect or (b) not being issued or renewed.

**“Law”** means all laws, decrees, regulations and other legal acts of any Public Authority of the Country and international treaties, or international laws or regulations as far as applicable in the Country, including any such acts, regulations or directives enacted by a body of the European Union, and – for all of them - the entry into force of which or the transposition of which, has taken or is required to take place on or prior to the acceptance of the Products or Services or of Provisional Acceptance of Works.

**“Liquidated Damages”** means the financial compensation that will be due in case of particular non-compliance as specified in and payable in accordance with the Agreement.

**“Make Good”** or **“Making Good”** means any repair, adjustment, alteration, replacement which may be required to correct a Defect.

**“Month”** or **“month”** means a calendar month according to the Gregorian calendar beginning at 12:00 midnight on the last Day of the preceding month and ending at 12:00 midnight on the last Day of the current month, unless otherwise specified as from another Day to the Day preceding the same Day of following Month (Ex : From 15/03 to 14/04)

**“Negligence”** means on the part of a Party’s personnel, its representatives and/or one of its Subcontractors or proxies, any act or omission causing harm or contractual default.



**“Operation and Maintenance Manuals”** means the manuals described as such in the specifications and being in accordance with Best Engineering and Construction Practices.

**“Parties”** means Client and Contractor.

**“Party”** means Client or Contractor as the context requires.

**“Permit(s)”** means the permit(s) needed for the construction and/or the operation of the Works to be applied for by the Client except if otherwise specified in the SC.

**“Personal Data”** means any personal data as such term is defined in Data Protection Legislation.

**“Products”** means all or part of the drawings, documents, substances, materials, equipment, tools, and/or other things to be studied, designed, manufactured, transported and supplied by the Contractor under the Agreement, as referred to in GC 27 and as further specified in the SC, to be accepted by the Client.

**“Project Intellectual Property”** means any information and knowledge, documents, works, know-how, preparations, creations, studies, research, experiments, inventions, software, literature or any other kind of information, in any form whatsoever generated by either Party in the course of the performance of the Agreement.

**“Proposal for Variation Order”** means the proposal by the Contractor to make alterations to the Products, Services or Works according to GC 19.

**“Provisional Acceptance”** means the taking over of the Works in accordance with GC 52 when the obligations of the Contractor until Provisional Acceptance have been fulfilled as stated in the Provisional Acceptance Certificate.

**“Provisional Acceptance Certificate”** means the certificate issued by the Client in accordance with GC 52.1.

**“Public Authority”** means the government of the Country or from any of its subdivisions, any administrative department or body or judicial body of the Country with direct or indirect impact on the Agreement including the competent grid operator of the transmission or distribution network.

**“Punch List”** means the list of the outstanding minor work still to be completed by the Contractor after Provisional Acceptance as per GC 52.1.

**“Services”** means the performance by the Contractor under the Agreement of a manual and/or intellectual task or service as referred to in GC 33 and as further specified in the SC, to be accepted by the Client.

**“Site”** means the location where the Products shall be delivered, where the Services shall be rendered or where the Works shall be installed or constructed and any other place as may be specified in the Agreement as forming part of the Site. The Site may be further specified in the SC.

**“Special Conditions”** or **“SC”** means the framework agreement if any, the specific contract and/or purchase order and their annexes as referred to as such in GC 1.6 and being one of the constituent documents of the Agreement.



**“Subcontractor”** means (i) any person, firm or company - or group thereof - (other than the Contractor) to whom any part of the Agreement has been subcontracted by the Contractor, (ii) any supplier or vendor of the Contractor and/or (iii) any service provider of the Contractor.

**“Technical Documentation”** means without any limitation all such technical documentation, specifications, samples, patterns, models, calculations, computer programs (software), Operation and Maintenance Manuals and other documents or information of a similar nature, to be submitted by the Contractor to the Client in accordance with the Agreement.

**“Termination Value”** has the meaning given to such term in GC 24.4.

**“Test Certificate”** means in relation to any test conducted in accordance with the Agreement where a Test Certificate is required, the certificate established by the Client certifying that the test has been satisfactorily passed.

**“Variation”** means any change of the Agreement and/or modification to the Products, Services or Works as set forth in a Variation Order issued by the Client in accordance with GC 19.

**“Variation Order”** means the order issued by the Client containing a Variation.

**“Week”** or **“week”** means a calendar week consisting of seven Days.

**“Working Day”** means each day other than a Saturday, or a Sunday, or other than a day which is a legal holiday in the Country.

**“Works”** means the supply of Equipment and the performance of design, manufacture, erection, building, installation, assembling, disassembling, testing, commissioning activities and/or Acceptance Tests activities by the Contractor, all as necessary for the Works to be taken over by the Client according to the Agreement.

## 1.2 Application Scope

These General Conditions of Purchase define the general provisions that shall apply to all Products, Services and/or Works ordered by the Client to the Contractor. Special Conditions (purchase order, specifications, etc.) to be applied in addition to the General Conditions must be in writing and accepted by the Parties in accordance with GC 1.8.

## 1.3 Notice

Any notice, instruction, consent, approval, comment, certificate or determination to be given in connection with the Agreement must be in writing and shall be validly given delivered by hand, sent by fax, sent by registered mail, internationally recognized courier company to respectively such addressee, fax number or address as each Party has notified to the other upon the date of conclusion of the Agreement as set forth in GC 1.8. Either Party to the Agreement may change its nominated address or fax number by prior written notice to the other.

In deviation hereof, day-to-day communications (with the explicit exclusion of amendments, Variation Orders, certificates and acceptance documents) between the Parties may also happen per e-mail on the e-mail address(es) as notified by a Party to the other Party.



#### 1.4 Governing Law

The Agreement shall be governed by and construed in accordance with the Belgian law without giving effect to (i) any conflicts of laws provision or rule that would cause the application of the laws of any other jurisdiction or (ii) the provisions of the United Nations Convention on Contracts for the International Sale of Products.

#### 1.5 Contractual Language

Without prejudice to GC 13.4 and unless otherwise stated in the SC, the language to be used by the Parties for all documents is the language used or specified in the Special Conditions, the so-called “**Contractual Language**”, as well as, if there is a requirement by any applicable Law to use a language other than the Contractual Language for some documents or items, the language imposed by such Law.

#### 1.6 Constituent Documents of the Agreement and Priority of Documents

The Agreement is composed of the following documents listed by decreasing order of priority: (i) framework agreement if any or specific contract (ii) the purchase order ((i) and (ii) are hereinafter called “**Special Conditions**”; (iii) these General Conditions; (iv) the other documents to which it is referred to in the Agreement by means of internet address or other means (as for example health and safety rules, Site regulations, ethics rules, etc.).

If the cumulative application of the constituent documents would give rise to inconsistency, one document shall take priority over the other in accordance with the sequence in which they are listed in this GC 1.6 and the main document shall prevail on the annexes. In case of ambiguities or discrepancies between any provisions of the same constituent document, the Contractor shall inform the Client as soon as possible after discovery thereof and the Client shall explain and/or adjust such ambiguities or discrepancies.

#### 1.7 Entire Agreement

The documents or the undertakings that have been exchanged or concluded between the Client and the Contractor prior to the date of conclusion of the Agreement as set forth in GC 1.8 cannot prevail over the stipulations contained in the Agreement nor complement these. They cannot be invoked to clarify stipulations of the Agreement that may give rise to different interpretations.

#### 1.8 Conclusion of the Agreement - Effective Date

The Agreement is deemed to be accepted and concluded and shall enter into force on the date of the signature of the contract by both Parties, except if otherwise specified in SC.

When the purchase order is issued and sent by the Client, the following applies. Failing written notice of refusal within five (5) Working Days of the sending of the purchase order, and in any event in case of performance of the purchase order, the Contractor is deemed to have accepted the Agreement. In case of acceptance or deemed acceptance of the Agreement, the Agreement is deemed to be concluded on the date of sending of the purchase order. If the Contractor notifies remarks or reserves after the aforementioned five (5) Working Days period expiry, such remarks or reserves are deemed to be refused unless accepted in writing by the Client.

Subject to the following, the Agreement enters into force and effectiveness on the date of its conclusion.



The Agreement shall enter into force and effectiveness under the condition precedent that the Permits which are required for the supply of the Products, the performance of the Services and/or the execution of the Works have been obtained. For purposes of this Agreement, a Permit shall be deemed to have been obtained when the grant thereof is definitive, i.e. the period has expired during which any legal recourse can be filed against the Permit and without such legal recourse being lodged against the Permit; or, if a legal recourse has been filed against a Permit, such legal recourse has been resolved definitively in a manner as to preserve the Permit and allow the performance of the Agreement without adverse or negative impact for the Client. If the Permits are not obtained within the period specified in the Agreement, or if no such period is specified therein, within twelve (12) Months from the date of its conclusion, the Client may notify that the condition precedent has failed so that the Agreement shall not enter into force and effectiveness and shall cease to exist, without any liability of the Client. The Contractor shall reimburse all payments received in advance if any.

The date of coming into force and effectiveness of the Agreement is called the “**Effective Date**”.

### **1.9 Amendment and Waiver**

No amendment of the Agreement or waiver shall be effective unless it is made in writing and signed by the Parties’ Representative. No failure or delay of the Parties to exercise any right or remedy under this Agreement shall be considered as a waiver of such right or remedy, or any other right and remedy under this Agreement. Any consent by either Party to, or waiver of, a breach by the other Party shall not constitute consent to, waiver of, or excuse for any other further, different or subsequent breach.

### **1.10 Assignment**

The Contractor shall not assign (whether by assignment or otherwise, through a sale, capital contribution, donation or any other transaction, including the sale or contribution of a division or of a business as a whole, or a merger or split-up or change of control - whereby control shall have the meaning as a corporation, company or other entity, now or hereafter, directly or indirectly, owned or controlled by, or owning or controlling, or under common control with owner of the Parties , but such corporation, company or other entity shall be deemed to be an Affiliate only as long as such ownership or control exists. For the purpose of this definition “control” shall mean to have directly or indirectly the power to direct or cause the direction of the management and policies of a corporation, company or other entity, whether (i) through the ownership of voting securities entitling to the right to elect or appoint, directly or indirectly the majority of the boards of directors, or a similar managing authority, (ii) by contract or (iii) otherwise), the Agreement or any part thereof to any third party, without the prior written consent of the Client. In case of assignment with the Client’s agreement, the Contractor shall remain jointly and severally liable with the assignee for the compliance of the Contractor’s obligations resulting from the Agreement.

The Client shall be freely entitled, without the consent of the Contractor to assign the Agreement or any part thereof to any Affiliate of Group Engie.

All rights of the Client under or in relation to the Agreement may be exercised by and shall inure to the benefit of its successor in title and assignees.



### **1.11 Subcontracting - Purchasing**

The Contractor shall not subcontract the whole of its obligations.

The Contractor shall not subcontract any part of the manufacturing and supplying of the Products, the performance of any part of the Services or Works to any third party, nor purchase certain portions of the Products/Services or Works from any third party except the purchase of minor and non-critical components, without the prior written consent of the Client which can be withheld at discretion.

When such consent is required, the Contractor shall apply in writing form or by mail for it in due time with all technical details of the scope of the subcontracting and provide the Client with a list of Subcontractors the Contractor may call upon, to allow the Client to analyse the request and give or refuse its consent.

Any such consent, if given, shall neither relieve the Contractor from any liability or obligation under the Agreement, nor result in a legal relationship being created between the Client and the Subcontractor concerned.

Such purchases and subcontracted items shall be made in full compliance with the terms and conditions of the Agreement. The Contractor shall pass to its Subcontractors all relevant obligations of the Agreement even if the Agreement does not refer expressly to the Subcontractor. Except for the purchase of minor and non-critical components, the Contractor shall prohibit its Subcontractors to subcontract or purchase the whole or part of the Products, Services or Works without the prior written consent of the Client.

The Contractor shall remain responsible and hold the Client harmless, for the acts, defaults and neglects of any Subcontractor as fully as if they were the acts, defaults or neglects of the Contractor.

In the event that the warranty obtained by the Contractor from its Subcontractors has a duration or extent greater than the warranty given by the Contractor to the Client by the Agreement, the Contractor shall, with respect to the warranty it has obtained, make the Client the full and direct beneficiary of that warranty.

### **1.12 Joint and Several Liability**

Without prejudice to GC 1.11, if the Agreement is entered into between, on the one hand, the Client and, on the other hand, the Contractor acting in partnership with other parties (in the form of a joint venture, consortium or other co-operation), the partners: (i) shall be jointly and severally liable to the Client for the performance of the Agreement; (ii) shall nominate one among them (subject to obtaining the prior written approval of the Client on such appointment) to represent the partnership, with the full powers to represent them and to ensure the co-ordination of the performance of their obligations and the exercise of their rights under the Agreement; (iii) shall not change the contractual terms of their co-operation without the prior written consent from the Client, copy of which will be submitted to the Client.

Once the Agreement has been concluded, the Contractor shall be prohibited from entering into partnership with a third party to supply or perform the Products, Services and/or Works to the Client without prior written consent from the Client.



### 1.13 No Exclusivity

The Contractor cannot claim any exclusivity as regards the Products, Services and/or Works that form the object of the Agreement. The Client does not guarantee the Contractor any minimum volume of turnover.

### 1.14 No Joint Venture, Partnership or Association – Parties' authority

The Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

### 1.15 Severability

If any provision in this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, under the Law, that provision shall be deemed not to form part of this Agreement, and the legality, validity or enforceability of the remainder of this Agreement shall not be affected. If such illegal, invalid or unenforceable provision affects the entire nature of this Agreement, each Party shall use its reasonable efforts to immediately negotiate in good faith a valid replacement provision having or having to a large extent the same economic impact as the illegal, invalid or unenforceable provision.

### 1.16 Contractor's Representations and Warranties

Contractor represents and warrants in its name and in the name of its Subcontractors or in the name of their respective directors or officers that:

- (i) it is not in violation of any applicable Law that would affect its ability to perform any obligations under the Agreement, there is no criminal proceeding like fraud, corruption or money laundering that has been pronounced against it and there are no legal, arbitration, administrative proceedings or any other proceeding or investigation by or before any Public Authority, now pending or (to the best of its knowledge) threatened against it which, if adversely determined, could reasonably be expected to have a material adverse effect on its ability to perform under the Agreement; and
- (ii) it has made all filings with and obtained all Consents from all authorities required or appropriate in order to permit it to lawfully conduct its business; and
- (iii) the entry into and performance of the Agreement by it , and the transactions contemplated by the Agreement do not and will not conflict with the Law, or with its charter or organizational documents, or with any of its contractual undertakings or other document which is binding upon it or upon any of its assets;
- (iv) no event has occurred which would constitute an Event of Default which can be ascribed to the Contractor under the Agreement or, with the giving of notice or the lapse of time or other condition would constitute such an event; and
- (v) if it carries out building works as defined in the Law related to the social security of the workers as modified from time to time, it has no social security debts, nor tax debts at the moment of the conclusion of the Agreement. Should the Contractor have such





debts at any moment during the performance of the Agreement, it shall immediately inform the Client. If such debts exist at any moment, and if the Client is requested to pay it, then the Client shall be authorized at the moment of the payment of the invoices of the Contractor, to retain from the amount of the price to be paid, the percentage stated in the Law and pay it to the appropriate body of the relevant state.

The representations and warranties set forth here above shall be deemed to be maintained by the Contractor throughout the term of the Agreement; therefore, the Contractor undertakes to take all steps and make all efforts required to maintain the accuracy of these representations and warranties.

The Client may ask the Contractor to certify by appropriate documents delivered by independent authorities, all or part of such representations and/or warranties.

Without prejudice to any other remedies available to the Client under this Agreement, the Contractor hereby agrees to indemnify and hold harmless the Client from any and all costs, expenses or other liabilities arising from or related to the application of the representations as set forth in this GC 1.16.

## **2. Scope of the agreement and general obligations of the Contractor**

---

The Contractor shall supply the Products and/or perform the Services or Works whose detailed scope is defined in the Agreement.

The Products, Services and/or Works shall be complete in all respects, be wholly in accordance with the Agreement and fit for the purposes for which they are destined (it being understood that the Contractor shall be deemed to have made careful inquiries about such purpose and destination).

The Products, Services and/or Works shall include all the services, supplies and substances, materials, instruments, equipment, systems and accessories as needed to properly and timely perform Contractor's obligations, whether or not expressly stated in the Agreement. Such things shall be selected in such a way by the Contractor that they shall in no way degrade the performance and the safety of the Products, Services or Works

If the Agreement provides construction, erection, commissioning, repair or replacement works, the Products, Services and/or Works also include the supply of all materials and accessories, the construction of temporary structures and any works and services required (including eventual disassembly and final disposal), except for those interventions of the Client that are expressly specified in the Agreement.

The Technical Documentation and other documents that must be drawn up by the Contractor pursuant to the Agreement shall fully cover the relevant Products, Services and/or Works and shall set forth all the details necessary to suit their purpose.

The Contractor shall perform its obligations in accordance with, and the Products, Services and Works shall be in conformity with (i) the provisions of the Agreement and the consequences that normally result thereof; (ii) the latest state of the art, the best workmanship, and the Best Engineering and Construction Practices; (iii) the Law, the Consents and the Permits as they are in force at the time of the Effective Date and as modified from time to time during the performance of the Agreement (iv) all which may reasonably be expected from a normal and prudent specialized professional.

Without prejudice to the norms, codes and standards imposed by Law, the Contractor shall, for the supply of the Products and for the performance of the Services and/or Works, apply the norms, codes,





standards specified in the technical specifications or, if not specified, the relevant norms, codes and standards, generally applicable to such obligations or part thereof unless otherwise agreed with the Client.

Furthermore, if the Contractor performs Services, Works or installation, repair or maintenance works in relation to the Products, such activities will be performed by appropriate, qualified and trained personnel, using due care and diligence.

Compliance with the obligations mentioned hereinabove shall not release the Contractor of its responsibilities under the Agreement.

### **3. Compliance with Time or Delivery Schedule**

---

#### **3.1 Time or Delivery Schedule**

Unless otherwise agreed, the Contractor shall start the performance of its obligations promptly upon the Effective Date and shall strictly carry out its obligations within the time or delivery schedule set out in the Agreement.

The Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the time or delivery schedule, taking into account all relevant facts and circumstances for the performance of the Agreement.

When the time or delivery schedule is determined in Days, it expires at the end of the last Day; in Weeks, it is counted from Day to Day; and in Months, it is counted from Day of Month to Day of Month; if the last Day of either time limit is a public holiday or does not occur in the Month in which the time limit expires, the time limit is extended to the end of the first Working Day that follows.

#### **3.2 Planning and Resources**

The Client may request the Contractor to transmit, within the time set forth in the Agreement, or if no time is set forth therein, within fifteen (15) Days from the Effective Date, a schedule containing:

- (i) a bar chart or similar planning document, showing the sequence of activities (if required on account of the complexity of the Agreement) and the time-scale of the main steps in the carrying out of the Contractor's obligations. Such schedule shall not relieve in any way the Contractor of its obligations regarding compliance with the contractual time or delivery schedule.
- (ii) the organizational chart, with names, of the team in control of the studies and the performance of the Agreement . The Contractor describes the interfaces between said team and its existing structure as well as the interfaces with Subcontractors.

#### **3.3 Delay – Extension of Time or Delivery Schedule - costs**

Whatever is the cause of the delay, the Contractor shall promptly and without further delay notify the Client when it is aware of any circumstances that may delay the performance of its obligations, and simultaneously give all information about the reason and extent of said delay and the corrective actions that the Contractor will carry out in order to avoid, strive to make up for or



recover said delay. The Contractor shall take all reasonable steps to minimize the effects and document these steps in writing. It shall mobilize all available resources to reduce the delays whether caused by itself, its Subcontractors or other parties.

The time or delivery schedule set out in the Agreement cannot be extended except in case of

- (i) any Variation Order as per GC 19 or;
- (ii) any suspension of the supply of Products or performance of Services or Works by the Client as per GC 23 except by reason of any Defect, wilful misconduct and gross negligence on the part of the Contractor or;
- (iii) any material breach of a major obligation under the Agreement on the part of the Client or a delay arising from an act or default by the Client, having an adverse effect on the Contractor's compliance with the time or delivery schedule or;
- (iv) Force Majeure as per GC 22;

and as far as the Contractor demonstrates that such event has a direct and material impact on its obligations under the Agreement.

Subject to the above paragraph, upon receipt of request from the Contractor, the Client shall consider all supporting details provided by the Contractor and shall extend the time or delivery schedule as appropriate. Any modification to the time or delivery schedule must be recorded through a Variation Order.

To the extent the Contractor has strictly complied with the contents of this GC 3.3 and subject to proper documentation of such costs, it shall be entitled to all reasonable costs incurred by it through events arising out of GC 3.3 (iii) costs resulting from delays for reasons under GC 3.3 (i), (ii), and (iv) shall be treated as provided in respectively GC 19, 23 and 22.

### **3.4 Liquidated Damages for Delay**

The Special Conditions and their annexes may provide for the application of Liquidated Damages for delay if the Contractor fails to deliver Products, perform the Services or Works within the contractual time or delivery schedule, as such time may be extended according to this GC 3. Liquidated Damages shall apply automatically without any prior notice. If the Special Conditions do not provide Liquidated Damages for delay, Liquidated Damages for delay of one (1) % of the price of the Agreement shall apply per Day of delay.

Liquidated Damages for delay shall be calculated for the period between the expiry of the contractual time or delivery schedule and the date of acceptance of the Products or Services or the date of Provisional Acceptance of the Works, for each Day of delay, up to the limit as given in the Agreement, if any.

If separate Liquidated Damages for delay are specified for several time or delivery schedule, their application is cumulative if more than one time-limit is exceeded.

According to the Law, the payment of Liquidated Damages for delay shall be done by automatic deduction from any amounts due to the Contractor.



The application of such Liquidated Damages for delay shall not be exclusive of the application of other remedies available to the Client under the terms of the Agreement or the Law, in relation to the delays encountered.

### 3.5 Other remedies

If the Contractor's obligations have not been fulfilled at the expiry of the time or delivery schedule as specified in the Agreement as such time or delivery schedule may be extended according to GC 3, the Client may without prejudice to any other measures provided for in the Agreement such as the payment of Liquidated Damages for delay, (i) receive compensation for the resulting actual damage in excess of the amount of Liquidated Damages applied, (ii) exercise any of the remedies as set forth in GC 24.

## 4. Price and financial guarantees

---

### 4.1 General Provision

The price for the supply of the Products, the performance of the Services and/or the Works is specified in the Agreement. The Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the price, taking into accounts all relevant facts and circumstances for the performance of the Agreement.

According to the Agreement, the price is either one of the following or a combination thereof:

(i) Fixed Lump Sum

When the price is not based on fixed unit prices, it is expressed as a fixed lump sum. The price to be paid to the Contractor is an all-inclusive price covering all the expenses resulting from the supply of Products or performing of the Services or Works, including the expenses related to labour, supervision, consumables, Contractor's Tools, design, engineering, delivery of Technical Documentation, manufacturing, testing, packaging transport, storage, quality assurance, erection, construction, commissioning and testing, coordination, handing over, travel, accommodation, Intellectual Property Rights costs, insurance costs, overheads, taxes, duties and profits.

(ii) Price based on Fixed Unit Prices

If the Agreement provides that the price shall be calculated on the basis of fixed unit prices, the price shall be obtained by adding up the various products obtained when multiplying the measured quantities controlled and approved by the Client with their respective fixed unit prices.

The fixed unit prices comprise all the costs of any nature whatsoever, including among others, engineering, manufacturing, transportation and installation for the proper performance of the Products, Services or Works.

The fixed unit prices for manpower are based on working hours/days/weeks and will be applied on hours/days/weeks actually worked, as controlled and approved by the Client. The fixed unit prices for manpower include all charges and related costs, e.g. insurance, wages (including the wage cost of the whole of the personnel for which no hourly rates are stated), social charges and bonuses to the manpower involved, the profits, the transport and travel costs, accommodation, allowances, expenses specific to controlled nuclear areas, work clothing and protective clothing, small tools and consumables. The Contractor shall organize the Services or Works so that they will



be performed to the highest extent possible during normal working hours. No work can be performed outside normal working hours if the Contractor has not obtained the prior written consent thereto from the Client.

There shall be no event, reason or cause, which shall entitle the Contractor to an amendment, adjustment or increase of the price, except as expressly provided in the Agreement.

#### **4.2 Taxes, Customs duty, other duties**

The Contractor shall be liable for all taxes, duties, customs duties and other charges of whatever nature required to be paid in order to supply the Products or perform the Services or Works. The Contractor shall include those charges in its price (except VAT). Unless provided to the contrary under applicable regulations, the amount of applicable VAT – to be determined in accordance with the relevant regulations as duly evidenced by the Contractor – shall be stated on each invoice. If the Client is required to pay taxes or other charges to be borne by the Contractor, the latter shall, upon presentation of appropriate documentation, reimburse the Client for such taxes or other charges.

#### **4.3 Financial Guarantees**

The Agreement may provide the following guarantees:

- (i) financial guarantees which shall be on first demand and issued by a first-class entity approved by the Client and/or;
- (ii) parent company guarantee,

in the form and of the content set out in the Agreement.

The costs of obtaining such guarantee shall be borne by the Contractor.

The guarantees shall enter into force at the latest on the Effective Date and, subject to mandatory provisions of the applicable Law, shall remain in force until the expiry of the Defects Liability Period or the issuance of the Final Acceptance Certificate whichever comes the latest.

If the Contractor has not fully completed its obligations thirty (30) Days prior to the expiry date of a guarantee, the Contractor shall extend, prior to the expiration date of the guarantee its validity. If the Client has not received such extension of the guarantee fifteen (15) Days prior to its expiration, the Client shall be entitled to claim the full amount of that guarantee.

If an increase of the price is mutually agreed upon under a Variation Order as per GC 19 or as an exercise of an option, the Contractor shall take such steps to increase proportionally the amount of the guarantees.

The failure to provide and maintain the guarantees within due time shall be considered as an Event of Default.

## **5. The client**

---

Without prejudice to the more specific provisions of Chapters II, III or IV hereof, applicable as the case may be, the Client shall comply with following obligations:



## 5.1 Access to the Site

Without prejudice to the Contractor's right of access to the Site for the sole purpose of its investigation of the Site, soil and subsoil as required for its tender and preparatory design and works, the Client shall grant to the Contractor such access at the time specified in the Agreement according to the access procedure of the Site for the sole purpose of performing its obligations under the Agreement. Should the time of access not be specified in the Agreement, the Contractor has the obligation to request in writing to the Client when access to the Site shall be given. Prior to having access to the Site, various formalities, Consent or controls may be required, some trainings should be followed or authorizations should be obtained by the Contractor, the Subcontractor and/or their personnel related to a.o. H&S and Site regulations. The access to the Site shall not be exclusive to the Contractor. For the avoidance of doubt, the granting of access to the Site shall not be treated as creating any servitude or other interest in favour of the Contractor.

## 5.2 Putting at disposal of space

The Client shall put at the disposal of the Contractor space for storage on the Site of its materials, tools and equipment as well as for the installations intended for its personnel, as specified in the Agreement. The preparatory works (including e.g. levelling) of the allocated space and suitability for transport and storage is at the Contractor's responsibility and cost. If the allocated space is not sufficient or the Agreement does not provide any space for storage on the Site, the Contractor shall procure (additional) space outside the Site at its own cost, risk and responsibility.

## 5.3 Client's Tools and Facilities

Except in case of Contractor having failed to provide sufficient and adequate Contractor's Tools on Site, the Client shall, at the reasonable request of the Contractor, allow the Contractor to operate any suitable tools and equipment belonging to the Client that may be available on the Site and which, in the sole opinion of the Client, is not reserved for other purposes. The Client shall during such operation retain ownership of the tool or equipment but shall not be liable for any acts of the Contractor in relation to such tool or equipment nor for the performance or non-performance or condition of such tool or equipment or for any incident, accident or damage that may occur to such tool or equipment or to others, when such tool or equipment is in use by the Contractor. The Contractor has a duty of care and custody of Client's tool or equipment used by it. The Contractor shall pay to the Client all charges (as reasonably determined by the Client) resulting from the use of such Client's tool or equipment (including, without limitation, charges for fuel and other consumables). The Contractor shall also be liable for any physical loss or damage caused (i) by improper custody or (ii) by any operations carried out by the Contractor when using the Client's tool or equipment.

## 5.4 Client's Engineer

The Client's Engineer shall technically advise, assist and support the Client. The Client's Engineer shall have no authority to relieve the Contractor of any of its duties, obligations or responsibilities under the Agreement, unless otherwise specified in the special conditions.

The Contractor shall ask to the Client which notices and/or documents as referred to in the Agreement also have to be sent to Client's Engineer.



## 5.5 Instructions

The Client may issue to the Contractor instructions which may be necessary for the supply of Products or performance of Services or Works or for the remedying of any Defects, all in accordance with the Agreement. The Contractor shall comply with such instructions.

## 6. The contractor

---

Without prejudice to the more specific provisions of Chapters II, III or IV hereof, applicable as the case may be, the Contractor shall comply with the obligations set forth hereunder.

### 6.1 Duty to inform the Client

The Contractor recognizes that it is a specialist regarding the Products to deliver or Services and Works to perform. As a specialist, the Contractor has the obligation to properly inform and advise the Client and referring to GC 19.7 to propose improvements for the benefit of the Client at every stage of the negotiation as well as during the performance of the Agreement. The proposal shall be introduced and managed according to GC 19.

During the negotiation of the Agreement, this obligation shall at least take into account the latest state of art and best workmanship including codes, norms and standards, and improvements known and/or foreseeable at the Effective Date.

The Contractor shall promptly inform the Client of any evolution of the state of the art and best workmanship, including norms, codes and standards arising after the Effective Date which may have a direct impact on the performance of the Agreement and the Client shall decide whether it will implement the modification.

### 6.2 Duty to verify Client's information

The Contractor shall be deemed to have scrutinized the Client's requirements (including the specifications and the design criteria and calculations, if any) and all other data and information provided by the Client, in particular as regards the accuracy of these requirements and the consistency of the requirements, information or data.

The Contractor shall promptly inform the Client in writing of any lack or error in the information provided.

Any information or lack of information from the Client or received otherwise by the Contractor shall not relieve the Contractor from its obligation of performing the Products, Services or Works in accordance with the Agreement.

The Contractor shall check that all information provided by the Client is consistent with the other requirements of the Agreement and, in case of doubt or discrepancy with or between the (i) the Agreement; (ii) the latest state of the art and best workmanship, the Best Engineering and Construction Practices; and (iii) the Law, the Consents and the Permits, the Contractor shall promptly refer the matter to the Client. The Client shall explain and/or adjust such ambiguities or discrepancies and shall issue to the Contractor instructions in respect thereof.

### **6.3 Client's Approval**

The Contractor acknowledges that it must rely entirely on its own skill and judgment in the performance of its duties and obligations under this Agreement.

Accordingly:

- (i) any proposal, instruction, inspection, examination, testing, consent, approval or similar act (including the omission of any such act) by or on behalf of the Client, shall not relieve the Contractor from any liability, including liability for its errors, omissions, discrepancies or Negligence.
- (ii) the Contractor shall not be entitled to make any claim against the Client or to seek any relief or remedy of any nature by reason of any such action or absence of action by or on behalf of the Client.

### **6.4 Contractor's Representative**

The Contractor shall name and designate a competent general representative to whom it shall delegate all authority necessary to act on the Contractor's behalf under the Agreement. Any action of the Contractor's Representative shall bind the Contractor as though it had been taken by the Contractor.

The Contractor shall, without delay, inform the Client about any change of the Contractor's Representative.

### **6.5 Work of other contractors**

The Contractor shall grant to (i) any other contractors employed by the Client and their workmen and (ii) the workmen of the Client and of any Public Authority who may be employed in the execution of any work not included in the Agreement, on or near the Site, all opportunities for carrying out their work.

Contractor shall consult with Client, on the details and procedures with respect to any interfaces and connections of any portion of the Products, Services or Works of Contractor with any other works or equipment from the Client or third parties. Regardless of whether the responsibility for an interface is allocated to the Contractor in a specific case, the Contractor shall use its best efforts to allow for the smooth and timely connection at the interface in order to complete those works.

The Contractor shall enquire timely from the Client as to the possible effects the studies, designs and works of other contractors may have on its own studies, design and works.

### **6.6 Revenues of the Products, Services or Works**

The Contractor acknowledges that all revenues of any kind, if any, arising out of the use of the Products, Services or Works at any time (even before the acceptance or Provisional Acceptance) or any part thereof shall be the property of the Client and, if received by the Contractor (or any of its Subcontractors), shall be promptly transferred to the Client.



## 6.7 Ethics and Sustainable Development

1. The Contractor acknowledge having been aware of and agree with the Client commitments in the area of ethics and sustainable development, available on ENGIE website [www.engie.com](http://www.engie.com), in particular the Ethical Charter, the Guide on Ethical Practices and the Principles of the Commercial Relationship.
2. The Contractor without limitation whatsoever and wherever, (a) represents and warrants to the Client having respected and complied with, for a six years period prior to the signing of this Contract; and (b) shall respect and comply with, for itself and its suppliers and sub-contractors; international and/or national applicable and enforceable rules, concerning:
  1. fundamental human rights, and in particular, to abstain from (a) using child labour or any other kind of forced or compulsory labour; (b) any form of discrimination within their company or in relation to its suppliers or sub-contractors;
  2. embargos, the prohibition of arms or drug trafficking, and terrorism;
  3. trade, import and export licences, customs;
  4. the health and safety of staff and third parties;
  5. work, immigration, the prohibition of illegal work;
  6. respecting the environment in the design, production, use and disposal or recycling of the product;
  7. financial criminal offences, in particular corruption, fraud, influence peddling, swindling, theft, misuse of corporate funds, counterfeiting, forgery and the use of forgeries, and similar or related offences;
  8. measures to combat money laundering;
  9. competition law.

The Client (a) shall have the right but not the obligation to ask the Contractor to prove commitments it took under this clause have been properly implemented; and (b) shall be entitled, but not obliged, to carry out or order audits.

Any failure to meet the obligations set forth in this clause shall constitute a default under Contract entitling the suspension and/or termination of the Contract by, and at the sole and exclusive discretion of, the innocent party, at the defaulting party's exclusive costs, expenses and liabilities, under the terms and conditions set forth in this Contract.

## 6.8 Obtaining of Consents, Preparation of Permits and Homologation by a Control Body

The Contractor shall timely obtain (and maintain in effect and renew when necessary) all Consents necessary for the supply of the Products, the performance of the Services and/or performance of the Works and shall give all notices and support all fees, fines or penalties in relation with the Consents.

Upon request of the Client, the Contractor shall prepare the documentation for the application of Permit(s) to be applied for by the Client.





The information supplied in the application for the Consents or the preparation of the documentation for the Permits shall be complete and accurate and shall satisfy the requirement of the Law.

Contractor shall provide all assistance required by the Client in order to obtain and maintain the Permits. If any formalities or requirements to secure and maintain a Permit are to be complied with following the initial grant of a Permit, including the confirmation of the Permit at any stage of the Works, the Contractor shall within the framework of its contractual obligations under the Agreement, proceed with the completion of such formalities and requirements. If the Law, Permits or Consents provide that Products, Services or Works have to be controlled and/or approved by a control body, the Contractor shall be responsible to obtain such approval at its cost. If the title of the Products, Services or Works has already been transferred to the Client in accordance with GC 11 and the Law provides that such approval has to be obtained by the owner, the Contractor shall obtain such approval in the name of the Client. The Contractor shall keep the Client informed of all contacts with the control body, invite the Client to all meetings and shall reserve to the Client a copy of all reports issued by them.

The Contractor shall not be released of any of its obligations under the Agreement and shall not be entitled to any Variation Order or extension of the time or delivery schedule in case of a (i) Lapse of Consent or Permit or (ii) any action taken by the government or a Public Authority, which is due to Contractor's Negligence, its fault or its failure to comply with Law, Consents or Permits. Such event shall constitute an Event of Default on behalf of the Contractor.

## 6.9 Reach Regulation

The Contractor as supplier of substances – used on their own or contained in preparations or articles – shall fully meet its obligations with regard to Regulation (EC) No.1907/2006 “REACH” of 18 December 2006 and to the provisions adopted in pursuance of the said Regulation and likely to be amended from time to time.

As a manufacturer or importer of substances, the Contractor shall proceed, in particular, with the pre-registration and registration of the substances for the use that the Client makes thereof, so as to ensure the continuity of supplies and consequently of Client's activities. Failing that, Contractor guarantees compliance with that requirement by the manufacturer or importer upstream in the supply chain.

Contractor shall inform the Client of any restriction related to the manufacturing, the placing on the market or the use of the substances that it supplies, whether they are used on their own or contained in preparations or in articles.

If the use of a substance supplied to the Client is subject to authorization, the Contractor shall submit an application to the European Chemicals Agency, in due time, aimed at covering the use or uses that the Client makes thereof within the scope of its activities. Contractor shall send a copy of such application to the Client. The Contractor will also forward a copy of the authorization to the Client, once the authorization has been issued.

In particular, the Contractor ensures that the labelling and the safety data sheets for substances are updated so as to ensure that they comply with the applicable regulations (REACH regulation, etc.).



In the event of a breach of its obligations with regard to these regulations, the Contractor shall indemnify and hold harmless the Client for any direct or indirect, damaging consequences arising there from, with that breach constituting, moreover, an Event of Default.

#### **6.10 Embargo**

The Contractor shall comply with all the provisions regarding the Embargo policy specified in the Appendix A Embargo Policy. Failure to comply with the provisions stated in GC. 6.10 and Appendix A shall be considered as an Event of Default.

### **7. Site conditions**

---

The Contractor shall be deemed to fully take into account all contingencies relating to the conditions of the Site where, and relating to the period during which the Products shall be supplied and/or Services and/or Works shall be performed, such as:

- (i) the relevant environmental and ambient conditions, and the relevant soil and subsoil conditions and;
- (ii) the means of access to the Site and the possibilities of use of public premises, infrastructure or services and;
- (iii) the presence and operation of existing installations, structures, ducts, piping and cables of any nature, as well as the areas needed for the relocation or modification of these installations and;
- (iv) the simultaneous progress of other structures, work or services and;
- (v) the presence of other contractors and/or the Client and;
- (vi) the operation constraints of the Client and;
- (vii) the local uses, codes and labour conditions at the Site or elsewhere and;
- (viii) the health and safety rules of the Site or elsewhere and;
- (ix) the Law, the Consent, the Permits.

The Contractor shall not be entitled to claim any modification of price or time or delivery schedule in relation to the above considerations, except as expressly provided otherwise in the Agreement.

### **8. Technical documentation**

---

#### **8.1 Submission of Technical Documentation**

The Contractor shall submit to the Client before the acceptance of Products or Services or Provisional Acceptance of Works all shop drawings, as-built Process Flow Diagrams (PFD), as-built Process and Instrumentation Diagrams (PID), as-built drawings for the mechanical parts, for the electrical power, control and instrumentation circuits, all documentation needed for the proper and safe operation and maintenance of the Products, Services or Works, as well as the technical



specifications needed for the procurement of spare parts on the market for such Products, Services and Works. The Special Conditions may specify additional Technical Documentation to be submitted to the Client by the Contractor.

Notwithstanding the time or delivery schedule provided in the Agreement, the Contractor shall submit such Technical Documentation in the Contractual Language and within the time required in order to meet the requirements of the performance of the Agreement. The Technical Documentation shall be in the custody and care of the Contractor unless and until taken over by the Client.

Unless a higher number of copies is required under the Agreement, all documents required to be submitted to the Client shall be submitted in two copies. The Client may give comments on any Technical Documentation submitted within thirty (30) Days. Should the Client not reply within this period, the Technical Documentation shall be deemed to have been commented upon.

## **8.2 Consequences of Comments on Technical Documentation**

The Contractor shall give due consideration to the comments of the Client within twenty (20) Days after having received the Client's comments. Should the Contractor not reply within this period, the comments of the Client and their consequences shall be deemed to be accepted by the Contractor.

Once the Technical Documentation has been commented upon or deemed to be commented upon, the Contractor shall not alter it without prior written consent from the Client.

Any comment made by the Client on the Technical Documentation shall not relieve the Contractor from the due performance of its obligations under the Agreement, nor operate as a Variation Order.

## **8.3 Inspection of Documentation**

The Client shall have the right during working hours after prior notice to inspect all Technical Documentation or other relevant documents of any part of the Products, Services or Works and to request submission thereof.

## **8.4 Errors in Technical Documentation**

The Contractor shall be liable for any cost incurred (i) in correcting any discrepancies, errors or omissions in the Technical Documentation prepared by it or on its behalf, whether or not any such Technical Documentation has been commented upon by the Client, and (ii) in correcting any work carried out by the Contractor or the Client or its respective Subcontractors, in reliance upon such Technical Documentation or due to a delay in submission of such Technical Documentation by the Contractor.

The Contractor shall be, in addition, liable for any damage incurred by the Client due to an error in the Technical Documentation.

## **8.5 As-Built Documents**

All Technical Documentation will be transmitted in the Contractual language to the Client in their as built status and so marked, in one package called "Final Technical File", according to the Agreement and at the latest before acceptance or Provisional Acceptance.



## 9. Manufacturing and construction

---

### 9.1 General Provision

The manufacturing and/or the construction of the Products or Works including Equipment are done exclusively with substances, building materials, parts and equipment that are new, of first quality and free of any Defect. The Contractor shall be able to demonstrate at any time the origin of the raw materials and Equipment and, in particular, their compliance with quality requirements, applicable standards and codes, Law and, if any, specific requirements mentioned in the Special Conditions. In this regard, material certifications and certifications of compliance may be requested by the Client during the performance of the Agreement.

The failure to provide any document required by the Client to ensure the proper application of this article shall be considered as an Event of Default.

### 9.2 General Right to Inspect and Test during Manufacturing and Construction

The Client shall be entitled during manufacturing and construction to perform inspections and tests of the Products, Equipment and/or Works during working hours after having given to the Contractor, or the authorized Subcontractors, a reasonable notice. In the frame of such inspections, Client shall have the right to take pictures or to make recordings. The Contractor and the Client shall agree on the date on and the place at which any Products, Equipment and/or Works will be ready for inspection and/or testing.

If part of the Products, Equipment and/or Works is being manufactured on other premises, the Contractor shall obtain for the Client permission to inspect, examine and attend any test as if the said Products, Equipment and/or Works were being manufactured on the Contractor's premises, provided, that, such inspection, examination or attendance of tests do not delay the execution of or unduly interfere with the manufacturing of the Products, Equipment and/or Works.

The Contractor shall at its costs provide such assistance, labour, materials, electricity, fuel, stores, scaffolding apparatus and instruments as may be necessary and as may be reasonably demanded to carry out the tests and inspections efficiently on the premises of the Contractor or of any Subcontractor.

Should the Client not attend the tests at the place and date agreed upon between the Parties, the Contractor may proceed with the tests and shall promptly forward to the Client duly certified copies of the test results. If the Client decides, at receipt of the test results, that the test should be repeated in its presence, all the consequences of such repeat test (additional costs and delay suffered by the Contractor) shall be borne by the Client, without prejudice to GC 9.4. The Client shall notify to the Contractor within five (5) Working Days after receipt of the test results its demand, if any, to repeat the test in its presence. The Contractor shall no longer be obliged to repeat such test in the absence of such timely notification.

### 9.3 Right to Inspect by Others during Manufacturing and Construction

In exercising its rights to inspect the Products, Equipment and/or Works and/or to attend any tests under the Agreement, the Client shall be entitled to appoint specialized control agencies and/or to be accompanied by any Public Authority, purchasers, lenders, any lender's consultants, or any advisor(s) of the former or any adjusters or insurers' representatives.



Such inspection will not replace any inspection normally carried out by the Contractor and/or Subcontractor or those tests carried out according to rules, regulation, and practices of the manufacturing country.

#### **9.4 Defects discovered during Manufacturing or Construction**

The Contractor shall promptly notify the Client in writing of any Defect discovered during manufacturing and/or construction.

If as a result of any inspection, examination or test of the Products, Equipment and/or Works the Client considers with reasonable justification that such Products, Equipment and/or Works are defective, the Client shall notify the Contractor accordingly, stating in writing its objections and reasons therefore.

The Contractor shall immediately submit a proposal to the Client in order to properly remedy the Defect. The failure to submit such a proposal shall be considered as an Event of Default.

The Client may either accept the proposal or reject the faulty materials or component. If the proposal is accepted, the Contractor shall with all speed remedy the Defect and ensure that the Products, Equipment and/or Works comply with the Agreement. Thereafter, if required by the Client, the tests shall be repeated under these same terms and conditions.

#### **9.5 Packing, Covering and Inspection on Completion**

The Contractor shall inform the Client of the completion of the shop manufacturing of each batch of Products or Equipment to enable the Client to have the Products or Equipment verified before packing and to check its full completion.

If any Products or Equipment are packed or covered up without giving the Client the opportunity to perform the necessary verifications and inspections, the costs of removing packing and uncovering shall be borne by the Contractor irrespective of whether or not the Products or Equipment are in accordance with the Agreement.

Without objection from the Client, the Contractor shall be authorized to pack and prepare the Products or Equipment for dispatch.

### **10. Delivery of products or equipment on site**

---

#### **10.1 General Provision**

The Products and Equipment shall be delivered and unloaded on Site in compliance with the provisions of the Agreement.

#### **10.2 Packing and Marking**

All Products and Equipment shall be packed in first quality containers or packing. All packing being used shall be designed to minimize waste.

All packing shall be suitable for transport from factories/port of embarkation and rail/road/sea/air freight, rough handling at port of destination, inland transport and movement to the Site, all as applicable.



All packing shall be suitably marked in full accordance with the shipping documents and in accordance with the applicable importation requirements for the delivery of Products or Equipment on Site.

In order to facilitate warehousing and assembling, all packets and loose parts shall be marked as follows: name of the Client; order reference number of the Client; identifying item of the equipment or the parts (as set forth in the Agreement); gross weight in kilograms; net weight in kilograms; dispatch number and packet number; and volume, in cubic metres.

In addition to compliance with the marking prescriptions above, packages containing Hazardous Materials shall contain all labels, captions, material safety data sheet and inscriptions required by the Law.

### **10.3 Warehousing**

If necessary, the Contractor shall arrange, at its expense, the storage of the Products or Equipment at its premises. In the event that dispatch or delivery is delayed at the Client's written request, the Contractor shall be required to store the Products or Equipment at its sole risk and take out insurance to cover warehousing risks. The Client shall be entitled to require the Contractor to provide proof of such insurance, which shall be provided upon first request.

In this case the cost of warehousing and insurance shall be borne by the Client from the third (3) Month of storage, counting from the later of the following two dates: (i) the date of delivery according to the Agreement, or (ii) the date on which the supply is ready for shipment.

### **10.4 Transport**

The Contractor shall be responsible for loading at factory, transport to port of embarkation, loading on ship, sea transportation (or air or rail or road transportation as may be required or appropriate), unloading at port of destination, storage at port if necessary, inland transportation and unloading and storage on Site according to the good practice and the internationally accepted standards.

In the event of delay for which the Contractor is responsible, the Client shall have the right to impose and notify by writing, a specific means of transport, to be arranged at the Contractor's expense within six (6) Days.

The Contractor confirms that it has entered into the Agreement having examined or at least having had the opportunity and time to examine the access to the Site. The Contractor shall be deemed to have verified the suitability and availability of all access routes to the Site. The Client does not guarantee the suitability or availability of any particular access routes. Costs due to non-suitability or non-availability, for the use required by the Contractor, of access routes shall be borne by the Contractor.

For exceptional transports, namely out of gauge or the transport of Hazardous Materials, the Contractor shall be obliged to obtain in due time all the necessary authorizations and make all arrangements to carry out the transport at its own cost and risk.

The Contractor undertakes that specifications about the transport of radioactive or fissile material shall comply with the applicable Law or the other applicable regulations.



The Contractor shall have the obligation to obtain prior written approval of the Client to bring Hazardous Materials into the Site.

All transports must be accompanied by a transport bill indicating the shipment date, the details of the Products or Equipment and the number and type of packages, the delivery address, the identity of the carrier and a packing note.

#### **10.5 Clearance through Customs**

The Contractor shall be liable for clearance through customs of all Products, Equipment and Contractor's Tools and in procuring any necessary Consent to the re-export of Contractor's Tools upon removal from the Site and shall support all dues and costs of any nature related thereto.

#### **10.6 Delivery**

The Contractor shall give the Client not less than twenty-one (21) days' notice of the date on which any major item of Products or Equipment will be delivered to the Site.

The Contractor shall deliver the Products or Equipment to the Site and unload it at the relevant location, including the handling from the places where the Products or Equipment are stored to the place intended for building.

Before entering the Site, the Contractor shall request from the Client, the authorization to enter into the Site and the specific locations and other conditions for delivery and unloading the Products or Equipment. It shall present to the Client the transport bill. The Contractor shall provide the staff and equipment required for delivery and unloading. The Contractor may request the prior written authorization of the Client for the use of handling equipment belonging to the Client, which shall not be unduly refused.

Delivery by the Contractor shall be made only on the days, at the times and to the address of the Site specified in the Agreement; failing such specification, delivery shall be made only during working hours on Working Days.

The Contractor must request from the Client a receipt at the time of delivery. The signature of this slip or any other document by the Client at the time of delivery constitutes sole proof of delivery and does not signify acceptance of the Products or Equipment. A signed copy of the delivery document must accompany invoices relating to the delivery of the Products or Equipment.

Partial deliveries are not permitted without the Client's prior written authorization.

If particularly heavy or cumbersome equipment is involved, the Contractor will contact the Client at least 48 hours in advance.

If delivery is made by a large vehicle to a location which is difficult to gain access to, the Contractor will take charge, at its expense, of reserving parking spaces.



## 11. Transfer of title

---

### 11.1 Ownership of Products, Services or Equipment

Irrespective of the transfer of risks as referred to in GC 20.1 (i), the transfer of title to the Client shall take place at whichever is the earliest of the following times:

- (i) on the Effective Date, in so far Products, Equipment, materials or deliverables of Services or part thereof can be identified on that date;
- (ii) when Products, Equipment, materials or deliverables of Services or part thereof can be identified as intended to be delivered to the Client;
- (iii) when Products, Equipment, materials or deliverables of Services or part thereof are delivered on Site.

The Contractor undertakes to place the concerned Products, Equipment, materials or deliverables of Services apart and label them as to make it clear that these Products, Equipment, materials or deliverables of Services have become the Client's property and shall issue to the Client documents in such a form as the Client may reasonably require evidencing Client's title to such Products, Equipment, materials or deliverables of Services.

The Contractor shall indemnify the Client against any claim, loss or damage arising from any defect in the title to or encumbrance or charge or lien on Products, Equipment, materials or deliverables of Services.

### 11.2 Ownership of Site Work

The property rights of the works on Site in progress, including installation services, shall be transferred to the Client as such work or service is/are incorporated into the Works.

## 12. Contractor's tools and utilities

---

### 12.1 Contractor's Tools

The Contractor shall, at its own Cost, provide all Contractor's Tools necessary to supply the Products, perform the Services and/or execute the Works, in a safe and efficient way. The Contractor's Tools shall be of high quality, in good shape and in sufficient quantity and appropriate to execute and complete the Products, Services or Works in the conditions set forth in the Agreement. The Contractor shall make the necessary arrangements and obtain all Consents for the delivery, transportation and receipt of the Contractor's Tools on the Site within such period required to perform the Agreement in accordance with the applicable time or delivery schedule.

Before being given access to the Site, the Contractor shall provide to the Client a list of the Contractor's Tools with a drawing showing the size and location of the Site facilities.

All certificates, inspection reports and other documents required by Law and related to any Contractor's Tools shall be available on Site.





The Contractor shall be liable for loss of or damage to any of the Contractor's Tools which may happen otherwise than through the fault of the Client and shall forthwith replace any item of the Contractor's Tools used for the performance of the Agreement which is damaged or lost. For the avoidance of doubt, the fault of any of the contractors or other third parties on Site is not considered as the fault of the Client.

Maintenance, care and custody of Contractor's Tools will be of the responsibility and at the cost of the Contractor as long as their use is required for the performance of the Agreement (whether or not the Contractor is present on the Site for the performance of other contractual obligations).

The Contractor shall also supply Site facilities for the Client and others as specified in the Agreement.

If, at any time, the Contractor's Tools on the Site appears insufficient, inefficient or inappropriate to secure the quality of the Products, Services or Works required for the proper rate of progress, the Client may request the Contractor to increase their efficiency, substitute new tools, or equipment as the case may be, and the Contractor shall comply with such request provided that it is a reasonable request. However, either such request or failure of the Client to demand such increase of efficiency, number shall not relieve the Contractor from its obligations to achieve the quality of Products, Services and/or Work within the time or delivery schedule required by the Agreement.

## **12.2 Electricity, Water and Gas**

The Contractor shall be responsible at its own costs for the provision of all electricity, gas, water (including drinking water) and other services it may require in respect of the Products to be delivered, or the Services or Works to be performed.

It shall also be responsible for and bear the costs of all arrangements for connection, metering and distribution.

# **13. Staff and labour**

---

## **13.1 General Provisions**

The Contractor shall at all relevant times have the necessary and qualified resources to perform the contractual obligations entrusted to it, i.e. an adequate number of competent, suitably qualified and experienced staff to perform such obligations properly.

The Contractor shall make its own arrangements for the engagement of all labour, local or otherwise, and, for the transport, housing, feeding, and any other encumbrances thereof as well as payment of wages, taxes, social security contributions and insurances and in compliance with all requirements of the Law.

Prior to the commencement of Services or Works on Site, the Contractor shall appoint one Contractor's manager per shift and per Site. This representative shall have the required qualifications and power to (i) coordinate the Services or Works, (ii) be the single point of contact on Site for the Client, (iii) lead the Contractor's personnel on Site, (iv) make decisions for the proper performance of Services or Works.



The Contractor shall ensure that its staff members remain at all times under its sole responsibility, guidance, authority and supervision, so as to avoid such staff members being qualified as employees of the Client.

The Contractor shall make a limited use of staff employed on a temporary labour services provider basis or staff employed on the basis of a temporary student work contract to perform Services or execute Works under the Agreement.

The Contractor shall comply with the Law applicable to the employment of personnel or to work as a self-employed contractor i.e. labour laws, immigration laws, tax laws, social security laws. Moreover the Contractor's personnel shall comply with the "Safety Health and Environmental standard clause" existing within ENGIE group and located on the internet web site [<http://prevention.engie.com/en/>]. The Contractor shall provide proof thereof to the Client, on the latter's request. The Contractor shall, in all dealings with labour in its employment, have due regard to all days of rest recognized in the Country where the Site is located and shall respect all regulations in respect of maximum allowed number of working hours.

The Client shall be entitled at any time to require the replacement of (or refuse access to the Site or its premises to) any staff member involved by the Contractor or any Subcontractor whose qualifications, performance or conduct is, in the reasonable opinion of the Client, unsatisfactory especially regarding health, safety, security or environment provisions applicable on Site.

As from the signature of the Agreement and until two years after the end of the Defect Liability Period, the Contractor shall not recruit, or attempt to recruit staff and labour of the Client or the Client's Engineer.

### **13.2 Client's instruction right**

The Parties acknowledge and accept that the compliance by the Client with his obligations with regard to wellbeing at work, as well as the instructions that would be given by the Client in the framework of the performance of this Agreement, shall not be considered as any exercise of authority by the Client on the employees whom the Contractor would deploy for the execution of the agreed assignments.

In particular, instructions which are directly linked with the proper and timely performance of this Agreement and its addenda are considered as "instructions in the framework of the performance of this Agreement" in the sense of the preceding section.

This "instruction right" of the Client affects in no way the employer's authority of the Contractor over his employees.

### **13.3 Contractor's Staff and Labour on Site**

Without prejudice to GC 13.1, the following provisions apply whenever the performance of the Agreement by the Contractor involves the presence of staff of the Contractor on the Site, whether to deliver Products, perform Services or execute Works:

- (i) Prior to the commencement of the Services or Works on the Site, the Contractor shall provide the Client (as well as the Procurement Department of the Client) with a nominative list of the staff which is to be involved in the performance of the Agreement, setting out, per person concerned:



- (A) indication of the basis of involvement, i.e., employment contract, interim worker contract if allowed including the name of the Contractor or Subcontractor for which it works;
- (B) function, as well as professional qualifications, by means of diplomas or certifications of professional qualifications and/or professional experience or any other conditions required for the proper and timely performance of the Agreement and language proficiency;
- (C) mobile phone number or contact details of Contractor's manager;
- (D) Others information and documents to be specified such as IT cart, mother language etc.

The Contractor acknowledges that the accuracy and completeness of the abovementioned information is of fundamental importance to the Client.

- (ii) With respect to Services performed or Works executed at the Site, the Contractor shall on a daily basis submit to the Client a list of the workers it employs at the Site. Such list shall be duly completed by the Contractor and drawn up under its responsibility as far as its workers are concerned. Upon arrival at the Site, the list shall be handed over to the Client's foreman or deposited at the place designated for this purpose by the Client.
- (iii) The Contractor shall provide all forms or certificates that are required according to the Country Law and automatically without any express request of the Client.

Should the Site be located in the Economic European Area ("EEA") the Contractor shall among others, deliver the following documents prior to accessing the Site:

- (A) for employees:
  - the applicable form for employees who are subject to the social security system of an Economic European Area ("EEA") Member state (other than the Country) or a certificate of coverage for these employees who are subject to a social security system of a non-EEA Member state with which the Client's state has concluded a treaty in respect of social security matters;
  - the form for employees for whom a declaration is obligatory;
  - the work permit (if required);
- (B) for self-employed Contractors:
  - the form for self-employed Contractors for whom a declaration is obligatory;
  - the professional card (if required).

The Contractor warrants that it, its employees as well as the employees of its Subcontractors shall fill out the questionnaire that the Client is entitled to present to them.

The Contractor shall perform all declarations and pay all corresponding duties or fees.



### 13.4 Proficiency of Languages

The Contractor's manager and staff on Site must fully understand and carry out all oral and written instructions issued by the Client.

It is recommended that the Contractor's staff on Site must speak at least one of the following languages: language(s) of the Country and/or the Site and/or English. Should the Contractor call upon the services of staff who do not speak the language of the area where the work is to be carried out, at least one Contractor's designated representative per shift and per Site must be capable of translating all instructions fluently and comprehensibly from the language used in the area in question into the language(s) spoken by its staff and back again. Members of the Contractor's staff who do not speak the language of the Site in which the work is to be carried out must carry with them (on their hard hat) the contact number (mobile phone or pager) of the designated representative who speaks the language in question. If the Contractor is unable to meet the language requirements described above, the Client must assess the situation and shall only allow the Contractor on to the Site or bar him from it after taking suitable measures.

### 13.5 Subcontractors

The Contractor shall comply with the obligations imposed by this GC 13 and shall also cause its Subcontractors to comply with these obligations (including by passing down to the relevant Sub-Contractor the full effect of any remedies and rights available to the Client in case of shortcomings under this GC 13.

### 13.6 Remedies

Should the required forms not be presented or in case of non-compliance by the Contractor or one of its Subcontractors with this GC 13, the Client shall be entitled to immediately refuse the concerned employees' access to the Site or immediately remove them from the Site until such time as all necessary requirements are complied with.

The non-compliance with the provisions set forth in GC 13 shall be considered as an Event of Default.

## 14. Health, safety and environment

---

### 14.1 Services and Works

Without prejudice to the provisions of the Law, the Contractor shall comply with all health, safety and environment provisions specified in the Agreement, and in particular in the Appendix B Health and Security standards for Services and Works.

### 14.2 Products

- The Contractor shall elaborate a Health and Safety file, comprising among other things, risk assessment reports related to design and works, all inspection reports, declarations of conformity and/or certificates of equipment and installations required by the Law or the Agreement. This file shall be delivered to the Client before the acceptance for the Products.
- Before the first exposure to the risks of the Client's personnel and at the latest before the Acceptance Tests for Works and before acceptance for Products, the Contractor must



provide a technical training of the Client's personnel that will be entrusted with the normal operation of the Products or Works and must in particular instruct them about all orders and procedures of operation necessary for the correct operation of the Products or Works.

- At delivery of the Products, the Contractor shall submit to the Client a certificate of compliance to the Law and to the specific requirements of this Agreement regarding health and safety items.

### **14.3 Other provisions related to delivery of Products or performance of Works**

#### **14.3.1. Safety related equipment**

All safety related equipment (e.g. valves, electrical switch, etc.) used or supplied shall be equipped with an appropriated device to give the opportunity to safely lock out this equipment, including padlocks, for operation and maintenance activities. The aim is to prevent people from getting injured by any pressurised fluid, energy (e.g. electricity) or dangerous substances by making physically impossible the spurious activation of equipment by non-informed people.

#### **14.3.2. Carcinogenic materials**

The use of carcinogen or potential carcinogen materials in the Products or Works must first be approved by the Client. Carcinogen means a substance or a mixture of substances which induce cancer or increase its incidence. Substances which have induced benign and malignant tumours in well performed experimental studies on animals are considered also to be presumed or suspected human carcinogens unless there is strong evidence that the mechanism of tumour formation is not relevant for humans, as defined by Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006.

#### **14.3.3. Operation and Maintenance Manuals**

The Contractor shall furnish to the Client as soon as possible and not later than the start of the Acceptance Tests for the Works or before acceptance for Products, the Operation and Maintenance Manuals in sufficient detail to enable the Client's personnel to operate, maintain (including dismantling and reassembling) and adjust all parts of the Products or Works. The Operation and Maintenance Manuals shall be written in the official languages of the Contractual Language and shall take into account the risk assessments regarding health and safety. The Operation and Maintenance Manuals shall include, also all information, including identification of parts, and manufacturers' names, addresses, telephone and fax numbers, to enable the Client to procure spare parts for the entire Products or Works. The Contractor shall revise the draft manuals of operating and maintenance to incorporate the comments made by the Client.

The Contractor shall during the Defects Liability Period revise and/or update the Operation and Maintenance Manuals and issue a final version of the Operation and Maintenance Manuals at the end of the Defects Liability Period.

Any cost incurred by the Client at any time due to a delay in supply of the Operation and Maintenance Manuals or to an error or omission in the same manuals shall be charged to the Contractor.



#### 14.4 Waste, Hazardous Materials and Environmental Liabilities

The Contractor shall take all reasonable steps, to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of its operations. In particular, but without limitation, the Contractor shall:

- (i) keep the Site free from accumulation of wastes, rubbish and Hazardous Materials caused by or used in the operations and acts or omissions by the Contractor and shall, in compliance with the Law, Consents, Permits and the Agreement, clean up the Site and dispose of any such materials, to the satisfaction of the Client, on a regular basis and as soon as possible after the Client's reasonable request to do so or after termination of the Agreement;
- (ii) ensure that emissions, surface discharges and effluent from the Contractor's activities shall not exceed the values indicated and prescribed in the Law, Consents, Permits and the Agreement. If the Permit has been applied by the Client to the Public Authorities, the Contractor shall ask to the Client what are the values prescribed by the Permit.

The Contractor shall act so as not to create any Environmental Liabilities, whether before or after termination of the Agreement, and shall indemnify and hold the Client and third parties harmless from any such liabilities, including liabilities resulting from Hazardous Materials, soil pollution generated or brought on to the Site by the Contractor.

### 15. Invoicing and payment

---

#### 15.1 Form of Invoices

If so required by the Client, the Contractor shall collaborate with the Client to facilitate the invoicing process including usage of web tool and pre-invoicing.

Invoices shall be submitted to the addresses and with the number of copies specified by the Agreement. In addition to the items which are required to be stated pursuant to applicable regulations (including without limitation VAT regulations), they shall set out:

- (i) the full references of the purchase order and of the Variation Orders if any (name of the Agreement, description of the object, complete reference number);
- (ii) for Services and/or Works, the service entry sheet number, if any;
- (iii) the total price or, as the case may be, the partial amounts of the order or its Variation Order for the remunerations at fixed lump sum, or the amount consistent with the progress statement for the price covered by fixed unit prices;
- (iv) the indication of the due term and the milestones as provided for in the Agreement;
- (v) in the case of partial or complete delivery, the detail of the supplies or services for which payment is requested;
- (vi) the supporting documents (progress statements and/or reports, work orders, delivery notes, etc.).



Any and all of the statements or references above stated are required for due registration in the Client's accounting system and will enable proper payment.

## **15.2 Invoicing Schedule**

The Contractor may issue its invoice for each payment term as set forth in the SC if any, or when the Products, Services or Works are complete and are accepted by the Client.

Invoices subject to reports of end-of-work, industrial start-up, acceptance, Provisional or Final Acceptance, shall be submitted together with a copy of their relevant reports or certificates.

The amounts relating to Variation Orders are invoiced separate from those issued for the main order.

## **15.3 Importation obligations**

When the purchase order covers Products, Services or Works imported into the Country from another EU Member state, the Contractor shall supply on its invoice the information requested in the Agreement with a view to making it possible for the Client to comply with Importation obligations.

## **15.4 Progress reports with respect to Agreement with fixed unit prices**

When the Agreement provides that the price or part thereof shall be calculated on the basis of fixed unit prices, the Contractor shall issue progress reports on a regular basis, using the forms agreed upon by the Parties. Such reports shall at least describe the Products, Services or Works performed during the related period, the associated fixed unit prices as well as the aggregate price.

Contractor shall submit in writing such reports to the Client for approval. The Client shall give its approval or its comments within a period of fifteen (15) Working Days. Such approval or comments shall not be unreasonably withheld.

Any approval by the Client shall not constitute acceptance of the Works to which such approval relates and shall not constitute a waiver of any right or remedy arising under this Agreement with respect thereto.

## **15.5 Timing of Payments and Payment modalities**

Subject to mandatory provisions of the Law, the amounts due are payable at sixty (60) Days from the date of the invoice or as otherwise agreed in SC, provided the contents and form of the invoice are compliant with the terms of the Agreement.

With respect to any invoice for a down payment or a milestone payment, the relevant invoice shall become due if the Contractor has fulfilled all contractual obligations at the date of the submission of the invoice for that down payment or milestone payment.

No payment can be requested by the Contractor if a payment relating to a previous term has not been carried out by the Client owing to an infringement, deficiency or default on the part of the Contractor.



The Contractor shall list and identify all its claims towards the Client, of which it had knowledge on or before submitting an invoice. No other claims or costs, including but not limited to extension of time or delivery schedule, indemnification, breach of Agreement, will be allowed thirty (30) days after the date of submission of the invoice.

If the payment of any sum payable under this Agreement is delayed for reasons attributable to the Client, the Contractor may ask interest on the amount unpaid for the period equal to the number of Days elapsed between such due date and the date of payment, at the rate per annum (for a year of 360 Days) being the three Months EURIBOR for similar amount and period (prorated if necessary), such interest rate to be increased by a margin of 2 points per annum, except if otherwise provided in the Law or in the SC. The interest rate is the rate in force on the date of issuance of the invoice.

#### **15.6 Disputes with respect to Amounts Invoiced**

If the Client disputes any amount specified in an invoice, it shall be entitled to limit its payment with respect to such invoice to the undisputed amounts.

With respect to the disputed amounts, the portion which eventually becomes due shall be paid within sixty (60) Days from the date of conclusion of the agreement reached between the Parties or the pronouncement of the decision definitively resolving the dispute. The Contractor undertakes not to invoke the exception of non-performance in order to suspend the performance of its obligations during the dispute.

Payment by the Client, wholly or in part, does not, in any case, constitute acceptance of the Products, Services and/or Works.

#### **15.7 Set-off**

The Client may retain and set off any amount due to the Client by the Contractor under this Agreement or any agreement existing between the Parties, against any amount due to the Contractor by the Client under the Agreement.

The Client may retain and set off any amount paid by the Client to any third party including Public Authority, due to Contractor's default, against any amount due to the Contractor by the Client under the Agreement.

#### **15.8 Adjustment of Invoices**

If any sum becomes payable under the Agreement by the Contractor to the Client, whether by deduction from the price or otherwise, the amount thereof shall be established in an appropriate accounting document, modifying, if applicable, the corresponding VAT and set off against any payment due under any invoice.

#### **15.9 Audit on costs**

When the Agreement provides payment of costs by Client, the latter shall have the right to have access to Contractor's accounting data and to audit them.





## 16. Data protection

---

### 16.1 General

Each Party shall, at all times, comply with its respective obligations under all applicable Data Protection Legislation in relation to all Personal Data that is processed under the Agreement. The Client may process Personal Data regarding the Contractor, and Subcontractors and their personnel within the context of this Agreement. Such Personal Data may be disclosed to the Client's affiliated companies as referred to in GC 1.10. The Contractor and Subcontractors and their personnel have the right to access and to request rectification of the Personal Data concerning them processed by the Client.

### 16.2 Processing of personal data

If during the performance of the Agreement the Contractor gets access to personal data, protection by applicable Law relating to the processing of personal data and its implementing regulations shall apply.

The Client is responsible for the processing of these data, and the Contractor carries out its activities in his capacity of processor. In his capacity of processor, the Contractor undertakes to process (i) only those data necessary for the performance of this Agreement, (ii) in accordance with the provisions of this Agreement, the applicable Law and (iii) in accordance with the instructions and under the supervision of the Client.

The Contractor undertakes to adopt appropriate technical and organizational measures (including, without being limited to, passwords, encryption, security, limited access, backup) to protect against accidental or unlawful destruction, accidental loss, personal as well as the amendment of or access to it, and any other unauthorized processing of personal data.

The Contractor will refrain from transmitting personal data to third parties, unless such communication is necessary for the implementation of this Agreement and with the prior written permission of the Client. The Contractor will not keep/save these personal for a longer duration than those required for the execution of this Agreement, unless a statutory provision to the Contractor imposes a longer retention period, in which case the Contractor will inform the Client of its decision in writing.

The Contractor will ensure that only the members of his staff that need the personal data for the implementation of this Agreement have access to them, and that these members of staff only have access to the data they actually need, taking into account their function. The Contractor will also ensure that the members of his staff who have access to personal data, process it in accordance with the guidelines given by Client to the Contractor, and are bound by a duty of confidentiality concerning these personal data.

The Contractor will compensate the Client for any damage resulting from failure to comply with this provision.

The Contractor will inform the Client immediately of:

- (i) a security incident or breach of any of the obligations contained in this Article 16;
- (ii) a complaint from an individual whose personal data are processed and / or



- (iii) an investigation by a regulatory authority or other competent authority with regard to the processing of personal data.

The Contractor will give the Client the opportunity to check periodically the compliance with this Agreement and the legal provisions relating to the processing of personal data. The control can be performed by an (external) independent auditor on behalf of the Client, possibly within the offices of the Contractor. Without prejudice to the above audit right for the Client, the Contractor shall in case of a security incident or breach of any of the obligations contained in this GC 16, immediately investigate the cause of the incident or breach and provide a report within 10 Days to the Client with (i) an analysis of the cause of the incident or breach and (ii) proposals to remedy.

### 16.3 Contractor warranties

When acting as a subcontractor processing the Personal Data for the Client, the Contractor shall, and warrants that its Subcontractors shall:

- (i) process Personal Data only as strictly necessary for the performance of the Contractor's obligations under this Agreement;
- (ii) only process the Personal Data in accordance with the instructions of the Client;
- (iii) take all necessary steps to ensure that its personnel who have access to the Personal Data is informed about the provisions of the Data Protection Legislation and Contractor's obligations under this clause;
- (iv) put in place appropriate technical and organizational measures against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access to the Personal Data in accordance with the Law and have adequate security programmes and procedures to ensure that unauthorized persons will not have access to the data processing equipment used to process the Personal Data and shall continue to review these measures to ensure that they are adequate, having regard to the state of the art and the cost of their implementation at the relevant time;
- (v) (i) ensure that all Personal Data shall be treated as and remain confidential; (ii) limit and restrict access to the Personal Data to those employees who are reliable and authorized to process the Personal Data; (iii) not communicate, either free of charge or in return for payment, the Personal Data to any third party or transfer the Personal Data outside the European Economic Area, and (iv) provide all necessary assistance to the Client when such assistance is required, on written request of the Client, to allow the Client to comply with all applicable Data Protection Legislation within the context of this Agreement;
- (vi) immediately notify the Client of any accidental or malevolent disclosure of the Personal Data (or any part thereof) entrusted by the Client to the Contractor.

The Contractor shall be liable for the processing of the Personal Data as entrusted by the Client and Contractor shall indemnify the Client for any losses or liabilities (including legal and other professional fees) resulting from any breach of Contractor's obligations under this GC.



## 17. Intellectual property

---

### 17.1 Background Intellectual Property

To the extent that such is necessary for the successful performance of the Services or Works or the delivery of the Products, the Client will make available to the Contractor its Background Intellectual Property and will grant the Contractor a non-exclusive, non-transferable right for the duration of the performance of the Agreement, to use this Background Intellectual Property for the purposes of the performance of the Services or Works or the delivery of the Products under this Agreement only.

In cases where the Contractor uses its Background Intellectual Property for the performance of the Services or Works or the delivery of the Products, the Contractor agrees to grant to the Client a worldwide, transferable license for the duration of the concerned Intellectual Property Rights, to use this Background Intellectual Property in so far as required to benefit from to the fullest from the performance of the Agreement. The price of such license shall be included in the price of the Agreement. In particular, the Contractor shall grant an access right to the Client to any documents of the Contractor necessary for the operation and maintenance of the Products, Services and Works and shall provide the Client with full support and assistance in order to allow the Client to purchase or subcontract the necessary spare parts on the market.

### 17.2 Project Intellectual Property

#### 17.2.1 Ownership of Project Intellectual Property

Under the terms of the Agreement, the Contractor assigns to the Client, exclusively, irrevocably, and finally, all the rights of ownership over the Project Intellectual Property, including all Intellectual Property Rights pertaining to the Project intellectual Property, throughout the world, for any purpose, and for the entire term of protection as provided for by the Law.

As regards to author's rights pertaining to the Project Intellectual Property, all pecuniary rights allowing the Client to exploit the Project Intellectual Property shall be transferred to the Client exclusively, in the broadest sense and without reservation, including in particular the right to use, reproduce, represent, adapt, alter, translate, exploit, distribute, in all forms, under all present or future means, and on all media, for all uses and all purposes, on its own or through any third party, without any limitation whatsoever, including the right to manufacture or have manufactured objects, tools, software, hardware, or constructions from the Project Intellectual Property .

The Client may assign or grant licenses on the Project Intellectual Property to its Affiliates or to third parties freely.

The Project Intellectual Property and all Intellectual Property Rights pertaining thereto are immediately transferred and assigned in their entirety to the Client, as from their coming into existence. The fees corresponding to this assignment are included in the price of the Agreement and no additional payment is owed in this respect by the Client to the Contractor.

The Client's ownership on the Project Intellectual Property and on all Intellectual Property Rights pertaining thereto shall be mentioned on the deliverables to be provided to the Client by the



Contractor. In the case of subcontracting, the Contractor shall take all provisions necessary to acquire, at its own costs, all Intellectual Property Rights on the Project Intellectual Property generated by any sub-contractors, without prejudice to its subcontracting or group with joint and several liability obligations, in order to comply with the present article.

The tangible ownership of the Project Intellectual Property shall also be transferred to the Client as soon as it is produced, as well as all documents and information, regardless of their form or their media, necessary for use, operation, maintenance and improvement of the Products, Services and Works by the Client (including documentation relating to software). The Contractor waives any right of retention over the Project Intellectual Property and all Intellectual Property Rights pertaining thereto.

**17.2.2** Under the assignment, the Client enjoys the exclusive right to file in its own name and at its own expense any application for Intellectual Property Rights pertaining to the Project Intellectual Property and/or any procedure for protection and any other mandatory formality, and in particular legal filing for those Project Intellectual Property that might fall within the scope of this type of procedure.

In this respect, the Contractor undertakes to sign and to produce upon first demand any document and to take any measures that might be necessary for the Client to obtain a full title deed that is valid and unconditional over the above-mentioned rights.

**17.2.3** The Contractor shall not use for its benefit or for the benefit of third parties all or any part of the Project Intellectual Property.

Should the Contractor wish to use all or any part of the Project Intellectual Property for its own needs or for the needs of other clients, or have them used by its suppliers or subcontractors, outside the scope of the Agreement, the Client may grant a license accordingly, on terms and subject to a license fee to be agreed, it being understood that the Client is entirely free to refuse to grant such a license.

### **17.3 Warranty**

The Contractor warrants that it owns all Intellectual Property Rights or that it has obtained (with the right to grant a licence of use to the Client and its affiliates) all Consents for the use of any third party Intellectual Property Rights to supply the Products or perform the Services or Works or allow the Client to use the Products, Services or Works supplied to the Client under this Agreement. The Contractor warrants that neither the supply of the Products, nor the performance of the Services and/or Works under this Agreement, nor the exploitation thereof as envisaged under the Agreement, infringe any third party Intellectual Property Rights. The Contractor warrants that this will remain the case for the actual or intended life or utilization time of the Products, Services and Works concerned.

### **17.4 Indemnification**

The Contractor shall fully indemnify the Client and hold the Client harmless against any claims, proceedings and/or liabilities for or on account of an alleged infringement of any Intellectual Property Right, which claims, proceedings or liabilities might arise by reason of the performance of the Services or Works or the use by the Client of the Products, Services or Works supplied under the Agreement.



## 17.5 Claims

In the event of any such claims or proceedings brought against the Client, the Client shall promptly notify the Contractor. The Client shall, at the request and the expense of the Contractor, provide all reasonably available assistance for the purpose of contesting any such claims or proceedings. At all times, during and after termination of the Agreement, the Contractor warrants to:

- (i) assist the Client in the defence of its rights and interests and to hold the Client harmless from any financial and other negative impact which the Client may incur as a result of any such claims or proceedings;
- (ii) pay any royalty, fees or damages due to or charged by any third party, holder of any Intellectual Property Rights that would have been infringed;
- (iii) reimburse the Client, at the Client's first request, for all costs of any nature whatsoever, including fees of lawyer's, experts and technical advisers, incurred due to or on in connection with any such claims or proceedings;
- (iv) take all necessary measures in order to allow the Products or Services or Works to be further used by the Client or, upon prior written consent by the Client, (i) replace, free of charge, the Products, Services or Works by equivalent Products, services or works that are not infringing any Intellectual Property Rights; or (ii) make such proper modifications to the Products, Services or Works so to render them no longer infringing any Intellectual Property Rights, it being understood that any and all costs, risks and liabilities resulting there from shall be borne solely by the Contractor.

## 17.6 Escrow Agreement

In the case the Products, Services or Works include Background Intellectual Property, the Client may ask the Contractor to enter into an escrow agreement with an escrow agent, under which all or part thereof of Background Intellectual Property is escrowed and deposited with the escrow agent. This escrow agreement shall be in the form as set out in the SC.

The Contractor warrants that the escrow agreement will safeguard the Client's right of access to Background Intellectual Property, if (i) the Contractor ceases operations or (ii) the Contractor is put into liquidation or (iii) the Contractor is no longer able to supply spare parts.

The Contractor shall immediately provide the Client with a signed copy of the escrow agreement upon request. The costs related to the escrow agreement shall entirely be borne by the Contractor.

## 18. Confidentiality

---

The Contractor shall hold in strict confidence the details of the Agreement as well as all documents and other information, whether technical or commercial, developed or received in relation to the performance of the Agreement or the Client, including Project Intellectual Property and Personal Data of Client's personnel ("**Confidential Information**"), and shall not (save as required by the Law and regulations or otherwise under the Agreement) divulge, make mention, publish, copy, or otherwise disclose or use all or part of Confidential Information for its own



purposes or for the benefit of third parties, otherwise than strictly required to perform its obligations under the Agreement.

Where disclosure of Confidential Information to employees, Subcontractors, consultants and agents of the Contractor or other parties is required for the performance of obligations under the Agreement, such disclosure shall be limited on a strict need-to-know basis. When appropriate, the Client may ask those parties, including the employees, to sign an individual confidentiality agreement. The Contractor shall be fully responsible for the respect by its employees, Subcontractors, consultants and agents of the Contractor or other parties of the terms and conditions of this GC 18.

Where disclosure of Confidential Information is required by applicable Law, such disclosure shall not take place prior to the Client being notified of such requirement with a view to providing the Client with the opportunity to contest such disclosure or otherwise to agree the timing and content of such disclosure.

The Contractor shall take all necessary and useful measures in order to protect the Confidential Information at least in the same degree of care in use for protection of its own confidential information. The Contractor shall ensure that robust information barriers are implemented when providing services to any competitor or potential competitor of the Client to ensure that no breach of the Client's confidentiality occurs.

The Contractor shall not make or distribute any public announcement, media release or other written or oral announcements concerning the existence and the content of the Agreement or referring to the co-operation between the Parties, without the prior written approval of the Client.

For purposes of the Agreement, Confidential Information shall not include (i) information which is in the public domain otherwise than by a breach of the Agreement; (ii) information which is lawfully disclosed to the Contractor by a third party who does not have a duty of confidentiality.

Upon the Client's request, and in any case at the latest within fifteen (15) Days as of the termination of this Agreement, all Confidential Information shall be returned to the Client.

This GC 18 shall apply during the term of the Agreement and shall survive its termination for a period of five (5) years.

Notwithstanding GC 20.4, the Client shall be indemnified for all direct or indirect damages suffered in the case of breach of this GC 18.

## 19. Variations

---

### 19.1 Client's Power to Vary

The Client shall be entitled to require the Contractor to make alterations to the Products, Services or Works and to the manner of their execution, including, without limitation any of the following:

- (i) increase or decrease the quantity of, or omit any portion of the Products, Services or Works included in the Agreement; or
- (ii) change the character or quality or kind of any such portion; or



- (iii) change the Client's requirements with respect to any part of the Products, Services or Works (including, as regards Works, the levels, lines, position and dimensions of any part of the Works); or
- (iv) execute additional works or services or supply additional Products, materials and/or equipment, or
- (v) change the time or delivery schedule or the sequence of the performance of the Agreement; or
- (vi) adapt the Products, Services or Works or any part thereof to accommodate any change in Law or codes, norms and standards after the date of conclusion of the Agreement to the extent they have a direct and material impact on the Contractor's obligations.

No such alteration shall in any way vitiate or invalidate the Agreement and, in carrying out such alteration, the Contractor shall be bound by the Agreement, subject to the alteration itself, as if the alteration was originally stated in the Agreement.

## 19.2 Orders for Variations to be in Writing

Unless otherwise agreed in the SC, the Contractor shall within ten (10) Days after having received any instruction for alteration to the Products, Services or Works from the Client, or earlier if so requested by the Client or later if so agreed in writing by the Client, notify to the Client by a Proposal for Variation Order, which will include at least, in the Contractor's opinion:

- (i) impact, if any, (in addition or in deduction) on price, and
- (ii) alteration, if any, on the time or delivery schedule, and
- (iii) alteration, if any, on warranties or guarantees (including guaranteed performances), and
- (iv) description of the alteration of the scope of the Agreement, and
- (v) any other effect, if any.

If the Client agrees with the Proposal for Variation Order issued by the Contractor, the Client shall issue the Variation Order. If the Client and the Contractor are unable to agree on the Proposal for Variation Order, the Client may either withdraw the instruction without liability or issue a Variation Order in accordance with GC 19.3.

No such alteration shall be implemented by the Contractor without a Variation Order duly signed by the Client's Representative.

Nothing in this GC 19 shall prevent the Contractor from making Proposals for Variation Orders to the Client within ten (10) Days of occurrence of the event leading to such proposal. No alteration so proposed shall be carried out by the Contractor except as directed in writing by the Client through a Variation Order. In the absence of a proposal within the above-mentioned ten (10) Days period, the Contractor shall irrevocably be deemed to have waived its right to make a Proposal for Variation Order and the event shall be deemed to have no impact on time or delivery schedule, price or technical performance of the Products, Services or Works.



No alteration instructed by the Client or proposed by the Contractor shall result in an addition to the price or an extension of the time or delivery schedule if instructed or proposed as a result of some negligent act, omission or default on the part of the Contractor.

It is understood that all the terms and conditions of the Agreement shall apply to the Variation Order, except those explicitly modified by the Variation Order.

### **19.3 Evaluation of Variations**

The Client and the Contractor shall each use their reasonable endeavours to agree upon the Proposal for Variation Order as soon as possible.

If the Parties do not agree in a reasonable time, the Client shall have the right to instruct the Contractor to work on a cost-plus-fee basis (in respect of which a 10% fee will be applied on the cost) and shall issue a Variation Order accordingly. The Contractor shall have the obligation to execute such Variation Order.

### **19.4 Contractor's Records of costs and Time Evaluation of Variation**

In any case where the Contractor proceeds on a cost-plus-fee basis, the Contractor shall keep records of the costs of performing the Variation Order and of any circumstances that may have effects on other contractual obligations. Such records shall be open to inspection by the Client at all reasonable times. This record will be the basis for a cost-plus-fee calculation.

### **19.5 Notice and Confirmation of Variation**

In no case shall the Contractor start the work on an alteration until it has received a Variation Order from the Client. When issuing a Variation Order, the Client shall give the Contractor such reasonable notice as will enable it to make its arrangements accordingly. In cases where Products or Equipment are already manufactured, or in the course of manufacture, or any work done or drawings or patterns made that require to be altered, the Contractor shall be entitled to be paid the cost of such alterations duly substantiated, for incorporation in the evaluation referred to GC 19.3 and 19.4.

### **19.6 Progress with Variations**

Without prejudice to GC 19.3 and 19.4, the Contractor shall, on receipt of the Variation Order, immediately proceed to carry out such order. The time required to reach agreement or to resolve any difference or dispute, as to any addition to or deduction from the price or any other effects as a result of such order shall not be invoked to excuse delays incurred in the carrying out of such order.

### **19.7 Improvements**

In the course of the supplying of the Products, Services or Works and until their completion, the Contractor must inform the Client as soon as possible when it learns or becomes aware of any improvements for the benefit of the Client that may be made to the Products, Services or Works as a result of advances in technology.

The Contractor communicates its opinion, together with the supporting documents, regarding the possible improvements and their feasibility, considering the current progress status of the Products, Services or Works as well as the total impact on the Agreement including on the price,





the time schedule, the technical performances etc. As the case may be, it submits to the Client the effect which adopting the improvements will have regarding the initial conditions of the order in terms of contractual prices, guarantees and time or delivery schedule. The Client retains the right to demand or refuse that the improvements be incorporated in the Products, Services or Works, subject to a Variation Order as the case may be. If the Client demands the incorporation of the improvements in the Products, Services or Works, the Contractor shall be held to comply with such demand.

## 20. Liability and responsibility, risks, care and custody liability

---

### 20.1 General Responsibility

#### (i) Damage to the Products, Services or Works - Risk, Care and Custody Liability

Irrespective of the title of ownership to the Products, Services or Works, the Contractor shall take full responsibility for the care of the Products, Services or Works and bear the risk for loss and damage regardless of the causes which produced them, until the acceptance of Products or Services, or Provisional or Final Acceptance of Works whichever is the earliest.

If any loss or damage occurs to the Products, Services and/or Works or any part thereof, during the period for which the Contractor is responsible for the care thereof from any cause whatsoever, the Contractor shall at its own cost rectify such loss or damage so that the Products, Services and/or Works shall conform in every respect with the provisions of the Agreement.

After the date of acceptance of Products or Services or after the date of Provisional Acceptance of Works, the Contractor shall be liable for and indemnify the Client from any damage to Products, Services and/or Works occasioned by the Contractor, its personnel and Subcontractors in the course of any operation carried out for the purpose of completing any outstanding obligation or complying with its obligation under GC 32, 38, 52.2, 20.1 (iv) or 20.1 (v).

#### (ii) Damage to existing Client's property

At any time during the performance of the Agreement, the Contractor shall be liable for and indemnify the Client from any damage to the existing Client's property on or around the Site, caused by the Contractor, its personnel and its Subcontractors.

#### (iii) Damage to third parties

Each Party shall be liable for, indemnify and hold harmless the other Party against all liabilities from any losses, damage, costs and claims whatsoever, in respect of death or personal injury or loss of or damage to property of third parties, caused by the defaulting Party, its personnel and its Subcontractors.

The Contractor shall be liable for, indemnify and hold the Client harmless from all claims and actions in respect of disturbances to the neighbourhood unless the Contractor can show the Client is responsible for such disturbances to the neighbourhood because it is inherent to the Works and could not have been avoided by the Contractor by making its best endeavours to avoid and mitigate such disturbances.



The employees or agents of either Parties are deemed to be third parties for the purpose of this GC 20.1 (iii).

(iv) Decennial Liability

Without prejudice to the obligations of the Contractor under the Agreement during the Defects Liability Period, the Contractor shall remain liable for a period of ten (10) years, Decennial Liability, starting from the acceptance or Final Acceptance, for any defect or inappropriate design in the foundations, structures and buildings, object of Services or Works or for the selection of materials or workmanship in the foundations, structures and buildings or part thereof object of Service or Works, that may prevent or materially impair the use of the Services or Works or of a part thereof for the purpose that it is intended for as according to the Agreement.

If the Contractor fails to perform its obligations set out in this GC 20.1 (iv) within a reasonable period to be agreed between the Contractor and the Client, the Client may proceed to do the work itself or by others at the Contractor's risk and costs provided that it does so in a reasonable manner. The liability of Contractor as aforesaid shall apply only in respect of claims notified in writing to the Contractor within a period of ten (10) years from the acceptance or Final Acceptance. Client shall notify Contractor without undue delay after becoming aware of a Defect under the Decennial Liability.

(v) Claims for Loss or Damage after Defects Liability Period

The Contractor is liable, after the end of the Defect Liability Period for Hidden Defects.

The Contractor's liability for such Hidden Defects shall in that event be the following:

- (i) the Contractor shall Make Good the Products, Services or Works, or
- (ii) if the Products, Services or Works are not Made Good within a reasonable time to be agreed upon between the Client and the Contractor, the Client may proceed to do the work itself or by others at the Contractor's risk and costs provided that it does so in a reasonable manner.

## 20.2 Defense of Claims

The Client shall notify the Contractor as soon as reasonably practicable of any claim made by third party(ies) against the Client in relation to which the Contractor is obliged to indemnify and hold harmless the Client pursuant to GC 20.1 (hereinafter the "**Claim**").

The Contractor shall intervene and assist and when possible, stand in for the Client in the defence of its rights and interests.

The Client shall have the right, but not the obligation, to contest, defend and litigate such Claim and the reasonable costs and expenses thereof shall be subject to the indemnification obligations of the Contractor.

One Party may only settle or compromise on any such Claim with the prior written consent of the other Party.



The Client shall, at the request of the Contractor, provide all reasonable assistance for the purpose of contesting any such Claim and shall be repaid all reasonable costs and disbursements (including legal fees) incurred in so doing.

If any such Claim involves or could have a material adverse effect upon the Client beyond the scope of this Agreement, then the Client shall have the right to be consulted and regularly informed with respect to the defence of such Claim and the Client shall be entitled to make any suggestion to the Contractor in respect of such defence.

### **20.3 Nuclear responsibility**

The Client, hereinafter also called “the Operator” warrants that it has been designated by the competent authorities as the Operator of the Nuclear Facility.

The Operator of the Nuclear Facility, in the sense given by the international agreements and the Law, is responsible for nuclear incidents as defined by the same agreements and legislation. As such, it takes out a civil liability insurance or other financial guarantee as stipulated by the Law.

The liability of the Operator of the Nuclear Facility for a nuclear incident taking place during erection works or deliveries made in the scope of this Agreement applies whether or not the erection works or deliveries concern the Nuclear Facility.

By derogation to GC 20.4 (iv) and except in the cases set forth in GC 20.4 (ii) et 20.4 (iii), the Operator of the Nuclear Facility waives any right of recourse against the Contractor, its Subcontractors and their personnel for any damage caused by a nuclear incident to persons inside and outside the Nuclear Facility and/or to property outside the Nuclear Facility.

The Client warrants that it is the owner of the Nuclear Facility either alone either in co-ownership with third parties. In this last case, the Client warrants to be the manager of the existing co-ownership. By derogation to GC 20.4 (iv) and except in the cases set forth in GC 20.4 (ii) and (iii), the Client waives in its name and on behalf of the co-owners of the Nuclear Facility, any right of recourse against the Contractor, its Subcontractors and their personnel for any damage caused by a nuclear incident to the Nuclear Facility and to all property on site of the Nuclear Facility for damage above five (5) Million euros.

### **20.4 Limitation of liability**

The Parties may agree on limitation of liability in the SC.

Any limitation of liability under the Agreement shall not apply:

- (i) if not allowed under the mandatory provisions of the Law,
- (ii) in the case of wilful misconduct meaning on the part of a Party’s personnel and/or one of its Subcontractors or proxies, an intentional and wrongful act,
- (iii) or in the case of gross negligence meaning on the part of a Party’s personnel and/or one of its Subcontractors or proxies, an act or omission implying either a failure to pay due regard to serious consequences, which a conscientious contracting party would normally foresee as likely to ensue, or a deliberate disregard of the consequences of such act or omission,



- (iv) nor shall such limitation of liability apply regarding any claims made by any third parties (claims made by third parties include, for purposes of this clause, claims made by any Subcontractor, employees, agents of a Party, as well as claims made by any Public Authority and/or other any third party),
- (v) when otherwise provided in the Agreement,
- (vi) for the obligation of the Contractor to Make Good,
- (vii) in case of Termination for Contractor's Default.

Moreover, the limitations of liability provided herein shall be without prejudice to the payment of Liquidated Damages,

In all cases where a Party is claiming a breach of Agreement or a right to be indemnified in accordance with the Agreement, it shall be obliged to take all reasonable measures to mitigate the loss or damage which has occurred or may occur.

## 21. Insurance to be taken out by contractor

---

### 21.1 General provisions with respect to Insurance

- (i) Prior to undertaking the supplying of any Products and/or performing any Services and/or Works, the Contractor shall take out and maintain insurance with first class insurance companies for as long as it is bound by contractual obligations under the Agreement, legal requirement or Best Engineering and Construction Practices.
- (ii) Upon request, the Contractor shall transmit to the Client certificates or cover notes evidencing the insurance procured prior to the Effective Date. The Contractor shall inform the Client by registered letter to the Client in the event of a change to or cancellation of the policies and not later of thirty days following such event.
- (iii) The fact that the Contractor has taken out the insurance covers prescribed by the Agreement shall not relieve it of its legal or contractual liabilities.

### 21.2 Insurance covers – Minimum requirements

As further specified in the SC, the Contractor take out and maintain the following insurances:

- (i) Workmen Compensation:  
  
The "Workmen's Compensation" insurance policy as stipulated by the Law, guaranteeing compensation for working accidents and accidents on the way to/from work as may be incurred by members of its personnel, even if they would be alleged to work under the authority, supervision and control of the Client.
- (ii) Third Party Liability:  
  
A comprehensive "General Civil Liability" insurance policy guaranteeing claims from the third parties and the Client for any physical injury, material and immaterial



damages and claims from the Client as well as to the existing Client's property for a combined insured limit of minimum EUR 1,500,000 each and every loss

This insurance shall include a product/completed works liability and the members of the personnel of the Client and the Client are considered as third parties in relation to the Contractor.

## 22. Force majeure

---

### 22.1 Definition of Force Majeure Events

Force Majeure Event means the occurrence of any (or any combination) of the following events or circumstances, which, or any of the consequences of which: (a) are unforeseeable and (b) are beyond the reasonable control and without fault or negligence of the affected Party and (c) could not have been prevented in whole or in part by the exercise of reasonable care and skill by the affected Party; and (d) prevent the performance of obligations under this Agreement by the affected Party.

A Force Majeure Event does not include, among others:

- (i) technical failures, normal wear and tear, or breakdown in Products or Equipment;
- (ii) shortage of parts, materials, staff or other similar circumstances for which the Contractor may be responsible pursuant to the Agreement,
- (iii) late or non-delivery of Products, Equipment, materials, spare parts,
- (iv) non-performance or late performance of Services or Works by the Contractor; or on the part of third parties employed by the Contractor, whether or not due to a Force Majeure Event,

Similarly, the Contractor may not be able to invoke as a Force Majeure Event, the non-obtainment of a Permit, a Lapse of Permit, and any action taken by the government or a Public Authority with respect to a Permit, to the extent that they constitute remedies or sanctions lawfully exercised by a competent authority as a result of non-compliance by the Contractor with the Law or Permit conditions.

Are however considered as Force Majeure Events, the following events:

- (i) delays in completion of a part of structure (foundations for equipment or constructions, access areas, etc.) which have to be completed prior to the Contractor's intervention, is caused by third parties;
- (ii) boycott, strike or lock-out of any nature, occupation of plant and premises, works stoppage occurring at the premises of the affected Party.

### 22.2 Notice of Force Majeure

If either Party is prevented from performing any of its obligations under this Agreement by a Force Majeure Event, it shall promptly notify the other Party of the events or circumstances constituting the Force Majeure Event, the likely duration of such events, circumstances and their



consequences and of its obligations whose performance is thereby prevented and the presumed duration thereof.

The affected Party shall deliver such notice as soon as possible but not later than ten (10) Days as from the date on which the Force Majeure Event was discovered by the affected Party for the first time. After delivering such notice, the affected Party shall keep the other Party informed of material developments relating to such Force Majeure Event. The affected Party shall, in particular, notify the other Party of the exact date on which the Force Majeure Event has ceased to exist and of the extent to which the performance of its obligations under this Agreement have been affected. The affected Party shall attach supporting documentation to this written notice, and if applicable attestations issued by an official body in this respect.

For avoidance of doubt, the affected Party shall have the burden of proving both the existence of any Force Majeure Event and the effect, both as to nature and extent, which such Force Majeure Event has on its performance.

### **22.3 Consequences of Force Majeure**

The affected Party, on giving notice in accordance with GC 22.2 shall:

- (i) not be liable for the performance or punctual performance, as the case may be, of the notified obligations as long as the events or circumstances notified (or the effects thereof) continue; and
- (ii) be deemed not to be in breach of the Agreement to the extent that such breach is caused by such Force Majeure Event

provided, however, that, no relief, including the extension of performance deadlines, shall be granted to the affected Party pursuant to this GC to the extent that such failure or delay would have nevertheless been experienced by the affected Party had the Force Majeure Event not occurred.

Each Party will bear its cost caused by the circumstances of Force Majeure.

The affected Party shall nevertheless use all reasonable endeavours to properly protect and secure the Products, Services or Works and continue to perform its obligations under this Agreement and to minimize the adverse effects of such Force Majeure Event. In particular, the Contractor shall notify the Client of the steps it proposes to take, including any reasonable alternative means for performance which is not prevented by Force Majeure Event, but shall not take any such steps unless directed so to do by the Client.

### **22.4 Optional Termination**

If either Party is prevented from performing any material obligation under this Agreement due to a Force Majeure Event for a continuous period of twelve (12) Months, then the other Party may at any time thereafter, terminate the Agreement by notice to the other Party. The notice to terminate must specify the termination date, which must be not less than thirty (30) Days after the date on which the notice to terminate is given.



Neither Party shall have any liability to the other in respect of termination of the Agreement due to a Force Majeure Event, without prejudice to rights and liabilities which have accrued prior to such termination.

Upon such termination, the Client shall pay to the Contractor:

- (i) the amounts payable for any Products delivered, Services or Work carried out at the prices and under the conditions stated in the Agreement;
- (ii) the cost of Products and materials ordered for the Products, Services or Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery;

in each case to the extent that the Works or Services carried out, and the Equipment and Products delivered, are in a form of value to, usable and useful for the Client, it being understood that the costs mentioned above under (i) and (ii) shall be paid by Client to the extent Contractor has proven that, notwithstanding all its reasonable efforts, the Products, Equipment, Services or Works cannot be reallocated for other purposes.

Such Products, Services or Works shall become the property of the Client when paid for, and be at the risk of the Client when the Contractor delivers those Products, Services or Works to the Client.

## **23. Suspension of supply of products and/or performance of services or works**

---

### **23.1 Order to Suspend**

The Client may at any time instruct the Contractor to suspend the supply of Products, the performance of Services or Works or any portion thereof for such time and in such manner as the Client may reasonably consider necessary and during such suspensions the Contractor shall properly protect and secure the Products, Services or Works against any deterioration, loss or damage, as considered necessary or required by the Client.

Any Cost reasonably incurred and properly documented by the Contractor in giving effect to the Client's instructions under this GC 23.1 shall be borne and paid by the Client unless otherwise explicitly provided in the Agreement, or, unless such suspension is:

- (i) necessary by reason of some material default on the part of the Contractor, or
- (ii) due to reason of Force Majeure, or
- (iii) necessary for the proper supply of Products or execution of the Services or Works or for the safety of the Products, Services or Works and the safety of persons or any part thereof in so far as such necessity does not arise from any act or default by the Client, or any other contractors working for the Client.

The Contractor shall not be entitled to recover any such extra cost unless, within fourteen (14) Days after receipt of the order to suspend, it gives to the Client prior written notice of its intention to make such claim, in the form of a Proposal for Variation Order in accordance with GC 19.



### 23.2 Resumption of Works

At any time after a suspension under GC 23, the Client may give notice to the Contractor to proceed with the delivery of Products and/or with the execution of all or part of the Services or Works suspended under this GC 23.

### 23.3 Prolonged Suspension

If the supply of Products or execution of the Services or Works or any portion thereof is suspended pursuant to GC 23 and if notice to resume execution is not given by the Client within twelve (12) Months per occurrence, then the Contractor may serve prior notice in writing on the Client requiring to proceed with the supply of Products, Services or Works or the portion in regard to which progress is suspended.

If such permission is not granted within thirty (30) Days following receipt of such notice, the Contractor may, by a further prior written notice to the Client, elect to treat the suspension.

- (i) either, where it affects a portion of the Products, Services or Works, as an omission of such portion which shall be settled pursuant to GC 19;
- (ii) or, where the suspension affects the whole of the Products, Services or Works, as a Termination for Client's Default the consequences of which are to be resolved in accordance with GC 25;
- (iii) this GC 23.3 shall not apply in the cases set forth in 23.1 second paragraph under (i), (ii) and (iii).

## 24. Remedies for contractor's default

---

### 24.1 Event of Default and Notice

If the Contractor:

- (i) assigns or subcontracts all or part of the Agreement, other than permissible assignments or subcontracting as provided in the Agreement; or
- (ii) without reasonable excuse suspends the progress of the Products, Services or Works; or
- (iii) fails to reach the time or delivery schedule as stated in the Agreement; or
- (iv) commits a breach of any material obligation under the Agreement; or
- (v) fails to obtain and/or maintain the required representations and warranties pursuant to GC 1.16; or
- (vi) abandons or repudiates the Agreement; or
- (vii) fails to have the Consents and insurances in full force and effect within the prescribed time and to maintain them in effect thereafter according to the Agreement; or





- (viii) subject to mandatory provisions of Law, becomes bankrupt or insolvent, has a receiving order made against it or compound with its creditors, or carries on business under a receiver, administrator, trustee or manager for the benefit of its creditors (or any of them) or goes into liquidation or if the guarantor (i) finds itself in the same situation as aforementioned or (ii) does not comply with its obligations as mentioned in the guarantee; or
- (ix) is prevented or delayed in the supply of the Products, or the performance of the Services or Works because an attachment, seizure, compulsory acquisition or execution process is levied, effected, enforced or sue out on or against the Products or Equipment and/or a substantial part of the assets of the Contractor; or
- (x) is in default due to any other event mentioned as an Event of Default in the Agreement

(any of such circumstances being hereinafter referred to as an “**Event of Default**”),

the Client may give ten (10) Days’ notice to the Contractor of its intention to apply any of the remedies provided in this GC 24. Upon the expiry of such notice and unless during such ten (10) Days’ period the Contractor has remedied the Event of Default or started and diligently pursues to remedy at the Client’s sole determination, then, the Client may have recourse to any or several of the remedies specified in this GC 24.

However, such notice shall not be required in case of event (i), (iii), (vi), (viii) and (ix) nor in case of urgency.

## 24.2 Suspension

Subject to GC 24.1 on and at any time after the occurrence of an Event of Default, the Client may upon written notice to the Contractor (but without further additional formality being required), while such Event of Default subsists, suspend performance of its obligations under the Agreement.

## 24.3 Substitution without Termination

Subject to GC 24.1 at any time after the occurrence of an Event of Default, the Client may, upon written notice to the Contractor (but without further additional formality being required), while such Event of Default subsists, make good for the Contractor’s default by performing himself or by having a third party perform the relevant obligations, at the Contractor’s risks and expenses. The Contractor shall nevertheless use all reasonable endeavours to continue to perform the obligations under the Agreement not affected by the substitution.

## 24.4 Termination for Contractor’s Default

- (i) General

Subject to GC 24.1 the Client may terminate the Agreement by written notice to the Contractor (without further additional formality being required).

- (ii) Termination Value



As soon as practicable after the Client has terminated the Agreement, the Client shall calculate the “**Termination Value**”, being the difference between the amounts already paid by Client to Contractor under the Agreement, and:

- (A) the costs of the Products, Services and Works carried out at the date of termination excluding any profit elements of any type, and;
- (B) the costs of Equipment and materials ordered for the Products, Services or Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery excluding any profit elements of any type;

in each case to the extent that the work or services carried out, and the Products, Equipment and materials delivered, are in a form of value to, usable and useful for the Client, and to the extent the Contractor has proven that, notwithstanding all its reasonable efforts, the Products, Equipment, Services or Works cannot be reallocated for other purposes. Title of the Products, Equipment, Services or Works which can be reallocated by the Contractor and for which the transfer of title already has been passed to the Client in accordance with GC 11, shall return to the Contractor at the moment of termination of the Agreement.

(iii) Consequences of Termination and Client’s rights

Without prejudice to GC 24.5, upon termination, the Client shall be entitled, but not have the obligation, to:

- (A) complete the Products, Services or Works itself or engage any other contractor to do so for the Client’s own benefit (whereby the Client may have the free use of any Contractor’s Tools for the time being on the Site); and
- (B) request the Contractor to assign (and, if so, the Contractor shall thereupon assign) to the Client the benefit of any agreement for the supply of any Products or Equipment and/or for the performance of any Services or Works including any associated guarantees and warranties which the Contractor may have entered into for the purpose of the Agreement and title to all Products, Equipment and other assets which are vested in the Contractor at that time and have been acquired by the Contractor for the purposes of the performance of the Agreement, including any right that is the subject matter of GC 17 Contractor acknowledges that in principle the benefits of all abovementioned agreements will be assignable, and it will use its best efforts to make all such agreements assignable as regards their benefits; and
- (C) suspend any further payment to the Contractor,

In case the Client decides to make good and complete the Products, Services or Works, the Client shall be entitled to the reimbursement by the Contractor of the extra costs (i.e. the total cost incurred by the Client for the Making Good and realization of the Products, Services or Works less the price of the Agreement). Upon the Client’s request, the Contractor shall immediately pay the extra costs increased by ten (10) %



for management costs to the Client. The reimbursement of the extra costs shall be free of any withholding taxes, taxes, or other charges.

To the extent that the title has not yet been transferred to the Client in accordance with GC 11, the Contractor shall transfer or assign to the Client, as the Client shall direct, all the Contractor's rights, title and interests in and to the Products, Services or Works and the Equipment which the Client is required to pay for according to the above.

If the amounts already paid by Client to Contractor under the Agreement are higher than the Ending Value, Contractor shall promptly reimburse to Client the difference between the already paid amount under the Agreement and the Ending Value.

If the amounts already paid by Client to Contractor under the Agreement are lower than the termination fee, Client shall pay the difference between the Ending Value and the amounts already paid under the Agreement.

(iv) Removal of Contractor's Tools

If, following termination of the Agreement, the Client decides that it does not wish to use all or some part of the Contractor's Tools, the Contractor shall, upon receipt of notice from the Client requiring it to do so forthwith, remove from the Site the Contractor's Tools referred to in Client's notice. Should the Contractor fail to remove any Contractor's Tools,, the Client may itself remove and dispose of the Contractor's Tools (without any obligation to obtain a reasonable price of such Contractor's Tools) and shall account to the Contractor for the net disposal proceeds (if any) after deducting the costs incurred by the Client in their disposal and any other sums then due from the Contractor to the Client.

## 24.5 Client's Right of Rejection of the Products, Services or Works

Independently of any former transfer of ownership or risk, if

- (i) prior to acceptance of Products or Services or Provisional Acceptance of Works, a Defect occurs and the Products, Services or Works cannot be completed in a reasonable and timely manner; or
- (ii) during the Defects Liability Period the Contractor is not able to remedy a Defect that renders impossible the normal, safe and proper use or operation (including in accordance with the guaranteed technical performances as set forth in the Agreement) of the Products, Services or Works;

then, the Client may reject the Products, Services or Works.

In case of a rejection, the Client may:

- (i) either, ask that the Products, Services or Works be replaced, totally or in part, by the Contractor, at the latter's cost and to his detriment and grievance, and without prejudice to the possible rights of the Client to damages. While waiting for the replacement, the Client is entitled to use these Products, Services or Works under the responsibility of the Contractor, on condition of certain modifications, additions or



adaptations made at the cost of the Contractor, either by himself or by another supplier, if need be.

The rejected Products, Services or Works are then freely at the disposal of the Client, who undertakes to use them in the operating and maintenance conditions specified in the documents transmitted by the Contractor; or

- (ii) refuse the replacement of the rejected Products ,Services or Works, and, with a fifteen Days notice by registered letter, cancel all or part of the Agreement. This rejection and the early termination of the Agreement are notified by the Client to the Contractor as indicated above; the latter must repay to the Client, within thirty Days from the date of mailing of this notification, the payments already received for the rejected Products, Services or Works.

In all the cases above, the rejected components are returned to the Contractor at the place of the installation, save for other regulatory or legal stipulations.

The Contractor must, at his own cost, dismantle and evacuate these rejected elements, at the time indicated by the Client.

Should the Contractor fail to do so, the Client may have the required demolition, dismantling, decontamination or evacuation done at the Contractor's cost, without any liability to the Client.

#### **24.6 Further Provisions with respect to Remedies**

None of the remedies specified in GC 24 shall be exclusive of any other remedies available to the Client at law or under any other provision of this GC or of the Agreement, including the Client's right to obtain compensation for any damages suffered.

In the event of termination by the Client under this GC 24 for Contractor's Default, the Client shall not owe any damages to the Contractor as a result of such termination.

## **25. Termination for Client's Convenience or Client's Default**

---

### **25.1 Notice of Termination for Client's Convenience**

The Client may at any time terminate the Agreement for any reason by giving the Contractor a notice of termination in accordance with this GC 25.1. The Agreement shall terminate with effect from the date indicated in such notice.

### **25.2 Notice of Termination Due to Client's Default**

In the event of the Client

- (i) being in a repetitive breach of its obligation to pay to the Contractor the amount (or the portion of the amount not disputed in good faith and with due cause) due under any invoice at the due date without prejudice to any deduction that the Client is entitled to make under the Agreement and provided, that, the Contractor has then given not less than sixty (60) Days' notice in writing and payment has not been made



within this period (except only to the extent that the Client is challenging the amount or a portion thereof due under such invoice in good faith and with due cause); or

- (ii) having suspended the Products, Services or Works, allowing the Contractor to treat the case as a termination of the Agreement by the Client according to GC 23.3 (ii), or
- (iii) becoming bankrupt or insolvent, having a receiving order made against it or compound with its creditors, or carrying on business under a receiver, administrator, trustee or manager for the benefit of its creditors or going into liquidation, or
- (iv) committing a breach of a material obligation under the Agreement and provided that, the Contractor has then given not less than thirty (30) Days' notice in writing and the Client has not remedied the breach or started and diligently pursues to remedy,

The Contractor may terminate the Agreement by thirty (30) Days' written notice to the Client. However, the thirty (30) Days' written notice by the Contractor to the Client shall not be required in case of event listed under (iii) above.

### **25.3 Removal of Contractor's Tools**

Upon the termination under GC 25, the Contractor shall with all reasonable dispatch remove from the Site all Contractor's Tools and return the Site neat and clear to the Client.

### **25.4 Payment in case of Termination for Client's Convenience or due to Client's Default**

In the event of termination under GC 25, the Client shall pay to the Contractor as Ending Value:

- (i) the costs of the Products, Services or Works carried out at the date of termination and;
- (ii) the costs of the Equipment and materials ordered for the Products, Services or Works that have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery;
- (iii) the reasonable cost of removal of the Contractor's Tools from the Site and the return thereof to the Contractor's plant in its country or to any other destination at no greater cost;
- (iv) the reasonable cost of repatriation of the Contractor's staff and workmen employed wholly in connection with the Products, Services or Works as at the date of such termination; and
- (v) ten (10) % of the above-mentioned costs under (i) and (ii) for profit on those costs;
- (vi) five (5) % of the difference between (a) the price of the Agreement on the one hand and (b) the costs paid by the Client under (i) and (ii) increased by ten (10) % as mentioned under (v) on the other hand, for loss of profit which the Contractor may have suffered in consequence of termination, less any sums which the Contractor is liable to pay to the Client under or by virtue of the Agreement.

However, the costs mentioned above under (i) and (ii) and the 10% of those costs as set forth under (v) shall be paid by Client to the extent that Contractor has proven that, notwithstanding all its reasonable efforts, the Products, Equipment Services or Works cannot be reallocated for other



purposes. Title of the Products, Equipment, Services or Works which can be reallocated by the Contractor and for which the transfer of title already has been passed to the Client in accordance with GC 11, shall return to the Contractor at the moment of termination of the Agreement.

The payment of the above costs is subject to appropriate evidencing documents.

The Ending Value shall be deemed to be in full satisfaction of the Contractor's damage and costs arising from termination of the Agreement by the Client for Client's convenience or by Contractor due to Client's default.

If the amounts already paid by Client to Contractor under the Agreement are higher than the Ending Value, Contractor shall promptly reimburse to Client the difference between the already paid amount under the Agreement and the Ending Value.

If the amounts already paid by Client to Contractor under the Agreement are lower than the Ending Value, Client shall pay the difference between the Ending Value and the amounts already paid under the Agreement.

The Client shall not in any case be liable to pay under the provisions of this GC 25.4 any sum which, when taken together with the sums paid or due or becoming due to the Contractor under the Agreement shall exceed the total price for the supply of the Products, the performance of the Services and/or the Works, as specified in the Agreement.

## **25.5 Transfer of Title and Rights**

If so request by the Client and to the extent that the title has not yet been transferred to the Client in accordance with GC 11, the Contractor shall transfer or assign to the Client, as the Client shall direct, all the Contractor's rights, title and interests in and to the Products, Services or Works and the Equipment which the Client is required to pay for according to the above.

## **26. Claims, disputes and litigations**

---

### **26.1 Contractor's Claims,**

If the Contractor intends to file a claim against the Client, it shall notify and substantiate the reasons for the claim by registered mail to the Client (with a copy to the Client's Engineer, if appointed for the Agreement) within ten (10) Days following the occurring of the event or the first of a series of events giving rise to the claim. Subsequently, the Contractor shall, within a period of thirty (30) Days following the notification submit a comprehensive file to the Client (with a copy to the Client's Engineer, if appointed for the Agreement) stating the reasons for the claim and assessing and justifying the amount claimed.

If the Contractor has not formally filed its claim within the time limit set forth here above, it shall be deemed to have definitively waived its claim and all rights that would have resulted from it.

For the avoidance of doubt, the provisions above regarding the submission of claims shall not apply to the issuance of invoices or other notifications, which are dealt with by specific provisions in the General Conditions.



## 26.2 Disputes and litigations

The Parties shall make all reasonable efforts to attempt to settle such dispute amicably. Should such efforts fail to resolve such dispute within thirty (30) Days after the Day on which notice was given, either Party may refer the dispute to litigation under this GC 26.2.

If the dispute cannot be resolved or has not been settled amicably within the above mentioned thirty (30) Days after receipt of a request by registered letter with acknowledgement of receipt such dispute shall be definitively settled by and under the ICC rules by three arbitrators stating in English. The place of arbitration shall be Geneva Switzerland.

Performance of the Agreement shall continue during any legal proceedings aforesaid unless the Client shall order the suspension thereof.



## Chapter II: Supply of Products

### 27. Application of chapter II

---

The provisions of this Chapter II shall, together with the provisions of Chapter I, govern the Agreement entered into between the Contractor and the Client under which the Contractor supplies Products to the Client. However, where the Agreement also includes erection, building, assembling, disassembling, testing or putting into service of the Products on Site, the provisions of Chapter IV will apply instead of the provisions of Chapter II.

In case of inconsistency between a specific provision of Chapter I and a specific provision of this Chapter II, the latter shall prevail.

### 28. Scope of supply

---

The Products to be supplied by the Contractor are detailed in the Agreement. The Products shall be supplied with all the accessories necessary to their good working (including operation manuals), even if such supply is not expressly provided for in the Agreement.

The Contractor undertakes to keep spare parts and consumables in stock for the Products supplied, and warrants the availability of those spare parts for the period corresponding to the normal lifecycle of the Products.

### 29. Place of the supply

---

The Products shall be delivered to the Site of the Client as set forth in the Agreement. Failing designation of such Site in the Agreement, the Contractor has the obligation to inquire in writing to the Client to which Site the Products are to be delivered.

### 30. Quality of the products

---

The provisions of GC 30 shall apply cumulatively with (and not derogate from) the mandatory provisions of Law, Chapter I of the General Conditions, Special Conditions and any additional warranties granted by the Contractor under the Agreement.

The Products shall be:

- (i) strictly in accordance with the Agreement including the requirements and specifications (technical or other);
- (ii) new and unused, treated to resist deterioration due to the prevailing local conditions on Site; such treatment shall include but not be restricted to coatings of protective materials, shields, etc.;
- (iii) possess the promised attributes and will be fit for their intended use or purpose,





- (iv) complete and ready for use and will include all ancillaries required for proper operation, even if not explicitly named and/or specified in full
- (v) suitable or shall be so protected to withstand the actual soil and subsoil conditions in case they are to be buried under the ground;
- (vi) free and clear of all liens, claims and encumbrances.

The Client may at any time request samples and test certificates of any material to check the compliance with the contractual requirements.

## 31. Acceptance

---

Upon delivery of the Products, the Contractor shall invite the Client to inspect the Products and check whether the Products are in conformity with the Agreement and/or have visible Defects.

Provided that such invitation to inspect is received, the Client shall inform the Contractor of any non-conformity and/or visible Defects thus detected within thirty (30) Days following the invitation.

If a non-conformity and/or a Defect is not discovered by the Client despite the Client's customary inspection practices (such practices being adapted to the importance and nature of the Products supplied, e.g. due to packaging or random checking method), the non-conformity and/or a Defect shall not be considered as accepted.

Should the Client discover a non-conformity and/or Defect, the acceptance of the Products shall not be granted to the Contractor.

The signature of a delivery certificate, written notification of completion, payment of final invoice, transfer of title or utilization of Products shall not qualify as an acceptance of the Products.

## 32. Defects

---

### 32.1 Defects Liability Period

Without prejudice to statutory warranties under the Law and additional specific warranties granted pursuant to the Agreement, the "Defects Liability Period" shall be twenty-four (24) Months calculated from the latest of (i) the date of acceptance or (ii) the date of first use by the Client.

However, the twenty-four (24) Months period shall be extended up to the first inspection with disassembly or opening of the Products or part thereof, when such inspection is required by the Operations Maintenance Manuals and with a maximum of thirty-six (36) Months calculated from the latest of (i) the date of acceptance or (ii) the date of first use by the Client.

When any Good or part thereof has been Made Good due to any Defects under this GC 32.1, a new Defects Liability Period of twenty-four (24) Months shall apply for such Good, starting from the date of completion of such Making Good.



## 32.2 Notification of Defect

In case of discovery of a Defect, the Client shall notify such to the Contractor within a reasonable period following the discovery thereof.

## 32.3 Remedies

### (i) Making Good Defects

Upon discovery of a Defect, the Client shall have the right, at its option, to:

- (A) require the Contractor to promptly correct by repair the defective Products, without charging any additional expense to the Client,
- (B) require the Contractor to promptly replace the defective Products with conforming Products, without charging any additional expense to the Client,
- (C) require the Contractor to grant the Client a reasonable reduction in the price to be agreed, or failing agreement, fixed in accordance with GC 26.

### (ii) Failing in Making Good Defects

If the Contractor fails to promptly Make Good the Defects or in case of urgency, the Client may at its sole discretion, and after notifying such to the Contractor:

- (A) proceed to do the work itself or by others at the Contractor's risk and expense provided that it does so in a reasonable manner, and all costs, incurred by the Client in undertaking such work may be deducted from the price or otherwise such costs shall promptly be reimbursed by the Contractor to the Client; or
- (B) exercise all rights as per GC 24 .

### (iii) Client's other rights

Such remedies shall be without prejudice to Client's right to obtain indemnification for any and all damages and extra expenses incurred as a direct consequence of or related to the Defect.



## Chapter III: Performance of Services

### 33. Application of chapter III

---

The provisions of this Chapter III shall, together with the provisions of Chapter I, govern the Agreement entered into between the Contractor and the Client under which the Contractor shall perform Services, be it from a manual or intellectual nature, to the Client. The Services may include small ancillary (minor) supplies, such as, but not limited to, spare parts. However, if the Agreement includes erection, building, assembling, disassembling, testing or putting into service on Site, the provisions of Chapter IV will apply instead of the provisions of Chapter III

In case of inconsistency between a specific provision of Chapter I and a specific provision of this Chapter III, the latter shall prevail.

### 34. Scope of the services

---

The Services to be performed by the Contractor including the time schedule, key performance indicators, deliverables and key personnel of the Contractor are detailed in the Agreement. The Services shall be supplied with all the needed accessories and ancillary supplies, even if such supply is not expressly provided for in the Agreement.

### 35. Reports and progress

---

#### 35.1 Reports

The Contractor shall prepare and submit to the Client at the appropriate time the reports as required in the Agreement and all such other information and reports in relation to the Services as the Client shall reasonably require from time to time.

#### 35.2 Revised Planning in case of delay

If at any time the actual progress of the Services does not conform to the time schedule, the Contractor shall promptly inform the Client and shall produce, within ten (10) Days of being so required, a revised plan showing the modifications to the approved programme necessary to ensure completion of the Services within the contractual time schedule.

If the modifications proposed by the Contractor will alter the time schedule in a manner which in the reasonable opinion of the Client will adversely affect Client's ability to perform its obligations under the Agreement or under any other agreement to which the Client is a party, then the Contractor shall make such other modifications as the Client shall require in order to remove the adverse effect.

The Contractor shall indemnify the Client from and against any additional direct costs incurred by the Client as a result of the modifications to the time schedule, under any agreement with third parties. This GC 35.2 is without prejudice to GC 3.3.



### 35.3 Services involving Interventions on Client's Existing Equipment

With respect to any Services which might affect Client's existing tool or equipment, Contractor shall be obliged to co-ordinate with the Client regarding the proceeding to and the timing of any such Services, so as to avoid or minimize any disruption of the Client's operations.

## 36. Quality of the services

---

The provisions of GC 36 shall be applied cumulatively with (and not derogate from) the mandatory provisions of Law, Chapter I of the General Conditions, Special Conditions and any additional warranties granted by the Contractor under the Agreement.

The Services performed by the Contractor shall be:

- (i) strictly in accordance with the Agreement, including the requirements and specifications (technical or other),
- (ii) fully in compliance with the key performance indicators as referred to in the Special Conditions or specifications, if any.

The Contractor shall provide necessary documents to monitor the quality of the Services.

## 37. Acceptance

---

Upon completion of the Services, the Contractor shall invite the Client to review the compliance of the Services performed with the requirements of the Agreement and the key performance indicators if any.

Provided that such invitation is received, the Client shall inform the Contractor of any non-conformity and/or Defects detected by means of the Client's customary and reasonable practices (such practices being adapted to the importance and nature of the Services supplied) within thirty (30) Days following the receipt of the invitation.

Should the Client discover a non-conformity and/or Defect, the acceptance of the Services shall not be granted to the Contractor.

The signature of a written notification of completion, the signature of time-sheets, the payment of the final invoice and/or the utilization shall not qualify as an acceptance of the Services rendered.

## 38. Defects

---

### 38.1 Defects Liability Period

Without prejudice to statutory warranties under the Law and additional specific warranties granted pursuant to the Agreement, the "Defects Liability Period" shall be twenty-four (24) Months, calculated from the latest of (i) the end date of the Services or (ii) the date of acceptance according to GC 37.



When any Services or part thereof have been Made Good due to any Defects under this GC 38.1 a new Defects Liability Period of twenty-four (24) Months shall apply for such Services, starting from the date of completion of such Making Good.

### **38.2 Defects on Products of the Client**

To the extent the Services are performed on Products or equipment belonging to or used by the Client, and if after the performance of the Services, the Client discovers a defect on those Products or equipment, such defect shall be deemed to be caused by a Defect of the Services, and GC 38 shall apply.

### **38.3 Notification of Defects**

In case of discovery of a Defect, the Client shall notify such to the Contractor within a reasonable period following the discovery thereof.

### **38.4 Remedies**

#### **(i) Making Good Defects**

Upon discovery of a Defect, the Client shall have the right, at its option, to:

- (A) require the Contractor to correct the Services, without charging any additional fee or expense to the Client,
- (B) require the Contractor to re-perform the Services, without charging any additional fee or expense to the Client,
- (C) require the Contractor to grant the Client a reasonable reduction in the price to be agreed, or failing agreement, fixed in accordance with GC 26.

#### **(ii) Failing in Making Good Defects**

If the Contractor fails to promptly Make Good the Defects or in case of urgency, the Client may at its sole discretion:

- (A) procure replacing Services from other service providers, at the expense of the Contractor. The costs incurred by the Client related to such services may be deducted from the price or otherwise such costs shall promptly be reimbursed by the Contractor to the Client; or
- (B) exercise all rights as per GC 24.

#### **(iii) Client's other rights**

Such remedies shall be without prejudice to Client's right to obtain indemnification for any and all damages and extra expenses incurred as a direct consequence of or related to the Defect.



## Chapter IV: Works

### 39. Application of chapter IV

The provisions of this Chapter IV shall, together with the provisions of Chapter I, govern the Agreement entered into between the Contractor and the Client under which the Contractor shall execute and complete Works for the Client, including the supply of Products and services which are inherent to the Works.

If the Agreement includes erection, building, assembling, disassembling, testing or putting into service on Site, the provisions of Chapter IV will apply.

In case of inconsistency between a specific provision of the Chapter I and a specific provision of this Chapter IV, the latter shall prevail.

### 40. Scope of works

The Contractor shall execute all the works, perform all services, supply all Equipment, Technical Documentation and Products, of whatsoever nature or extent, required to execute the Works in accordance with the Agreement, in order to achieve completion within the time schedule and comply with all other obligations under the Agreement. The Contractor shall be fully and unrestrictedly liable for, and the Contractor's obligations shall include, among others:

- (i) handling the complete design, engineering, procurement, manufacture, testing, transportation, storage, erection, construction, completion, checking, quality assurance, commissioning and testing, co-ordination, and handing over of the Works and;
- (ii) modifying and updating the design taking into consideration (a) the requirements imposed in the course of the development and Permit obtainment process and (b) the design reviews and (c) the Client's comments including on the Contractor's design safety assessment documentation; and
- (iii) providing such services and Products as required under the Agreement for the proper training of the Client's personnel and for the remedying of Defects in accordance with the relevant provisions of the Agreement.

The Contractor shall design the Works in accordance with the requirements of the Agreement with a view to ensuring, under normal operating conditions and subject to proper maintenance and compliance with the Operation and Maintenance Manuals and according to good industrial practice, a useful life of the Works for a normal lifetime of such Works, provided, however, that nothing herein is construed to limit the warranties given pursuant to the Agreement.

The Contractor shall provide all labour, including the supervision thereof, materials and Contractor's Tools, and all other things whether of a temporary or permanent nature, necessary to perform the Works.



The Contractor undertakes to keep spare parts and consumables in stock for the Works performed and warrants the availability of those spare parts for the period corresponding to the normal lifecycle of the Works.

## **41. Commencement, time schedule, delays and suspension**

---

### **41.1 Notice to Proceed**

The Agreement may provide a notice-to-proceed mechanism whereby the issuance of such notice to proceed is a condition for the start of the Works on Site.

### **41.2 Time Schedule**

The Contractor shall proceed with the Works as from the Effective Date with due expedition and without any delay.

Without prejudice to any other provision of this GC 41.2, the Works shall be executed in accordance with the time schedule set out in the Agreement.

### **41.3 Reports**

The Contractor shall prepare and submit to the Client at the appropriate time the reports as required in the Agreement and all such other information and reports in relation to the Works as the Client shall reasonably require from time to time.

### **41.4 Reviewed Planning in case of delay**

If at any time the actual progress of the Works does not conform to the time schedule, the Contractor shall promptly inform the Client and shall produce, within ten (10) Days of being so required, a revised schedule showing the modifications to the approved programme necessary to ensure completion of the Works within the contractual time schedule.

If the modifications proposed by the Contractor will alter the time schedule in a manner which in the reasonable opinion of the Client will adversely affect Client's ability to perform its obligations under the Agreement or under any other agreement to which the Client is a party, then the Contractor shall make such other modifications as the Client shall require in order to remove the adverse effect.

The Contractor shall indemnify the Client from and against any additional direct costs incurred by the Client as a result of the modifications to the time schedule, under any agreement with third parties. This GC 41.4 is without prejudice to GC 3.3.

### **41.5 Works involving Interventions on Client's Existing Equipment**

As regards any Works which might affect Client's existing tool or equipment, Contractor shall be obliged to co-ordinate with the Client regarding the proceeding to and the timing of any such Works, so as to avoid or minimize any disruption of the Client's operations.



## 42. Setting out

---

The Contractor shall be liable for the accurate setting out of the Works in relation to original points, lines and levels of reference given by the Client in writing and to be first ascertained by the Contractor and for the correctness of the positions, levels, dimensions and alignment of all parts of the Works and for the provision of all necessary instruments, appliances and labour in connection therewith.

If, at any time during the progress of the Works, any error appears or arises in the positions, levels, dimensions or alignment of any part of the Works, the Contractor shall at its own cost, rectify such error and bear all the consequences (financially and timing wise) of possible modifications, if necessary, of the Permits or the application for new Permits.

The checking of any setting out or of any line or level by the Client shall not in any way relieve the Contractor from its responsibility for the accuracy thereof.

The Contractor shall give a minimum of three (3) Days notice to the Client before setting out.

## 43. Site data

---

Without prejudice to GC 7 :

- (i) the Contractor confirms that it has entered into the Agreement after having examined (or at least having had the opportunity and time to examine) the Site and the accesses to the Site and their suitability for the undertaking of the Works (including among others the climatic, hydrological, soil and general conditions of the Site);
- (ii) the Contractor is solely liable for all conditions at the Site (whether or not foreseeable at the time of inspection) and for the suitability of the Site for the performance of the Works. The Client shall bear no responsibility for (and the Contractor shall not be entitled to any extension of the time or delivery schedule or addition to the price or any Variation Order in respect of) the actual conditions prevailing at the Site or the suitability of the Site for the performance of the Works nor for any error, inaccuracy or omission of any kind in any data provided to the Contractor by the Client. The Contractor shall be solely responsible for verifying and checking the accuracy and correctness and completeness of all information supplied by the Client and shall in any case be deemed to have checked such information;
- (iii) the Contractor shall be deemed to have satisfied itself as to the suitability and availability of the access routes to the Site. The Contractor shall be liable for the selection, the impact on the cleanliness and the damages caused by him, of access routes to the Site it chooses to use. The Contractor shall provide any signs or directions which are necessary for the guidance of its personnel and Subcontractors. The Contractor shall be liable for obtaining any permission or Consent that may be required from any Public Authority for the use of such routes, signs and directions;
- (iv) in particular the Contractor has checked that the information on soil and subsoil conditions represents the actual situation on Site, and that they are complete and valid for design and construction of the Works. Contractor undertakes not to claim for





any price modification or any other change in the Agreement as a result of further investigations.

#### **44. Manmade obstacles**

---

The Contractor shall be solely liable for checking the localization of man-made obstacles including those of the Client (e.g. pipes and lines) in the soil and the subsoil and for the damages caused in this regard (notwithstanding the fact that the Client has provided the Contractor with the related plans). The Contractor shall not be entitled to any Variation Order, for any man-made obstacles.

If any data of the Client or of another party regarding the Site, whether given by the Client or obtained from third parties (including for the avoidance of doubt, the drawings for any existing installations, listed in the Agreement), proves to be substantially incorrect or incomplete, the Contractor shall forthwith inform the Client.

#### **45. Fossils and other articles of artistic, archaeological or historical value**

---

- (i) All fossils, coins, articles of historical, cultural or other value, and remains or items of geological or archaeological interest discovered on the Site shall (subject to the applicable Law) be the property of the Client. The Contractor shall take precautions to prevent its personnel or its Subcontractors or other persons from removing or damaging any such item.
- (ii) Immediately upon discovery of such item, the Contractor shall inform the Client, who shall issue instructions in relation thereto.
- (iii) Should the progress of the performance of the Agreement be suspended or impeded as the result of the discovery of such fossils or other items, the Contractor shall be granted by the Client a reasonable extension of the relevant time schedule and a price increase in accordance with GC 19.

#### **46. Contractors' operations on the site**

---

The Contractor shall confine its operations to the Site, and to any additional areas which may be used as working areas with the prior consent of the Client and subject to no objection from any Public Authority or any other third party. The Contractor shall keep its personnel and equipment within the Site and such additional areas.

#### **47. Equipment, materials and workmanship**

---

##### **47.1 Manner of Execution**

All Equipment to be supplied and all the Works to be done under the Agreement shall be manufactured and executed in the manner set out in the Agreement.



If the Contractor desires to propose a method or to use Equipment other than that specifically described in the Agreement, it shall in all cases submit such proposal for consideration to the Client and it shall not make the substitution unless approved in writing by the Client.

#### **47.2 Quality of Materials**

All Equipment and Works shall be brand new and unused upon delivery to the Site, shall in any event be in accordance with the Agreement and free and clear of all liens, claims and encumbrances.

All Equipment and Works shall be treated to resist deterioration due to the prevailing local conditions on Site. Such treatment shall include but not be restricted to coatings of protective materials, shields, etc.

All materials buried under the ground shall be suitable or shall be so protected to withstand the local soil and subsoil conditions.

The Client may at any time request samples and test certificates of any material to check the compliance with the contractual requirements.

#### **47.3 Surplus Equipment**

The Client shall be given the opportunity to purchase the surplus Equipment at Provisional Acceptance. If the Client does not exercise its rights within sixty (60) Days as from Provisional Acceptance, the Contractor shall remove the surplus Equipment together with Contractor's Tools.

### **48. Delivery of equipment to the site**

---

The Contractor shall be liable for the receipt on Site of all Equipment delivered for the purposes of the Agreement, the storage on delivery, the protection during storage as well as the surveillance of the storage, constructions and assembly areas.

The Contractor shall deliver to the Client, on a case by case basis for the major pieces of Equipment, and on a monthly basis for the other items of Equipment, a report detailing the circumstances of receipt on Site, including possible damages occurred to such Equipment.

### **49. End of erection and commissioning**

---

#### **49.1 End of Erection and commissioning**

As soon as the Works have, in the opinion of the Contractor, been completed mechanically, electrically and structurally, and put in a tight and clean condition excluding minor items which do not materially affect the operation or safety of the Works, the Contractor shall notify such completion, the End of Erection, to the Client in writing.

After the End of Erection and before the start of the Acceptance Tests, the Contractor shall proceed with the commissioning of the Works in order to make the necessary adjustments and to verify its correct operation without any incident and/or shutdown. This commissioning shall be performed under the responsibility of the Contractor.



If during this commissioning the operation of the Works requires the operation of other equipment not part of the Works, the Client will set up an operation team which will operate such other equipment on the request and instructions of the Contractor in accordance with a programme fixed in common agreement with the Client and with the applicable project procedures (including the consignment procedure). The Contractor shall propose such programme to the Client at least one Month prior to the start of such operation.

#### **49.2 Ready for Acceptance Tests**

As soon as the Works in respect of commissioning activities, including all tests and running-in operations required are completed and, in the opinion of the Contractor, are ready for Acceptance Tests, the Contractor shall so notify the Client in writing.

## **50. Acceptance tests**

---

### **50.1 Obligations to proceed with Acceptance Tests – Notice - Programme**

Subject to prior written agreement from the Client, the Contractor shall proceed with the Acceptance Tests of the Works.

The Acceptance Tests shall include as a minimum (i) all necessary tests to demonstrate all functionalities of the Works and (ii) a proper operation of the Works during a reasonable period of time.

The Contractor shall deliver to the Client at the latest thirty (30) Days in advance of the scheduled start date of the Acceptance Tests (such date being provided in the time or delivery schedule) the proposed detailed testing programme in accordance with the Agreement. Such programme including the expected start and duration of each test, shall be subject to approval of the Client and shall take into account the consignment procedure of the Client. The dates for the tests shall be confirmed in writing by the Contractor to the Client at the latest ten (10) Days ahead of the scheduled dates for their commencement.

If during the Acceptance Tests, the operation of the Works is performed by the Client, such operation shall be under the direction and responsibility of the Contractor.

### **50.2 Utilities and Facilities for Acceptance Tests**

The utilities and facilities shall be supplied by the Client to the Contractor, except as otherwise provided in the Agreement.

### **50.3 Repeat Tests**

If the Works fail to pass any of the Acceptance Tests, then, the Contractor shall Make Good the Works or part thereof and the Acceptance Tests shall be repeated within a reasonable time upon the same terms and conditions, save that all costs related to the repetition of the tests shall be reimbursed by the Contractor.

### **50.4 Tests Results - Test Certificate**

The Contractor shall submit to the Client a test report (including the test results) of each of the Acceptance Tests performed within five (5) Working Days of their respective execution.



When, in the opinion of the Contractor, the Works have passed successfully any of the Acceptance Tests, the Contractor shall ask the Client to issue the Test Certificates in relation thereto.

The Client shall have a reasonable period of time, not to exceed ten (10) Days, to review and comment on the supporting data and issue or refuse the Test Certificate.

In case the Client has issued the relevant Test Certificates related to the Acceptance Tests, those tests shall be deemed to have been successfully passed retroactively to the date on which such tests were conducted.

#### **50.5 Modification**

If the Contractor modifies the Works after successful completion of the Acceptance Tests or part thereof and if the Client considers that such modification may have an impact on the Acceptance Tests or part thereof, the Contractor shall repeat the Acceptance Tests or part thereof, and shall carry the costs as a result thereof.

#### **50.6 Postponement**

If the above procedure of Acceptance Tests is incompatible with the nature/and or the time schedule of the Works, the Client may postpone the Acceptance Tests to a later date.

#### **50.7 Use by Client before Provisional Acceptance**

Without prejudice of GC 6.6, the produced energy before Provisional Acceptance shall be to the benefit of the Client. Sale of energy shall not relieve the Contractor from any of its obligations hereunder nor in any way restrict or exclude the remedies available to the Client in respect of the Works as set out in GC 51 or GC 20.1 (v).

#### **50.8 Consequences of Failure to Pass Acceptance Tests**

If the Contractor is unable to pass successfully the Acceptances Tests,

- (i) at the date on which the maximum amount of Liquidated Damages for delay is reached if such amount is specified in the Agreement or;
- (ii) at the end date of the time or delivery schedule as set forth in GC 3 if such schedule is specified in the Agreement or,
- (iii) two (2) Months after the start of the Acceptance Tests if no such schedule or amount as set forth under (i) or (ii) above is specified in the Agreement,

The Client shall be entitled, in addition to its right on Liquidated Damages for delay if any, to apply any of the remedies as set forth in GC 52.2 (iv). If a maximum amount of Liquidated Damages for delay as well as the time or delivery schedule is specified in the Agreement, Client shall only be entitled to apply any of the remedies as set forth in GC 52.2 (iv) at the date on which the maximum amount of Liquidated Damages is reached or at the end date of the time or delivery schedule.



## 51. Defects before provisional acceptance

---

Without prejudice to GC 50 if at any time, before Provisional Acceptance, any part of the Works contains a Defect or is not in accordance with the Agreement, and as soon as the Client has given notice thereof then, the Contractor shall, with all speed and due diligence and at its own expense, Make Good the Defect so specified.

In case the Contractor shall fail to do so within reasonable time, the Client is entitled to (but has no obligation to) take at the cost of the Contractor such steps as may in all the circumstances be reasonable to Make Good such Defect.

If any part of the Works contains a Defect, the Contractor has the obligation to forthwith notify the Client thereof stating in writing the nature of the Defect.

## 52. Provisional acceptance

---

### 52.1 Conditions for Provisional Acceptance

As soon as the following conditions and, if applicable additional conditions specified in SC are fulfilled, the Contractor shall invite the Client in writing to inspect the Works. The Provisional Acceptance Certificate shall be issued by the Client if the following conditions and if applicable additional conditions specified in SC are fulfilled:

- (i) the Contractor has complied with all its obligations under the Agreement, and in particular, all Works are completed (other than with respect to the items on the Punch List); and
- (ii) the Acceptance Tests have been successfully passed and the Client has issued all the Test Certificates; and
- (iii) there is no unremedied Event of Default (or Defect) (including health and safety related matters) on the part of the Contractor under the Agreement (save for outstanding minor work which the Client will record in the Punch List, a list of works and/or supplies to be performed by the Contractor within twelve (12) Months from Provisional Acceptance and which will be attached to the Provisional Acceptance Certificate and
- (iv) the Contractor has paid to the Client any amount due at that time, including the applicable Liquidated Damages for delay; and
- (v) the Contractor has issued certificates (the certificates can be presented to the Client in the course of the execution period of the Works) in respect of Equipment confirming that such Equipment are new and unused; and
- (vi) the Contractor has provided to the Client the technical documentation as referred in GC 8 as well as the complete draft marked-up version of the Operation and Maintenance Manuals and
- (vii) the Contractor has provided to the Client the certificates required by the Law or Public Authority in respect of the Works or part thereof (such as, but not limited to the certificates referred to in GC 50.4 and



- (viii) the conditions concerning health and safety as specified in GC 14 are fulfilled; and
- (ix) the Contractor has removed all Contractor's Tools and the Site and the Works are left in clean and in a workmanlike condition, to the satisfaction of the Client; and
- (x) the Contractor has supplied all spare parts as provided in SC; and
- (xi) the Contractor has delivered all the bonds due at that time as provided in SC.

The Provisional Acceptance Certificate shall specify the date of Provisional Acceptance and shall be signed by the Client's Representative and (if any) by the Client's Engineer.

The granting of the Provisional Acceptance Certificate shall not restrict the Contractor's obligations under the Agreement.

## **52.2 Defects after Provisional Acceptance – Defects Liability Period**

### **(i) Defects Liability Period**

Unless specified otherwise in the Agreement, the Defects Liability Period shall be 24 Months, calculated from the Provisional Acceptance, and may be extended in accordance with this GC.

However, the twenty-four (24) Months period shall be extended up to the first inspection with disassembly or opening of the Equipment or Works or part thereof, when such inspection is required by the Operation and Maintenance Manuals and with a maximum of thirty-six (36) Months calculated from the Provisional Acceptance.

When any item or equipment or part thereof has been Made Good due to any Defect under this GC 52.2 a new Defects Liability Period of 24 Months shall apply for such item or equipment, starting from the date of completion of such Making Good.

### **(ii) Notice of Defects**

If any Defect appears, the Client shall within a reasonable period following discovery inform the Contractor thereof, stating in writing the nature of the Defect.

### **(iii) Extension of Defects Liability Period**

If, in the course of the Defects Liability Period, the Works have been out of operation, as a result of a Defect or a damage resulting from a Defect during a total period of more than two (2) Months, the Defects Liability Period shall be extended by a period equal to the number of days by which the shutdown of the Works exceeds two (2) Months, with a maximum of five (5) years following the Provisional Acceptance.

### **(iv) Remedies**

#### **(a) Making Good Defects**

Upon discovery of a Defect, the Client shall have the right, at its option, to:

- require the Contractor to promptly correct by repair the defective Works, without charging any additional expense to the Client,



- require the Contractor to promptly replace the defective Works, without charging any additional expense to the Client,
- require the Contractor to grant the Client a reasonable reduction in the price to be agreed, or failing agreement, fixed in accordance with GC 26.

**(b) Failing in Making Products Defects**

If the Contractor fails to promptly Make Good the Defects or in case of urgency, the Client may at its sole discretion:

- proceed to do the work itself or have it done by others at the Contractor's risk and expense provided that it does so in a reasonable manner, and all costs, incurred by the Client in undertaking such work may be deducted from the price or otherwise recovered as a debt due from the Contractor to the Client; or
- exercise any of its rights as per GC 24.

**(c) Client's other rights**

Such remedies shall be without prejudice to Client's right to obtain indemnification for any and all damages and extra expenses incurred as a consequence of or related to the Defect.

**(d) Removal of Defective Work**

The Contractor may with the consent of the Client dismantle and remove from the Site any portion of the Works which is defective or damaged if the nature of the Defect is such that repairs cannot be expeditiously carried out on the Site. All costs of any nature due to that dismantling and removal shall be for the account of the Contractor.

**(e) Conditions Applicable to Works after Provisional Acceptance**

The Agreement shall apply to all inspections, adjustments, replacements and renewals and to all tests occasioned thereby, carried out by the Contractor pursuant to this GC 52.2.

**(f) Right of Access; Tests**

For the sole purpose of and to the extent necessary for performing the Works related to solving the Punch List or remedying a Defect and until the Final Acceptance Certificate has been issued, and subject to the conditions set forth in GC 5.1, the Contractor may request the Client to have the right of access to the Works for the purpose of inspecting the working thereof. The Contractor may at its own risk and expense make any test which it considers desirable subject to the Client's approval. The Contractor shall communicate the results of such tests to the Client.

**52.3 Contractor to Search**



The Contractor shall, if required by the Client in writing, search for the cause of any Defect under the direction of the Client. If such Defect is not one for which the Contractor is liable under the Agreement, the Cost of the work carried out in searching for the Defect shall be borne by the Client.

If the Parties, or an independent expert, come to the conclusion that there is a reasonable probability that similar Defects in Works or in Equipment can appear regularly or can affect other similar items or parts of the Works, the Contractor shall be obliged to examine an additional number of those Works or Equipment; if at least one similar Defect appears, the Contractor shall be obliged at its costs and under its responsibility to repair, replace or modify all such similar items or Works by Equipment or Works of a higher quality design or concept.

### 53. Final acceptance

---

At the end of the Defects Liability Period, subject to any extension as provided for hereinabove, the Contractor shall invite the Client in writing to issue the Final Acceptance Certificate. The Final Acceptance Certificate shall be issued by the Client, under condition that the Contractor has satisfied all its obligations as required by the Agreement. Such obligations shall include, in particular:

- (i) all Defects which appeared during the Defects Liability Period have been corrected by the Contractor in accordance with the Agreement; and
- (ii) the Contractor has provided all final Technical Documentation as appropriate; and
- (iii) the Contractor has fulfilled all its obligations under the Agreement; (for the avoidance of doubt, such obligations do not include obligations related to Hidden Defects and Decennial Liability); and
- (iv) all sums and all Liquidated Damages due under the Agreement have been paid.

The issue of the Final Acceptance Certificate will not release the Contractor from its outstanding obligations according to the Law or the Agreement.





## APPENDIX A: EMBARGO POLICY

### 1. Additional definitions under present Clause:

- “**Embargo Laws**” shall mean legal provisions of the United States of America and the European Union and Law prohibiting, directly or indirectly, any transaction including specified importation or exportation of good and/or services, or any transaction with specified natural or legal persons, as well as similar laws applicable to the Client, the Contractor, and their direct and indirect shareholders under the laws of their home jurisdiction, and under the laws to which the Client and the Contractor and their direct and indirect shareholders are subject, depending on the jurisdiction of that country.

### 2. Representations & Warranties:

With regard to the Agreement performance, the Contractor represents and warrants to the Client that:

- (i) it is aware of and is familiar with the Embargo Laws applicable to it in connection with the performance of the Agreement ; and
- (ii) it complies with and shall continue to comply with Embargo Laws, in connection with the performance of the Agreement; and
- (iii) its employees, officers directors, agents, partners, suppliers, co-contractors, shareholders, beneficial owners, affiliates, principals or any natural or legal person or entity directly or indirectly under its control or acting on its behalf (howsoever designated), comply with and shall comply with laws, rules, regulations and policies applicable to them including, without limitation, applicable Embargo Laws, in connection with the performance of the Agreement; and
- (iv) it shall immediately inform the Client in the event of any breach of covenants, representations and warranties by itself ; and
- (v) it shall inform the Client in the event of any breach of covenants, representations and warranties by its employees, officers directors, agents, partners, suppliers, co-contractors, shareholders, beneficial owners, affiliates, principals or any natural or legal person or entity directly or indirectly under its control or acting on its behalf (howsoever designated), as soon as it is aware or should have been reasonably aware of such breach.

Notwithstanding anything therein to the contrary, in the event the Client reasonably believes that the Contractor, its employees, officers directors, agents, partners, suppliers, co-contractors, shareholders, beneficial owners, affiliates, principals or any natural or legal person or entity directly or indirectly under its control or acting on its behalf (howsoever designated) have taken, are taking, are about to take or may take any action whichever and whatsoever in breach of or which may breach the laws, rules, regulations, decree, judgment, decision, order or injunction (howsoever designated) applicable to them, including, without limitation, applicable Embargo Laws, in connection with the performance of the Agreement, or any of the representations, warranties and covenants contained therein, the Client may:

- (i) Serve a written notice to the Contractor requesting pieces of evidence that the Contractor complies and shall comply with the Embargo Laws ; and



- (ii) Withhold any future payments under the Agreement to the Contractor until the Company, at its sole and absolute discretion, receives satisfactory pieces of evidence from the Contractor that the Contractor complies and shall comply with laws, rules, regulations, decree, judgment, decision, order or injunction (howsoever designated) applicable to it, including, without limitation, applicable Embargo Laws, in respect of the performance of the Agreement; and/or
- (iii) Suspend the Contract performance until the Client receives from the Contractor reasonable pieces of evidence at the sole and exclusive discretion of the Client that said Contractor complies and shall comply with the Embargo Laws.
- (iv) Suspend the Agreement performance without any fee nor penalty until the Client receives from the Contractor reasonable pieces of evidence in the reasonable opinion of the Client that said Contractor complies and shall comply with laws, rules, regulations, decree, judgment, decision, order or injunction (howsoever designated) applicable to it, including, without limitation, applicable Embargo Laws, in respect of the performance of the Agreement.

Notwithstanding any other provision of this Agreement to the contrary, the Client shall not be obliged under the Agreement to take any action, or omit to take any action or conduct itself in a manner which, in the sole and exclusive opinion of the Client, might conflict with or cause a breach of Embargo Laws or any other law, regulation, decree, judgment, decision, order or injunction (howsoever designated) applicable to the Client, its employees, officers directors, agents, partners, suppliers, co contractors, shareholders, beneficial owners, affiliates, principals or any natural or legal person or entity directly or indirectly under its control or acting on its behalf (howsoever designated), or any asset of the Client.



## APPENDIX B: HEALTH AND SECURITY STANDARDS FOR SERVICES AND WORKS

Health and safety at the place(s) of execution of the Services and Works are an integral part and essential component of the correct execution of the Agreement.

At all times during the execution of the Services or Works, the Contractor undertakes to comply with the most stringent health and safety standards applicable in the Country and to the business. The Contractor undertakes specifically to comply with the specific health and safety requirements of the Client in accordance with the Client's internal regulations and policies at the time of the execution of the Services or Works, and to take all appropriate measures not to compromise the health and safety of any physical person working on the Site(s) where the Services or Works are carried out.

### 1. HEALTH AND SAFETY: APPLICABLE STANDARDS, LIFE-SAVING RULES, RISK ASSESSMENT

#### Applicable standards

- 1.1 All Contractor personnel involved/taking part in the service undertake to comply at all times with the most stringent applicable Health & Safety standards.
- 1.2 The most stringent applicable Health & Safety standards include the 9 Life-Saving Rules, i.e. (Annex 1):
  - a) I do not walk under a load. I do not stand under a load.
  - b) I stay out of the path of moving equipment.
  - c) I clip on my harness when working at height.
  - d) I only enter a trench if the appropriate wall supports are in place.
  - e) Before entering a confined space, I make sure that atmosphere has been tested and is monitored as I work.
  - f) Before performing hot work, I make sure that fire or explosion risks have been eliminated.
  - g) I verify that there is no live energy (mechanical, chemical, electrical, fluids under pressure, etc.) before starting work.
  - h) I do not handle my phone or other communication tools when driving.
  - i) I do not drive under the influence of alcohol or drugs.

These 9 Life-Saving Rules cover the 9 situations identified by the Client as previously creating a fatal accident risk for individuals working on the Site.

- 1.3 The Contractor implements a monitoring system designed to update applicable Health and Safety standards. The Contractor takes the steps necessary to inform its personnel about such changes and ensures that its personnel is informed about the impact on their work.
- 1.4 The Contractor undertakes to carry out any Health and Safety adjustment requested by the Client.



## The Life-Saving Rules

- 1.5** The Contractor ensures that all of the personnel for which it is responsible, including its personnel and its subcontractors' personnel, are informed of the Life-Saving Rules, comply with those rules and understand the consequences of failing to comply with those rules (Article 4).

The Contractor shall take all necessary steps to ensure compliance with the Life-Saving Rules and shall inform the Client accordingly.

### **Risk assessment related to the businesses and activities of the Contractor**

- 1.6** The Contractor shall assess the risks linked to the businesses and activities specific to it.
- 1.7** The Document setting out the results of the risk assessment shall be sent to the Client before the Services or Works are carried out.

## **2. OBLIGATIONS PRIOR TO EXECUTION OF THE SERVICES OR WORKS**

### **2.1 Prior inspection**

Prior to the execution of the Services or Works, the stakeholders, including the subcontractors, shall jointly inspect the workplaces, installations and equipment provided by the Contractor.

During this inspection, the Parties shall:

- stipulate the tasks to be carried out and their performance in time, stipulating to whom they will be attributed (who does what);
- verify that no employee will work in isolation at a location where he cannot be rescued quickly in case of accident;
- delimit the intervention zone and indicate the zones in that sector that might present dangers;
- report all risks present in the intervention zone (risks inherent to the activity of each Party and interference risks;
- decide on the control measures in order to minimise the risks to an acceptable level;
- stipulate the instructions specific to the Client applicable to the operation (traffic rules, emergency procedures, etc.);
- check that the applicable Life-Saving Rules can be complied with and, where appropriate, decide on the corrective measures that need to be implemented before the works start.
- stipulate the provisions regarding sanitary installations, locker rooms and canteens.

Based on this information, if there are interference risks between the execution of the service and other activities, a Health & Safety Plan must be drawn up.



## 2.2 Interference risk prevention plan

The parties shall jointly establish a written Interference Risk Prevention Plan defining the measures taken by each company with a view to preventing risks of interference between activities, installations and equipment, as well as the measures taken to ensure compliance with the Life-Saving Rules.

For construction or demolition projects, the Interference Risk Prevention Plan supplements the existing Health and Safety Plan.

The Interference Risk Prevention Plan must include the following (non-exhaustive list):

- information pertaining to services, including those services that are the subject of the Agreement, including location, timetable, nature of activities and equipment used;
- the list of companies in question (including subcontractors) and the order in which they intervene, with a description of their activities and the contact details of the contacts within the companies;
- the skills, approvals, certifications, required medical authorisations and aptitudes, for which proof will be required throughout the operations;
- assessment of the interference risks, with each party solely responsible for assessing its specific risks;
- health and safety measures, including safety instructions, reporting risks and work permit procedures and collective and individual protective equipment based on risk analyses;
- health and safety measures specific to compliance with the Life-Saving Rules;
- the distribution of maintenance of sanitary installations, locker rooms and canteens;
- provisions on collaboration and communication;
- alert mechanisms and the organisation of first aid in case of emergency, including mobile worksites.

## 2.3 Appointment of Single Points of Contact

Before starting the Services or Works, the Contractor and the Client appoint, among their personnel, a Single Point of Contact in charge to ensure, in connection with the Service:

- the compliance with health and safety requirements,
- the coordination with other participants.

## 2.4 Project kick-off visit

Before the start of execution of each Service or Work, the Client's representative may organise a project kick-off visit with all of the stakeholders – including the Contractor and subcontractors – in order to check that all of the measures have been implemented so that the Life-Saving Rules are



complied with, validate the context and, if necessary, update the risk assessment and supplement the Health and Safety Plan.

### **3. OBLIGATIONS DURING EXECUTION OF THE SERVICES OR WORKS**

#### **3.1 General obligations of the Contractor**

The Contractor shall provide the human and material resources, as set out in the Agreement and in the Interference Risk Prevention Plan, that are needed to comply with the requirements described in this article, as well as the relevant proof (such as approvals, qualifications, certificates, inspection reports, etc.). It ensures that its employees are managed and informed and provides them with the appropriate health and safety training. The Contractor checks correct understanding of the health and safety instructions and the Life-Saving Rules and undertakes to ensure compliance with them.

The Contractor shall also ensure and, where appropriate, shall make sure that its subcontractors and/or suppliers ensure working conditions respecting the health and safety of its employees and/or employees of its subcontractors and/or suppliers as well as those of third parties.

When the Services or Works are carried out in whole or in part on the premises of the Client, the Contractor undertakes to ensure that its employees or the personnel of any other entity under its orders complies with the Client's rules and regulations on health and safety and conduct at the workplace.

The Contractor shall supervise the work carried out in connection with the Service. He shall keep the Client regularly informed of the arrival of any new subcontractor and shall update a list of workers placed under its responsibility.

The Contractor shall ensure on a daily basis the relevance of risk assessment and associated prevention measures. The Contractor undertakes to provide the Client, in writing, with the updated assessment of the risks involved in its activities and the content of associated prevention measures taken as a result of the assessment.

The Contractor ensures that any new party involved, as a subcontractor and/or temporary employee, is informed of the applicable regulations and particularly the specific requirements, including the Life-Saving Rules.

#### **3.2 Access and rules specific to Client Sites**

Access to the Client's buildings and sites not open to the public is subject to the Client's authorisation. In the absence of special provisions on access to building and sites, this authorisation is granted to the personnel of the Contractor in connection with the execution of the Contracts.

In the Client's areas of intervention that are covered by Construction Site Rules, the Client stipulates the rules governing access to the area where work is being carried out.

By the same token, certain Client sites are subject to access restriction rules. In such cases, the said rules apply to Contractor personnel and Contractor subcontractors in connection with the execution of the Agreement, with the Client reserving the right to refuse access to certain individuals. The Contractor and its subcontractors may not submit any claim, including for the related travel, if these requirements are not met.



Any access authorisation granted by the Client in no way lessens the Contractor's responsibility with regard to the behaviour of its personnel and its subcontractors.

The Contractor undertakes not to have third parties visit the installations where the Service is being provided, unless prior written agreement is obtained from the Client.

The Contractor shall instruct its employees:

- (i) not to use copiers or other equipment for private personal purposes;
- (ii) not to annotate, read or copy documents, books, brochures, etc. located on the Clients premises but not related to the Service;
- (iii) to ensure a high standard of housekeeping.

### **3.3 Client's obligations**

The Client shall inform the Contractor, in writing, of all health and safety rules (including, but not limited to, the Life-Saving Rules, safety guidelines, prior training, health and cleanliness, risk reporting, management of products hazardous to people and/or the environment, traffic plan, loading and unloading operations) applicable on the Site where the Services or Works are carried out. At the request of the Contractor, the Client shall forward a copy of all of its applicable policies so that the Contractor can inform its employees (and its subcontractors) accordingly.

The manager of the Client's Site on which the Services or Works are carried out shall, in coordination with the Contractor, coordinate health and safety policy. Pursuant to any change (for instance, regarding the context, works, organisation, resources, third parties), the manager of the Client's Site shall update the Interference Risk Prevention Plan.

The Client at all times provides the necessary resources he is accountable of, for ensuring that the Life-Saving Rules can be enforced.

### **3.4 Accidents and significant incidents**

In case of accident, significant incident or hazardous situation that could impact the health and/or safety of people, the Contractor shall alert the Client immediately.

The Contractor shall collaborate with the Client to analyse the situation and provide all relevant information.

Any accident, incident or hazardous situation linked to failure to comply with Life-Saving Rules shall be jointly analysed and documented.

The Client and Contractor must, as soon as possible, implement the relevant corrective measures. Specifically, if necessary, the safety guidelines and health and Interference Prevention Plans in question shall be revised.

### **3.5 Unplanned visits to the Site where the Work is carried out**

The Client and Contractor shall carry out regular inspections, planned or unplanned, on the Site where the Services or Works are carried out.



During such visits, the following shall be verified:

- conditions for applying and complying with the Life-Saving Rules,
- for construction/demolition work, the items listed in Annex 2
- certificates and the correct condition of equipment, plant, vehicles, protective equipment, etc;
- compliance by the various stakeholders with the safety guidelines, the information provided, the wearing of personal protective equipment.

Based on the observations carried out during these duly documented inspections and checks, the Client and Contractor shall review their risk assessments and, if necessary, the Interference Risk Prevention Plan(s).

The Contractor may be asked to immediately take the corrective measures necessary to ensure respect for the health and safety of individuals working on the Site where the Service is carried out.

## **4. FAILURES TO MEET HEALTH AND SAFETY OBLIGATIONS**

### **4.1 Principles**

If, during the execution of the Services or Works, the Client observes failures to comply with health and safety obligations, specifically failure to comply with the Life-Saving Rules, the Client shall:

- if necessary, immediately suspend the execution of non-compliant work or hazardous activities and inform the Contractor of the failures that have given rise to suspension ,
- notify in writing the Contractor of such failures and, if necessary, its decision to suspend the execution of non-compliant work or hazardous activities.

In all the cases:

- Upon such notification, the Contractor shall inform the Client of the corrective actions it takes. The Client shall then inform it of the time periods it deems acceptable to correct the notified failures and enable the resumption of the execution of the contract, when execution of the contract has been suspended. The stipulated penalties may be applied if the time period resulting from suspension is exceeded.
- If the Contractor does not take corrective action within the time period stated above and accepted by the Client, the Client may terminate the Agreement under the conditions stipulated and shall take, at the Contractor's expense, any measures needed for the purposes of performing the Agreement, and in particular to have it performed by a third party.

### **4.2 Evaluation of the Agreement**

Once the service has been performed in full, the two parties shall conduct a joint assessment of it from the viewpoint of health and safety rules, and more specifically, the Life-Saving Rules.





The Client and the Contractor shall jointly analyse all the failures to comply with health and safety obligations over the Agreement's term, as well as all the positive behaviours and initiatives adopted to improve safety, and the results will be included in the evaluation of the Contractor.

