

Company

Terms and Conditions of Purchase

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1.0 DEFINITIONS

- 1.1 The term 'Goods' means all equipment, materials, machinery, supplies, spare parts, services and work required to be supplied or performed by Supplier all as stated in the Order including drawings, documents, manuals, instructions, spare part lists and the like relating thereto
- 1.2 The term 'Guarantee Period' means the period during which Supplier's guarantees remain in full force. Unless otherwise specified in the Order, the Guarantee Period is 12 months from the date of first commercial operation of the Project.
- 1.3 The term 'Order' means the purchase order, these Terms and Conditions of Purchase, and all other attachments, specifications, drawings and documents incorporated into the Order by reference or attachment including subsequent revisions to the aforementioned documents.
- 1.4 The term 'Owner' means Purchaser's client who is establishing the plant or facilities in which the Goods are intended to be used. (hereinafter jointly and severally 'Project').
- 1.5 The term 'Price' means the total financial consideration specified in the Order and payable to Supplier for the supply of the Goods in accordance with the Order..
- 1.6 The term 'Purchaser' means Company having its office located in The Hague, The Netherlands, and its legal successors and assignees.
- 1.7 The term 'Supplier' means the person or company on whom the Order has been placed by Purchaser and includes all employees, agents, representatives of Supplier and all sub-suppliers and subcontractors of the Supplier.

2.0 ACCEPTANCE OF ORDER

- 2.1 The Order shall become a binding contract on the date that the Supplier signs the acceptance copy of the Purchase Order. Supplier shall return the signed Acceptance Copy of the Order within 14 calendar days of the date of the Order or within 7 calendar days of the date of the final discussions or correspondence between the parties.
- 2.2 If Supplier commences work before returning the signed Acceptance Form of the Purchase Order, Supplier shall be deemed to have accepted the Order.
- 2.3 The Purchaser shall be entitled to cancel the order if the signed Acceptance copy of the Purchase order is not received within the time limit mentioned in 2.1 or if modifications to the Purchase order are sent with the signed Acceptance copy of the Purchase order.

3.0 CHANGES AND MODIFICATIONS

- 3.1 No change, modification, deletion or substitution by Supplier to any detail of Purchaser's specifications, drawings etc. or to any condition or provision of the Order is permitted without prior written approval of the Purchaser.
- 3.2 Purchaser may alter quantities and/or specifications given in the Order at any time. If any Purchaser - initiated changes affect Price or delivery time, Supplier shall give Purchaser written notice to that effect within 14 calendar days from the date of receipt of Purchaser's notice of change. Any changes in Price and/or delivery time shall be agreed to on an equitable basis.

4.0 EXPEDITING AND INSPECTION

- 4.1 Supplier agrees that all inspections and tests specified in the Order shall be made by him and by his agent or his sub-suppliers. Supplier shall give Purchaser at least five (5) working days notice of readiness for final inspection of the Goods.
- 4.2 If Purchaser or its Agent finds the Goods not in conformity with the Order, Supplier shall at his own expense correct any defects to the satisfaction of the Purchaser. Supplier shall not dispatch Goods until Purchaser has carried out final inspection and issued the Inspection Release Note or has waived such final inspection in writing.
- 4.3 If and when required in the Order, Supplier agrees to submit a detailed production schedule and to regularly submit progress reports against such schedule. Supplier agrees to undertake all expediting, including expediting sub-suppliers, as may be necessary to ensure that the delivery date or any other relevant date specified in the Order

is met.

- 4.4 Supplier agrees that all materials and equipment supplied by Supplier and sub-suppliers under the Order are subject to expediting, inspection and testing by Purchaser and/or his agent and/or Owner and his agent at all reasonable times and places before, during or after manufacture. Such inspection and expediting by Purchaser, or failure to do so, shall not relieve Supplier or its sub-supplier of his obligations and liabilities under the Order or be interpreted to imply approval or acceptance of the Goods.
- 4.5 All suborders placed by Supplier, of which three (3) unpriced copies of each shall be transmitted to the Purchaser immediately following their issue, shall include a statement of the Purchaser's expediting and inspection rights as set forth herein.
- 4.6 Equipment, materials or supplies delivered by Supplier in error or excess will be returned to Supplier at Supplier's expense.

5.0 PROPERTY OF PURCHASER

- 5.1 Whenever Supplier holds or has in his possession any equipment, material or other property of Purchaser and/or Owner issued to him in connection with the Order, Supplier shall insure and be responsible for care, safety and custody of aforesaid property until completion of the Order. Purchaser shall retain under any event full and sole title to and ownership of this property.

6.0 DELIVERY, DELIVERY TIME AND DELAYS

- 6.1 Unless otherwise agreed, the Goods shall be delivered duty- and freight-paid at the destination designated by Purchaser. Supplier shall arrange for appropriate packaging, as well as for proper security and appropriate transport. Partial delivery shall be permitted only to the extent it is explicitly stated in the Order.
- 6.2 Any failure by Supplier to deliver the Goods in accordance with the delivery schedule or by the delivery date specified in the Order shall constitute substantial breach of the Order justifying termination under Article 16, however, Purchaser may at his option choose not to exercise his termination rights and grant Supplier extension of the delivery time.
- 6.3 Supplier shall notify Purchaser in writing immediately if any delay is foreseen and shall take all necessary measures wholly at its cost to maintain the agreed delivery schedule. Purchaser reserves the right to require Supplier to implement, and Supplier shall promptly implement at its cost, such measures as Purchaser reasonably considers necessary to maintain the agreed delivery schedule.
- 6.4 In the event of default by Supplier under the provisions of Articles 6.1 through 6.3 above, and/or if Purchaser otherwise determines that Supplier's performance is such that it will cause a delay in delivery, provided such delay is not due to Force Majeure, Purchaser has the right, after prior written notice to Supplier, to terminate or cancel part or all of the Order in accordance with the provisions herein. In the event delay is due to Force Majeure, the provisions of Article 18 shall apply.

7.0 SUSPENSION OF PERFORMANCE

- 7.1 Purchaser may at any time, and without affecting the Order otherwise, by written notice to Supplier, suspend further performance by Supplier of any part or all of the Order. Upon receipt of such notice, Supplier shall promptly suspend further performance and shall, during the duration of such suspension, take proper care and protect all work associated with the Goods in progress and any materials, supplies and equipment on hand. Purchaser may at any time withdraw by written notice the suspension and Supplier shall promptly resume and diligently continue performance under the Order.
- 7.2 If suspension under Article 7.1 reasonably affects price and/or delivery schedule, Supplier shall so notify Purchaser in writing and suggest the necessary changes. The parties will discuss in good faith the proposed changes in accordance with the provisions of Article 3.2.
- 7.3 If the duration of suspension exceeds 120 consecutive calendar days, the provisions of Article 17 shall apply.

8.0 COMPLIANCE WITH LAWS AND REGULATIONS

- 8.1 Supplier warrants that he and its employees, agents and sub-suppliers

will comply with all applicable laws, codes, rules, regulations and directives of Governmental and/or any local Authorities, and the applicable directives of the European Union and agrees to indemnify and hold harmless Purchaser and Owner from and against any and all liabilities, liens, claims, costs, expenses, losses, damages, penalties and judgments arising from or based on any actual or asserted violation of aforesaid laws, codes, rules, regulations and directives.

8.2 Supplier warrants that should the Order require its presence at the Project site he shall comply with all applicable safety, health and environmental regulations including Owner's or other requirements applicable to the site and shall promptly implement instructions by Purchaser and/or Owner in this regard.

9.0 GUARANTEES AND LIABILITIES

9.1 Supplier guarantees that the Goods will:

- (a) be new and free from defects in design, materials and workmanship, and
- (b) conform to specifications, drawings and other descriptions furnished by Purchaser, and
- (c) be fit and sufficient for the purpose expressly specified or manifestly implied by the Order.

9.2 If any failure of the Goods to meet the above guarantee is discovered prior to expiry of the Guarantee Period and Supplier is notified thereof by Purchaser and/or Owner, Supplier shall promptly make such alterations, repairs and replacements as may be necessary for the Goods to meet such guarantee.

9.3 If the deficiencies cannot be corrected, the defective Goods shall be dismantled and removed by Supplier promptly and solely at Purchaser's option, Supplier shall either (i) re-supply proper materials and/or equipment and reinstall them if necessary, or (ii) refund to Purchaser the full purchase price.

9.4 If alterations, repairs and replacements under Articles 9.2 and 9.3 above are carried out by Supplier, all costs, expenses, including any costs and expenses incurred by Purchaser and/or Owner, relating to or arising from dismantling, removal, transport, insurance, re-installation, clearing, cleaning, testing and re-testing shall be wholly to the account of Supplier.

9.5 If Supplier does not fulfill its obligations under Articles 9.2 and 9.3 above, Purchaser shall be entitled, without prejudice to other remedies available to him, to have all required alterations, repairs and replacements done by any means of his choice including direct arrangements with Supplier's suppliers and subcontractors and Supplier shall be wholly liable for all such costs and expenses.

9.6 The Guarantee Period for the Goods shall be extended by the period(s) equal to the time(s) elapsing between the date when the failure or defect first became evident (which shall be notified by Purchaser to Supplier in writing) and the date on which such defect by Purchaser or failure has been finally rectified to the satisfaction of Purchaser and/or Owner (to the extent that Supplier has been allowed to rectify the defect).

9.7 Supplier shall not be relieved of his guarantee obligations herein merely because Supplier's engineering designs, specifications, drawings and calculations have been reviewed and commented upon and approved by Purchaser and/or Owner or because the Goods have been inspected and cleared by Purchaser's and/or Owner's Inspectors.

9.8 All guarantees and warranties offered by Supplier with regard to the Goods and/or in the Order shall extend to assignees and successors of Purchaser and for the benefit of the Owner. The Owner shall have the same rights as Purchaser to enforce warranties and guarantees offered by Supplier under these Terms and Conditions of Purchase.

9.9 Supplier shall not be liable for default under guarantees and warranties herein to the extent that Supplier can prove to Purchaser's reasonable satisfaction that the Goods have been operated under conditions more severe than that described or implied in the Order or have been improperly operated or maintained by Owner. Supplier shall not be liable to Purchaser for the indirect or consequential damages suffered by Purchaser including loss of use, loss of production or profit except when such loss or damages are due to gross negligence or willful misconduct of Supplier.

10.0 INDEMNIFICATIONS

10.1 Supplier hereby agrees to assume the risk of and to release, defend, indemnify and hold harmless Purchaser, Owner and their employees, subcontractors and agents (hereinafter collectively called 'Indemnitee') without limitation from and against all loss, damage, liability, cost and expense (including attorneys fees), claim and suit arising out of any injury (including death) to any person or damage to any property resulting from or connected with the performance by Supplier or the Order or the Goods supplied hereunder regardless of whether such loss, damage, liability, cost, expense, claim and suit are caused in part by Indemnitee.

10.2 Without prejudice to the generality of 10.1 above, Supplier agrees to indemnify and hold harmless Indemnitee without limitation against all costs, expense, liability, damages or penalties resulting from pollution (including pollution of soil) or other environmental impairment at the Project caused by Supplier or the Goods.

10.3 Supplier assumes sole responsibility for making deductions and payments of payroll taxes, social premiums and other charges he is statutorily obligated to make under applicable Laws and Regulations and agrees to indemnify and hold harmless Indemnitee from and against all claims, damages, costs and expenses arising from default,

11.0 INSURANCE

11.1 Supplier undertakes to have and maintain at its cost during the performance of the Order and up till the expiry of the Guarantee Period, the following insurance:-

- (a) All insurance which Supplier is compulsorily required under applicable laws and regulations to maintain including Workmen's Compensation Insurance and/or Employer's Liability Insurance;
- (b) Insurance covering damage to or loss of the Goods and Purchasers' property issued under Article 5.1 up to the full value thereof valid during performance of all Supplier obligations and until transfer of title to Purchaser as specified herein.
- (c) Comprehensive General Liability (CGL) Insurance covering Third Party property damage and bodily injury and expressly covering the indemnification obligations assumed by Supplier under Article 10.0 above. Unless otherwise specified in the Order, the minimum coverage under the CGL Insurance policy shall be NLG 2,000,000 (Two Million Dutch Guilders) per occurrence. Purchaser has the right to require from Supplier higher insurance limits which shall be specified in the Purchase Order.
- (d) Automobile Liability Insurance and Insurance for mechanically propelled vehicles if used in connection with the Order, in conformity with applicable legal requirements and practices.

11.2 If required by Purchaser, Supplier shall furnish to Purchaser Certificates of Insurance or other documents in evidence of insurance coverage to the satisfaction of Purchaser. Supplier shall ensure that Purchaser is given at least thirty days notice prior to cancellation of modification of any insurance referred to herein. Purchaser may at any time require Supplier to produce true copies of the complete insurance policies referred to herein and Supplier shall promptly so comply.

11.3 Supplier shall obtain from underwriters of its insurance policies applicable to the performance of the Order or as required above a complete waiver of rights of subrogation by underwriters against Purchaser, Owner and their employees and agents.

All insurance which Supplier is compulsorily required under applicable laws and regulations to maintain including Workmen's Compensation Insurance, Employer's Liability Insurance;

11.4 Without relieving Supplier of his obligations under Article 10.0, Purchaser agrees to include Supplier as additional insured in any Construction All Risk (CAR) insurance policy which Purchaser may purchase and maintain to cover the risk of damage or loss to Owner's plant and property included in the Project. If the CAR Insurance policy is taken out by Owner, Purchaser agrees to make best efforts to include Supplier as additional insured under said policy.

12.0 PATENT AND COPYRIGHT

12.1 Supplier shall grant to Purchaser and Owner a non-exclusive, royalty-free, transferable, irrevocable license under relevant patents, trademarks, copyright and know-how owned by Supplier to use, operate and sell the Goods.

12.2 Supplier shall solely at its expense indemnify and hold harmless Purchaser from and against all costs, expenses (including attorney's fees), suit or proceeding brought against Purchaser and/or Owner based on a claim that the sale or use of the Goods which constitutes infringement of any patent, copyright, trademark, proprietary information or intellectual property of others.

12.3 Supplier shall be notified in writing by Purchaser and/or Owner on receipt of such suit or infringement claim and Supplier shall take over at its cost the defense of such claim, suit or proceeding. In the event it is determined in the suit that the use or sale of Goods constitutes infringement as aforesaid, Supplier shall at its cost either secure for Purchaser and Owner the right to sell or use the Goods or replace the same with other Goods which are substantially similar but which do not infringe.

12.4 Supplier shall not be liable under this Article 12 if the suit or claim arises from the use of design or specification furnished in writing to Supplier by Purchaser and/or Owner.

13.0 CONFIDENTIAL INFORMATION

13.1 Any information made available by Purchaser and/or Owner to Supplier in connection with the Order shall not be copied, reproduced, used or disclosed to any third party except as authorized in writing by Purchaser. Supplier shall not divulge the existence of the Order or the name of Purchaser or Owner for any purpose whatsoever without the prior written approval of Purchaser. Supplier undertakes to obtain the same confidentiality agreements from his subcontractors as set forth herein. Supplier agrees to promptly return to Purchaser on his request all documents and copies thereof furnished by Purchaser or Owner in connection with the Order.

14.0 RIGHTS AND TITLE

14.1 Unless otherwise agreed upon, ownership of, title to and copyright in all specifications, drawings, and other documents prepared by Supplier under the Order shall vest in Purchaser and/or Owner, and Purchaser and/or Owner shall have the right to use such specifications, drawings and other documents for any purpose whatsoever without any obligation of any kind to Supplier.

14.2 Supplier shall arrange that any of the aforementioned rights and titles (together with the obligations relating thereto) which Supplier may

- have acquired directly or through his subsuppliers from third parties, if required by Purchaser and/or Owner, are automatically assigned to Purchaser or Owner.
- 14.3 Unless otherwise provided in the Order, the title to Goods supplied under the Order shall pass progressively to Purchaser in proportion to the partial payments of the Price made by Purchaser or directly by Owner as may be stated in the Order. Full title to the Goods shall pass to Purchaser or Owner upon delivery by Supplier at the point specified in the Order and upon obtaining the signature of Purchaser's representative, or other person authorized by Purchaser for this purpose, in confirmation of delivery and acceptance of the Goods.
- 14.4 In the event pre-payment or partial payments have been made by Purchaser to Supplier as provided in Article 14.3, and Purchaser reasonably concludes that the Supplier has, or will have financial or other problems which may lead to material default by Supplier, full title to the Goods shall pass to Purchaser without any further requirement, deed or legal act to be met or done on the date of issue of a written notice by Purchaser to Supplier stating that title to Goods shall pass. Nothing in this Article 14.4 shall diminish or cancel the right of Supplier to receive payment for Goods in accordance with the provisions of the Order.
- 15.0 LIENS**
- 15.1 Supplier warrants the Goods to be free from all liens claims, charges or encumbrances arising from Purchaser's performance of the Order and agrees to indemnify and hold harmless Purchaser and Owner from and against costs, expenses and claims arising therefrom. Supplier waives all rights of lien against any property and premises of Purchaser and Owner. Purchaser may require Supplier to submit a signed release of liens, satisfactory to Purchaser, before making final payment to Supplier.
- 16.0 TERMINATION FOR DEFAULT**
- 16.1 In the event Supplier is in default or breach of any provision, condition or requirement of the Order, including failure to deliver the Goods as per the agreed schedule, Purchaser may, by prior written notice to Supplier, and without prejudice to any other rights which Purchaser may have, terminate the Order in whole or in part.
- 16.2 If Supplier is declared bankrupt or becomes insolvent, or makes any arrangement with its creditors, or has a receiver appointed, or commences any action to wind up its business, the Purchaser may, without prejudice to its other rights, terminate the Order forthwith by written notice to Supplier or to any person in whom the Order may have become vested. In such an event, Purchaser is entitled to forthwith take possession of the Goods and Purchaser's property issued to Supplier under Article 5.1.
- 16.3 Upon receipt of the termination notice, Supplier shall promptly stop performance under part or all of the Order as directed by Purchaser, place no further orders on subsuppliers, cancel existing subcontracts on terms approved by Purchaser, protect and safeguard work completed and at Purchaser's option either deliver the Goods or part thereof completed as of the date of cancellation or continue performance on such part of the Order and on such terms as Purchaser may reasonably direct.
- 16.4 In the event of termination, Purchaser has unconditional right to have the Order completed by such means as Purchaser may decide. Supplier shall be liable for, and agrees that Purchaser may set-off against any amount due to Supplier, all additional costs which Purchaser may incur by doing so and other damages suffered by Purchaser due to Supplier's failure. Supplier hereby grants Purchaser the right to make direct payments to, and arrangements with, subsuppliers or subcontractors of Supplier if Purchaser considers such payments and arrangements necessary for the uninterrupted completion of the Order.
- 16.5 In the event of termination for default, Supplier is entitled to payment, subject to set-off as provided under Article 16.4, for only such part of the Goods which have been completed in full and satisfactory compliance with the terms and conditions of the Order. In the event a net payment is due from Supplier to Purchaser, Supplier undertakes without any condition or proviso to promptly refund to Purchaser such excess payment.
- 17.0 TERMINATION FOR CONVENIENCE**
- 17.1 Purchaser has the right at any time to terminate for his convenience the Order in part or in whole by written notice to Supplier. Upon receipt of such notice, Supplier shall promptly stop further performance of the Order, place no further orders on subsuppliers and subcontractors, protect the Goods or part thereof which has been completed both in Supplier's premises and in the premises of its subsuppliers and subcontractors and await further instructions from Purchaser.
- 17.2 Purchaser shall pay to Supplier for the portion of the Order satisfactorily completed up till the date of termination together with reasonable overhead and profit as substantiated by documentation satisfactory to and verifiable by Purchaser less any disposal or retention value and payments previously made to Supplier. Supplier shall deliver or assign all Goods with all applicable warranties or dispose of Goods as directed by Purchaser including Purchaser's property furnished under Article 5.1. In no event shall Purchaser and/or Owner be liable to Supplier for any special, indirect or consequential damages of any kind whatsoever including but not limited to loss of production, loss of business, income or profit and damages arising from claims against Supplier by its subsuppliers or its other customers.

18.0 FORCE MAJEURE

- 18.1 Any delay in or failure of performance by either party hereto shall not constitute default under the Order if and to the extent such delay or failure is caused by Force Majeure which is, for this purpose, defined as occurrence beyond the control of the party affected and which by exercise of reasonable diligence such party is unable to foresee and prevent. The following occurrences shall in any event be considered as Force Majeure: acts of God, fire, floods, explosion, embargo, war whether declared or not, riots, national or general strike, civil disorder or applicable directives of the relevant Governmental Authority.
- The following occurrences shall not be considered as Force Majeure: normal hazards of weather; shortage of materials, supplies, power, labor and transport; strikes other than general or national strikes; disputes between Supplier and his workers; strikes by Supplier's workers and directives by Government Authority arising from failure, error or delay by Supplier to conform to applicable laws and regulations or to secure obligatory approvals and permits from Governmental or Local Authorities in due and proper time and any breaches or Force Majeure of Supplier's sub-contractors or sub-suppliers.
- 18.2 If Supplier is affected by Force Majeure, he shall promptly notify Purchaser in writing and shall take all reasonable and expeditious steps to mitigate the adverse impact of Force Majeure. In the event of Force Majeure, the delivery schedule and related payment schedules shall be extended by and to the extent performance is affected by Force Majeure but Supplier shall in no event be entitled to any extra compensation by reason of Force Majeure. The occurrence of Force Majeure shall not operate to limit or terminate any of the obligations of either party.
- 19.0 ASSIGNMENT**
- The Supplier shall not assign the Order in part or in whole nor any interest therein without the prior written consent of Purchaser and any assignment made without such consent shall be void. Purchaser has the right to assign the Order to Purchaser's affiliates or to Owner and Owner's successors and assignees.
- 20.0 RIGHT TO OFFSET**
- The Purchaser shall be entitled, without prejudice to other rights available to him, to deduct from any amount due to Supplier in connection with the Order any and all amounts owed by Supplier to Purchaser and/or to Owner.
- 21.0 DISPUTES**
- 21.1 All disputes arising in connection with the Order shall be settled by the competent court in Rotterdam, The Netherlands.
- 21.2 The rights and remedies available to Purchaser herein are cumulative and additional to other or further remedies available under equity and law. Waiver by Purchaser of a breach by Supplier of a provision of the Order shall not be construed as waiver of such provision or of any other breach by Supplier.
- 22.0 APPLICABLE LAW**
- The Order shall be governed by the Laws of The Netherlands. The Uniform Law on the International Sale of Goods of 15 December 1971, enacted for execution at the United Nations Convention of 1964 relating thereto shall not apply to the Order. In as far as there is no deviation from it in this Order, the delivery terms agreed to between Supplier and Purchaser shall be interpreted according to 'Incoterms 1990' brought into force on 1 July 1990 and as more recently defined and amended by the ICC, Paris. Unless otherwise agreed upon, the English language is the ruling language for all aspects of the Order including those of Article 21.0.
- 23.0 ENTIRE AGREEMENT**
- 23.1 Upon acceptance of the Order by Supplier, the terms and conditions of the Order annul in their entirety all printed or written conditions of sale established by the Supplier or by any trade association, unless otherwise expressly agreed to by Purchaser in the Purchase Order.
- 23.2 The Order constitutes the entire and sole agreement between the parties and all other correspondence, prices, terms, conditions and qualifications contained in Supplier's quotation or in prior discussions between the parties are canceled as of the date of Acceptance of the Order by Supplier.