

# General Commercial Terms and Conditions

## for the Procurement of

## Plants, Plant Components, and Services

### “GCC 04/14“

Table of revision

Revision	Date	Kind of revision
0	01.08.2002	First edition
1	30.05.2005	General revision
2	19.07.2010	Point 19.2 - include Federal Act on the Employment of Foreigners
3	03.07.2013	Complete new release
4	12.08.2014	General revision

## 1. DEFINITIONS

- Overall plant: The work to be provided, forming a unit from the engineering viewpoint or under a contract, of which the delivery of goods and/or provision of services by the Contractor forms part.

With respect to step-by-step delivery of plants or plant components, the following definitions shall apply:

- Completion of erection: Completion of erection and/or assembly including no load test. The no load test shall be deemed completed when the entire equipment without operating media has been tested in separate operation and in operation in the context of the overall plant, when all plants, plant components, systems, operating controls and protective devices/equipment etc. have been tested for proper functioning and/or set to the rated values. In addition, all control circuits must be tested for proper functioning and pre-adjusted.
- Beginning of test run: Commissioning = beginning of testing under load = starting up the overall plant under normal operating conditions.
- Performance test: Performance test of the overall plant under continually full load for a reasonable period of time.
- Proof of performance: Achieving any and all performance data of the overall plant and ensuring operation in accordance with the requirements set forth in the contract with the Customer.

## 2. BASIC PROVISIONS

### 2.1. SCOPE

Unless agreed otherwise in writing, any and all contracts shall be subject exclusively to the following General Commercial Terms and Conditions which shall apply subsidiarily to the text of the order. Any general terms and conditions or contract forms of the Contractor will not be recognised in any case and shall not become part of the Contract, no matter (i) whether or not they were known to the Customer, (ii) whether and when they were submitted to the Customer, (iii) whether or not the Customer objected to them, and (iv) no matter whether or not they are in conflict with these General Commercial Terms and Conditions. Even acceptance of delivery or performance of services by the Customer without objection shall not be deemed submission to any such conditions. In case of permanent business relations our General Commercial Terms and Conditions shall apply even without explicitly making reference to them.

### 2.2. ENQUIRIES / CARE DURING THE PHASE LEADING UP TO CONCLUDING A CONTRACT, SUBCONTRACTING / JOINT VENTURES

The enquiries of the Customer are always non-binding unless expressly agreed otherwise in writing. The Contractor shall accurately examine any and all particulars contained in an enquiry or in an order, including but not limited to technical requirements and conditions, other descriptions, specifications, and data, with respect to technical feasibility and suitability, and shall inform the Customer forthwith of any circumstances which might prevent, make more difficult or delay the execution of the order and/or the use of the work/object of delivery for its intended purpose. This shall also apply to any subsequent modification of or supplement to the order. The costs incurred in connection with preparing, drawing up and submitting an offer (including cost estimates) shall be borne by the Contractor in any case.

Prior to submitting an offer, the Contractor shall familiarise itself with the building site and its surroundings, local soil conditions, working conditions, traffic situation, and any and all circumstances which are relevant for the delivery of goods or performance of services, as well as with the data and documentation provided by the Customer. Any loss or disadvantage due to the fact that the Contractor did not comply with this obligation properly shall be borne by the Contractor.

The Contractor shall inform the Customer in advance of any intended subcontracting or formation of joint ventures in the course of initiating business, submitting offers, and/or negotiating a contract, and shall disclose the names of subcontractors and/or prospective members of a joint venture. The Contractor shall not enter into any subcontract or joint venture agreement without the prior written consent of the Customer. In case of subcontracting or formation of joint ventures with the approval of the Customer the companies involved must accept these General Commercial Terms and Conditions of Lenzing AG, and any general terms and conditions of subcontractors or companies participating in a joint venture shall be explicitly excluded.

### 2.3. FORMATION OF CONTRACTS

A legal transaction shall be effected at the earliest upon signature of the minutes of negotiations (receipt of the written order of the Customer) (hereinafter referred to as the "Order" or "Contract"). If the Order deviates from the Contractor's offer the Contract shall be formed according to the Order unless the Contractor objects to it within 14 days from receipt of the Order. If an acknowledgement of an Order or any other correspondence of the Contractor contains any supplements to or deviations from the Order they shall not be deemed agreed upon. Any statements of the Customer shall be binding upon the Contractor only when made by the competent purchasing department in writing, by email or by fax.

In case of contradictions between the parts of the Contract formed between the Contractor and the Customer the following order of priority shall apply:

- The Order (letter, fax or telex)
- The Annexes mentioned in the Order
- The General Commercial Terms and Conditions of the Customer.

If proceeding according to this order of priority does not provide clarity the scope of delivery/services shall be according to the principle of optimum suitability of the goods and services for the application intended by the Customer.

Any change of specifications shall be subject to the prior written approval of the Customer

### 2.4. PRICES AND TERMS OF PAYMENT

#### 2.4.1 Price:

The prices of an Order are fixed prices exclusive of Value Added Tax including any and all expenses of the Contractor incurred in performance of its contractual obligations. Unless stated otherwise in the Order, pricing shall be DAP Lenzing according to Incoterms 2010 inclusive of careful packing or packing as prescribed.

#### 2.4.2 Invoicing:

Invoices shall be submitted to the Customer, attn. Vice President Global Purchasing. In all invoices, contractors from EU countries shall state the particulars required by law for tax purposes for an intracommunity purchase, as well as any other prescribed particulars, and information on the movement of goods.

Contractors from non-EU countries shall be responsible for all import formalities and bear the duties and costs of importing the goods into the EU.

#### **2.4.3 Payment:**

The (part) payments agreed upon shall be made by the date of payment agreed upon in the Order after receipt of the invoice and after all requirements for payment stated in the Order have been met, including but not limited to proper delivery of the documentation. Payment shall not be deemed to constitute acknowledgement that goods and services have been delivered properly, and thus shall not constitute a waiver of performance, warranty, damages or any other legal remedies on the part of the Customer.

#### **2.4.4 Retention money:**

The Customer shall be granted retention money of 10 % of the contract price including VAT as security for any warranty claims and claims for damages for a period of 30 days beyond the warranty period. The retention money is redeemable against acceptance of an abstract bank guarantee free of charge for the Customer in the amount of at least 10 % of the contract price.

#### **2.4.5 Final invoice:**

The final payment will be released only upon receipt of an overall final invoice for any and all goods delivered and services provided according to the Order and for any related claims. By submitting the final invoice the Contractor declares that it has asserted any and all claims arising out of the Contract concerned and thereby explicitly waives any additional claims on the basis of the underlying legal relationship.

### **2.5. DELIVERY OF GOODS AND PROVISION OF SERVICES**

**2.5.1** The goods delivered and services provided by the Contractor will become part of a complex overall plant to be built by the Customer and/or existing at the Customer. Defective performance of individual deliveries/services may cause problems in the overall project organisation with a high degree of probability, which will give rise to additional costs, e.g. in connection with postponing deadlines in network planning, interference with logistics, default of acceptance, down times, etc.. Therefore, the Contractor undertakes to exercise particular care in performing the Contract in order to avoid causing loss in the legal sphere of the Customer.

**2.5.2** Before initiating a section of work the site manager of the Contractor shall agree with the site manager of the Customer whether the work shall be executed without any changes, i.e. in accordance with the Contract documents, or whether any changes have occurred. If the Contractor fails to seek such agreement prior to starting work the Contractor shall bear any and all ensuing consequences.

**2.5.3** The Contractor shall not be entitled to compensation of waiting time and lost time, nor to reimbursement of any other costs in the event that performance of its work was interrupted upon the instructions of the Customer's site management (i) because performance according to Contract on the part of the Contractor is questionable, (ii) if work was interrupted as a result of a lack of discipline of the Contractor's staff, or (iii) if work was interrupted due to instructions given by the authorities.

### **2.6. PERIODS AND DEADLINES**

The periods and deadlines for delivery agreed upon shall be deemed fixed deadlines and must be complied with. There is no obligation of acceptance on the part of the Customer prior to the agreed date. Any delivery of goods or provision of services prior to the agreed date shall be subject to the written approval of the Customer. However, they shall not give rise to any premature claim for payment.

The date of delivery of goods and provision of services shall be the date of complete performance free from defects, however not prior to acceptance by the Customer of the performance owed under the Contract.

The date of delivery of documentation shall be the date of the receipt stamp of the Customer and/or acknowledgement of receipt by the Customer, provided that the documentation submitted is complete.

Deferring of dates and deadlines by the Customer by up to 12 weeks shall be free of charge.

### **2.7. EXCEEDING OF DEADLINES**

If the Contractor becomes aware that a deadline will be exceeded the Contractor shall inform the Customer forthwith in writing stating the reasons and expected duration of the delay. If the Contractor fails to comply with this obligation it cannot rely on the claim that this delay is not to be attributed to it. In any such case, the Customer shall be entitled to rescind the Contract without granting a grace period and claim damages in the full amount of loss incurred. Any changes of dates of delivery agreed upon shall be valid only when set forth in a written agreement.

### **2.8. ACCEPTANCE**

The recorded acknowledgement of the Customer that the plant has been delivered according to Contract and free from defects with respect to the goods to be delivered and services to be provided by the Contractor shall constitute acceptance. In case of machines or delivery of goods or provision of services in the area of process engineering this

shall include but not be limited to proof of compliance with performance values (e.g. capacity, product quality, consumption, emissions) in a performance test agreed upon or as customary in the industry.

In case of a failed performance test or non-acceptance due to any other defects the Customer shall grant the Contractor a reasonable period for subsequent improvement in line with the requirements of the overall plant. After the lapse of this period without removal of the defects the Customer may rescind the Contract. The Contractor shall bear the costs of staff, materials, consumables, etc. incurred by the Customer and caused by the Contractor in the course of unsuccessful performance tests.

## **2.9. DOCUMENTATION**

### **2.9.1 Importance of documentation:**

Documentation means any and all written documents, drawings, and documents in any other form accompanying the goods delivered and services provided by the Contractor which permit the Contractor and the Customer to perform their respective obligations. These documents refer to manufacturing, quality control, potential hazards, safety regulations, shipping, transportation, export, import, customs clearance, taxation, identification of parts (manufacturer's part number), logistics, storage, erection, assembly, commissioning, training, accounting, invoicing, business operation, repairs, maintenance, procurement of spare parts, etc.

The documentation is a relevant part of the scope of delivery of the Contractor. The Customer shall acquire a gratuitous, unlimited, unlimitable and perpetual right to use the documentation.

### **2.9.2 Scope:**

The documentation shall be submitted in the scope set forth in the Order. In the absence of a separate agreement on the scope of documentation the documentation shall be supplied in such a scope and in due time that the Customer does not suffer any disadvantage whatsoever. The documentation shall be German or if the place of performance is outside Austria in the national language and in English.

### **2.9.3 Shipping documentation:**

The complete and correct order number, identification number, contract item number, and part number (manufacturer's part number), as well as the designation of goods must be clearly shown in the documentation, inter alia for the purpose of unequivocal assignment to the applicable customs tariff. The designation of parts must be identical in the entire documentation. In particular, this designation must be identical in drawings, parts lists, packing lists, and shipping documents.

### **2.9.4 Export licence:**

The Contractor shall obtain any export licences for exporting goods to Austria at its own expense.

The Contractor guarantees that at the date of the Order the complete delivery of the subject matter of the Order is assured, and that there are no restrictions by the authorities and no other restrictions that would prevent the complete delivery of goods and provision of services as ordered. Otherwise, the Contractor shall be liable for any loss incurred by the Customer and shall fully indemnify and hold harmless the Customer in this respect. After conclusion of the Contract, the Contractor shall inform the Customer in due time of any possible new export bans/restrictions and shall submit alternatives free of charge at an early stage.

### **2.9.5 Documentation of origin:**

In case of cross-border shipment the Contractor shall enclose certificates of origin and/or preference documents with the goods to be supplied at its own expense. Any and all duties, charges, and additional costs incurred as a result of failure to provide such documentation or due to false declarations shall be borne by the Contractor and the Contractor shall fully indemnify and hold harmless the Customer in this respect.

## **3. DEFAULT**

If the Contractor fails to comply with the deadlines agreed upon in the Order, in the absence of any other agreement it shall pay the stipulated penalties set forth below which shall not be subject to the right of reduction by judges. The penalties shall be calculated on the basis of the total contract value and payable up to the actual date of delivery independently of whether or not an actual loss has been incurred. If applicable the penalties may be offset against the current invoices and/or claims of the Contractor. The Customer reserves the right to claim further damages. If final acceptance is delayed for reasons to be attributed to the Contractor the regulation concerning default set out below shall also apply (even if no explicit date of acceptance has been stipulated in the Contract; in that case the date fixed by mutual agreement between the Customer and the Contractor in the course of performance of the contract shall be relevant).

- (i) Delivery of goods and performance of services  
1 % per week of default or fraction thereof, however not more than 10 % of the total order value;
- (ii) Documentation  
0.1 % per week of default or fraction thereof, however not more than 1 % of the total order value;

- (iii) The obligation to pay a penalty shall arise for the Contractor as soon as default occurs. Reservations upon acceptance of delivery on the part of the Customer are not required for safeguarding the right to a stipulated penalty.
- (iv) The payment of penalties shall not release the Contractor from its obligation of performance and from the resulting liability.

## **4. CONTRACTOR'S LIABILITY**

### **4.1. LIABILITY**

The Contractor shall be liable for any loss or damage caused by it. The Contractor is generally not released from its liability by virtue of any insurance taken out by the Customer. To the extent that the Customer has taken out insurance for the interests of the Contractor too, the Customer undertakes to safeguard the rights of the Contractor under the insurance policy, however without assuming the risks, rights, and obligations of the Contractor (the obligations under the Contractor's warranty shall not be covered by this provision).

With respect to the removal of damage and/or pollution in the installation area of the Contractor where it is impossible to unequivocally identify the party that caused such damage or pollution all companies involved in the building project at the moment of the event shall be liable pro-rata to the value of their respective contracts if under contract with the Customer. The Contractor undertakes to indemnify and hold harmless the Customer and any third party with respect to any damage and/or accident suffered by its personnel. The Contractor assumes full responsibility for the actions of its personnel both inside and outside the site area. The Contractor shall be liable for damages with respect to any loss caused to the Customer or to any third party by its personnel.

### **4.2. WARRANTY**

Apart from the explicitly specified or warranted characteristics and the characteristics that can be generally expected, the Contractor warrants and guarantees that the goods delivered and services provided by it are complete and suitable for the specific use intended by the Customer, including but not limited to suitability of the goods and services for the operating conditions prevailing at the place of use in continuous operation as well as within the overall plant, and further guarantees that any and all standards and government regulations in force at the place of use (in particular with respect to safety and environmental protection) will be complied with, and further guarantees availability without failure in compliance with the performance and consumption values, ease of installation, maintenance and repairs, as well as state-of-the-art execution.

#### **4.2.1 Warranty period, removal of defects:**

In the absence of any agreement to the contrary, the warranty period shall end 24 months after acceptance of the overall plant, however at latest 36 months from final delivery according to the Order if the delay is to be attributed to the Customer.

The warranty period shall be extended by the duration of down times due to defects. In case of replacement or repair of a part a new warranty period of the same duration as for the initial delivery shall begin for this part upon installation of the new part or completion of repair.

In the absence of any agreement to the contrary, the warranty period for steel structures or frames and corrosion protection shall be 60 months from the date of acceptance of the overall plant. Furthermore, corrosion protection and steel structures or frames shall be subject to the special provisions of Lenzing AG. Sections 377 et seq. of the Austrian Business Code ("UGB") shall not apply. Any obligation of the Customer to inspect or test the goods delivered or services provided by the Contractor prior to the agreed function- or performance tests shall be excluded. Any defects occurring prior to or during the warranty period shall be removed by the Contractor at the place of use of the goods delivered as soon as possible by replacement or repairs at the Customer's election. If repairs or replacement are unreasonable from the commercial viewpoint or if the Customer cannot be reasonably expected any more to have them performed by the Contractor the Customer shall be entitled to cancel the Contract with immediate effect. Any and all services and ancillary costs such as transportation, customs duties, dismantling and installation, etc. shall be performed and/or paid by the Contractor.

In case of defects which must be removed without delay, including but not limited to defects occurring in critical phases with respect to deadlines or production, the Customer shall be entitled to remove such defects or have them removed immediately without the consent of the Contractor at the Contractor's expense, which shall not release the Contractor from its warranty obligations and shall not affect any further claims on the part of the Customer. This shall also apply if the Contractor fails to remove any defects within the specified time despite having been requested to do so.

### **4.3. LIABILITY FOR DOCUMENTATION**

The Contractor explicitly states that it is aware of the special importance of complying with its obligations in relation to documentation, and consequently assumes liability for the consequences of any default, fault or deficiency.

#### **4.4. REIMBURSEMENT OF COSTS OF FAULTS IN SHIPPING**

The Contractor shall reimburse the Customer with respect to any and all costs incurred by the Customer as a result of failure to comply or shortcomings in complying with the shipping terms agreed upon in the Order.

#### **4.5. WEARING PARTS**

The Contractor warrants and guarantees that the wearing parts offered as being necessary and selected by mutual agreement will be sufficient for two years continuous operation from the date of commissioning, unless agreed otherwise. The Contractor guarantees that spare parts, wearing parts, and replacement parts for the object of delivery will be available for 10 years after the end of the warranty period.

### **5. QUALITY ASSURANCE AND MONITORING DURING IMPLEMENTATION**

**5.1.** In performance of its contractual obligations the Contractor shall strictly comply with any and all laws (in particular the law on the employment of foreigners), ordinances, rules, and regulations in force or newly adopted at the place of installation during the time of project implementation. The Contractor explicitly declares that it has accurate knowledge of the subject matter of the Order, that it knows the conditions, customs, demands on materials and working conditions at the place of installation and on the site, and that it will take any and all prevailing conditions into account in performing its obligations. To the extent that the Contractor does not have sufficient information within the meaning of this paragraph it shall obtain such information at its own expense and in due time.

**5.2.** The Contractor undertakes on its own behalf and on behalf of its subcontractors to apply the principles of quality assurance according to the applicable standards in the delivery of goods and provision of services. The Contractor further undertakes to comply with any and all safety procedures of the Customer and to instruct its personnel to this effect.

The Customer shall be entitled to audit the quality assurance system, the quality assurance rules, and the quality assurance plan of the Contractor at any time. The Contractor shall make sure that the Customer can also perform such audits at the subcontractors of the Contractor at any time.

**5.3.** The Contractor grants the Customer and the persons acting upon its instructions the right to check the activities in connection with performance of the Contract. For this purpose the Contractor shall grant the Customer or its authorised representatives access to the relevant working facilities and documents at the Contractor. The Contractor will make sure that the Customer will be granted access to its subcontractors at any time.

### **6. CANCELLATION / RESCISSION OF CONTRACT**

#### **6.1. BREACH OF CONTRACT**

In case of material breach of Contract, the Customer may rescind the Contract as a whole or in part with immediate effect. In case of rescission of Contract the Customer shall be entitled to use the subject matter of the Order without limitation and free of charge up to acceptance of a replacement solution.

Inter alia, the following shall constitute a material breach of Contract:

- exceeding the deadline for delivery and/or commissioning by 2 months; and/or
- non-compliance or poor compliance with the main performance obligations under the Contract and/or
- if the penalty for not achieving any warranted data exceeds the maximum
- penalty defined in the Contract, and attempts at subsequent improvement were unsuccessful;
- if the Customer has justified and comprehensible reasons for assuming that the Contractor will not be in a position to perform its contractual obligations even before delivery and/or acceptance, and/or
- if bankruptcy or composition proceedings are initiated against the Contractor or if a petition in bankruptcy is dismissed for lack of estate;
- in case of change of direct or indirect ownership of the Contractor; and/or
- if the Contractor fails to meet the obligation according to point 6.2.

In the event of rescission of Contract on the ground of 2 months default, non-compliance or poor compliance with the main performance obligations under the Contract the Customer shall be entitled to perform the deliveries and services which have not been performed at all or have been performed insufficiently either itself or have them performed by a third party at the Contractor's expense (substitute performance). The cost incurred may be invoiced directly by the Customer with a period of payment of 30 days from receipt of invoice being hereby agreed, and the Contractor hereby waives any offsetting of the Customer's claim against its own purported claims. The Contractor shall reimburse the Customer for the loss incurred by the Customer due to premature termination of the Contract.

The Contractor shall repay any amounts already paid by the Customer for deliveries and services not yet performed, plus the financing costs incurred by the Customer, and in this context shall refrain from any offsetting against its own purported claims.

In the event that exercising the right to substitute performance requires access to any materials located at the Contractor or its subcontractors, the Contractor shall surrender any such materials to the Customer. This obligation shall survive termination of the Contract.

In the event that exercising the right to substitute performance requires access to industrial property rights, documentation (e.g. shop drawings, calculations) or any other information, the Contractor shall obtain the required rights, documentation, and information for the Customer. This obligation shall survive termination of the Contract.

## **6.2. INSOLVENCY / CHANGE OF CONTROL**

In the event of composition proceedings or bankruptcy proceedings being threatened or initiated against the Contractor or its suppliers and in the event of a change of ownership of the Contractor the Contractor shall fully inform the Customer forthwith. In case of non-compliance with this obligation the Customer shall be entitled to terminate the Contract according to point 6.1.

The Customer may cancel the Contract at any time. In any such case the Customer shall pay the Contractor the costs incurred up to that point, offsetting the amount corresponding to the opportunity of the Contractor, if any, to use the goods for another purpose.

## **7. APPLICABLE LAW / JURISDICTION / ARBITRATION**

Any dispute arising out of this Contract shall be subject to Austrian substantive law with exclusion of the conflict of law rules, and shall be finally settled by the Permanent Court of Arbitration of the Vienna Economic Chamber ("Ständiges Schiedsgericht der Wirtschaftskammer Wien") according to its rules of arbitration by one or several arbitrators. The language to be used in the arbitral proceedings shall be German. If the said Permanent Court of Arbitration lacks jurisdiction because not all parties have their headquarters or permanent residence in Austria any disputes arising out of this Contract or relating to its violation, termination or nullity shall be finally settled according to the Rules of Arbitration and Conciliation of the Vienna Arbitral Center of the Austrian Economic Chamber (Vienna Rules) by one or more arbitrators appointed according to the said Rules. The language to be used in the arbitral proceedings shall be German. Multi-party proceedings shall be permitted. The applicable law shall always be Austrian law with the exclusion of its conflict of law rules. Application of the UN Convention on Contracts for the International Sale of Goods dated April 11, 1980 shall also be excluded.

Departing from the aforesaid, the Customer shall be entitled to sue in courts of law rather than relying on arbitration to settle any disputes under this Contract. The applicable law shall always be Austrian law with the exclusion of its conflict of law rules. The place of jurisdiction shall be the court having subject-matter jurisdiction for the headquarters of the Customer.

The Contractor recognises the Code of Conduct of the Contractor ([www.lenzing.com](http://www.lenzing.com)). The relevant technical standards, provisions, as well as the Customer's works standards shall apply.

The Contractor will and will cause any person or entity acting on its behalf to fully comply with all applicable governmental, legal, regulatory and professional requirements, including but not limited to anti-money laundering, anticorruption and anti-bribery laws (including without limitation, the Foreign Corrupt Practices Act, the UK Bribery Act and Proceeds of Crime Act, and commercial bribery laws.

## **8. RIGHTS TO THE SUBJECT MATTER OF THE CONTRACT**

### **8.1. THIRD PARTY RIGHTS**

The Contractor undertakes to ensure that the use of the goods delivered and services provided by the Contractor will not be affected in any way by any third party rights being asserted (trademark rights, registered designs, patents, territorial protection, etc.) and will not infringe against any existing boycott clauses, blacklists etc. The Contractor shall inform the Customer forthwith in writing of any infringement of third party rights, boycotts, blacklists, etc. becoming known. If any third party alleges that any such limitation of the right of use exists or that any such rights as aforesaid have been infringed the Contractor shall fully indemnify and hold harmless the Customer, and furthermore shall ensure the unlimited use of the subject matter of the Contract or provide other acceptable alternatives to the Customer free of charge.

### **8.2. COPYRIGHT**

The Customer shall retain the copyright and exclusive right of use of the drawings, information, and know-how submitted to the Contractor by the Customer. The Contractor acknowledges that these are protected by exclusive proprietary rights of the Customer.

## 9. SECRECY

The Contractor shall not publish the contents of the Order, the transaction, or any information received from the Customer or any information based thereon and to be supplied by the Contractor, nor use any of the aforesaid for advertising purposes or for any other purpose without the written consent of the Customer. In particular, the Contractor shall observe secrecy with respect to any production or design documents and the documentation provided by the Customer, and shall use any such documents exclusively for performing the respective orders, and shall return any and all such original documents to the Customer upon completion. Copying is prohibited. An obligation of secrecy shall be imposed on any person acquiring knowledge of any such information or documentation, and the written undertaking of secrecy shall be submitted to the Customer. In case of infringement against this obligation of secrecy the Contractor shall indemnify and hold harmless the Customer, even with respect to third party claims.

## 10. PASSING OF RISKS

The risks shall pass subject to the Incoterms as amended from time to time. If formal acceptance is required the risk shall not pass prior to such formal acceptance.

## 11. TRANSFER OF TITLE

The ownership title shall pass to the Customer upon delivery DAP place of delivery according to Incoterms 2010.

## 12. INSTALLATION EQUIPMENT

Installation equipment, components used for commissioning, etc. which are intended for temporary use on the site only shall remain the property of the Contractor and the Contractor shall bear all risks related thereto.

## 13. INSURANCE

The Contractor shall maintain insurance coverage as customary in the industry with a reputable insurance company at its own cost (and shall submit an insurance certificate to the Customer upon request). The insurance coverage shall include industrial liability insurance and extended product liability insurance. The product liability insurance shall be maintained with a minimum cover of 5,000,000.00 per claim for at least eleven (11) years after performance of the Contract. The Customer may demand to be shown as a "co-insured" in the insurance certificate and may request a waiver of recourse for the benefit of the Customer.

## 14. ASSIGNMENT OF RIGHTS

Any assignment of rights of the Contractor shall be subject to the prior written consent of the Customer. The Customer shall be entitled to assign its rights and obligations under the contractual relationship with the Contractor to third parties (including but not limited to group companies) at any time without any further consent on the part of the Contractor being required.

## 15. CHANGES OF PERFORMANCE

The Contractor undertakes to inform the Customer of any possible improvements to the subject matter of the Contract becoming known to it and to offer such improvements. However, any changes shall be made only on the basis of a supplementary order.

## 16. HEADINGS

Headings serve for convenience only and shall not be taken into account in the interpretation of the contents hereof.

Date: \_\_\_\_\_ Contractor's signature (by duly authorised representative)

Note: the Minutes of Negotiations constitute a binding offer by the Contractor which is acknowledged by an order placed by the Customer within a period of 8 weeks.