

# Conditions for Supplies and Services (CSS)

Version January 2015

## I. GENERAL CONDITIONS

1. The scope, quality and all terms and conditions for the provision of any parts, equipment, hardware, product, technology, documentation, works or services (collectively "Work(s)" or "the Work") shall be exclusively defined on the one hand by as the case may be either the order confirmation of the provider of the Work ("Supplier") or the contract document signed by Customer and Supplier ("Parties" or any one of them as the "Party") and on the other hand the written provisions of these Conditions for Supplies and Services ("Contract"). Terms and conditions of Customer including general terms and conditions shall apply only where expressly accepted in writing by the Supplier. The Contract shall be deemed to have been concluded upon receipt of Supplier's written acknowledgement stating its acceptance of Customer's order on the basis solely of such terms.
2. Supplier may provide partial deliveries of Work, unless the acceptance of partial Work cannot be reasonably expected from Customer taking into consideration the interests of both Parties.
3. Supplier shall not be obliged to install, repair or otherwise use third party parts, except if explicitly agreed in the Contract. Third party parts shall mean any parts, components, equipment or materials provided by Customer or that exist in Customer's plant and which were neither manufactured nor supplied by Supplier, or which were originally supplied by Supplier but subsequently repaired, serviced, overhauled or otherwise altered by a person other than Supplier. Day-to-day maintenance with regard to a part (originally supplied by the Supplier) by a third party does not qualify the respective part as third party part.
4. Supplier's obligations under the Contract shall be subject to the proviso that such fulfillment is not prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions.
5. Supplier shall comply with all health and safety laws and regulations in force at the work area, which in particular includes without limitation the ambient air of such area on any site where Work needs to be carried out (hereinafter "Work Area") as well as with the health and safety laws, regulations and requirements valid in the European Union. Customer shall provide to Supplier Work Area at the agreed point in time and shall ensure that the Site complies at such time with all aforementioned laws, regulations and requirements, and shall not, during the performance of this Contract, cause any risks not in compliance with the aforementioned laws, regulations and requirements.
6. Customer shall inform Supplier prior to the execution of any Work about possible health or safety risks which may arise out of Customer's plant and equipment or may exist on Customer's site including, but not limited to hazardous materials which may exist in addition to any hazardous materials already specifically identified in the Contract to exist or the existence of which is obvious for the Supplier. The Supplier shall provide reasonable support to the Customer in the assessment of the existence of any such health or safety risks and what protective and preventive measures should be taken.
7. In the given case of health or safety risks for which Supplier is not responsible as defined in the two preceding paragraphs above (including but not limited to the exposure to artificial mineral fibers or asbestos concentrations in the work area) ("Customer Health or Safety Risks") the Parties shall reach agreement in good faith how to proceed. However, Supplier shall not be obligated to carry out any Work at all if the asbestos concentration exceeds 100,000 particles / m<sup>3</sup> ambient air.
8. In case of substantiated doubt regarding the existence of Customer Health or Safety Risks the Customer shall provide proof of their non-existence by means of an expertise of an independent, internationally operating, specialized and qualified company or institute agreed upon by the Parties. The expertise shall take into account all circumstances including but not limited to the environment of the Site. Nothing in this Contract shall in any way be construed to limit Supplier, in its sole

discretion, from taking any samples or measurements of such areas, though Supplier shall have no obligation to do so.

9. In the event there are Customer Health or Safety Risks or there exists any substantiated doubt that the same exist or may be created by or during the Work, or the Customer has failed to comply with any of its obligations set out in the preceding paragraphs, then, without limiting its other rights and remedies, Supplier shall be entitled to suspend its Work until (a) the respective Customer Health or Safety Risk has been permanently eliminated, or (b) the addressed (substantiated) doubt has been proven to be unsubstantiated, or (c) agreed protective and preventive measures have been taken.
10. Customer shall dispose of all waste created on its site in a timely manner and in accordance with all applicable laws. The Customer shall also be responsible for the timely and lawful disposal of its equipment or parts thereof which are or become hazardous waste. Notwithstanding the foregoing, in the event the Supplier has negligently created such waste on Customer's site the Supplier shall be responsible to reimburse Customer for its disposal to the extent Customer incurs substantial costs. In all cases Customer shall be responsible for decontamination and/or disposal of any radioactive materials or waste.
11. Customer shall indemnify and hold Supplier harmless from and against any claims, losses or damages any employee of Supplier or its subcontractors or any other third party may demand from Supplier and arising out of the realization of any Customer Health or Safety Risks or the disposal of any waste Customer is responsible for.

## II. PRICES AND TERMS OF PAYMENT

1. Unless otherwise agreed in writing, prices are free carrier ("shipping location"), ICC Incoterms® 2010, and shall exclude any indirect tax, including but not limited to property, license, sales, use, value added or similar taxes or duties applicable to the transaction or related work. Customer agrees to pay or reimburse Supplier all such taxes, levied on Supplier or its subcontractors.

In particular, Customer acknowledges that for intra- or extra-EU deliveries French tax regulations require evidences for any invoicing without VAT. Customer undertakes to return to the Supplier after each delivery the transport document or the customs export declaration as appropriate showing exit outside the EU or EU-member State. Failing this, the Supplier reserves the right to pass to the Customer the costs the Supplier may have to bear because of the absence of such evidence.

2. If Supplier has undertaken the assembly or installation, Customer shall bear all required incidental costs including but not limited to travel expenses and daily allowances in addition to the agreed price, unless otherwise agreed in writing.
3. Without prejudice to Clause II paragraph 1, Customer shall bear all taxes, fees, duties, social security contributions and other charges which are levied on Supplier or its employees (including Supplier's subcontractors and their personnel) in connection with the performance of the Contract in the country of destination of the Work other than the country where Supplier's factory or workshop is located in which the major part of the Work is performed.
4. Payments shall be made to the bank account or payment office notified by Supplier without any deduction, including but not limited to deductions of withholding tax unless Customer is required to make a payment subject to such deduction. In this case the sum payable by Customer in respect of which such deduction is required to be made, shall be increased to the extent necessary to ensure that, after the making of the deduction, Supplier receives and retains (free from any liability for such deduction) a net sum equal to the amount it would have received had no such deduction been made. Customer shall hand over tax receipts of withholding tax paid to Supplier within four weeks after payment of an invoice, which was subject to withholding tax.

5. If Supplier does not receive payment from Customer when such payment has become due and payable Supplier shall be entitled to charge interest at the annual rate equal to the rate of interest applied by the Central European Bank in its most recent refinancing operation, plus ten percentage points.
6. In accordance with the provisions of article L 441-6 of the French commercial code, a fixed compensation amounting to 40€ for collection fees will be chargeable for any late payments. It is specified that this fixed compensation will not be included in the calculation basis of the late payment penalty. Besides, an indemnity of 10% of the total amount due can be applicable.
7. If Customer suspends Work for reasons Supplier is not responsible for, Supplier may stop work until the failure is remedied or the suspension lifted, as appropriate, and shall be paid for all Work performed until receipt of the suspension notice and for all additional cost not compensated by this payment, but incurred in connection with the performance and/or suspension of the Contract including but not limited to payments due to subcontractors and sub-suppliers, cost of waiting time, demobilization and remobilization, costs and protection of the existing Work. In addition, Customer shall grant an adequate extension of time (including the time necessary to restart the works after suspension if lifted) to Supplier.
8. Customer may set off only those claims made under this Contract that are undisputed.

### III. SECURITY INTEREST

1. Title to the Work shall remain with Supplier until each and every claim against Customer to which Supplier is entitled under this business relationship has been duly satisfied. If Supplier does not retain title to the Work or any portion thereof, for any reasons, e.g. the applicable law, Customer grants Supplier a security interest in the Work sold to secure the payment of the price by Customer as well as performance of all other obligations of Customer arising under this Contract, Customer herewith authorises Supplier to enter or notify the retention of title or, as the case may be, the security interest with public registers, books or similar records, all in accordance with relevant laws, and shall fulfill all required formalities, at Customer's costs and expense.
2. For the duration of the retention of title or, as the case may be, the existence of a security interest in the Work or any portion thereof, Customer shall be prohibited from giving the Work in pledge or as security, and resale shall be permissible only in the ordinary course of business and subject to the condition that Customer immediately receives payment from its customer or retains title or, as the case may be, security interest for as long as all payment claims of Customer against its customers or clients have not been fulfilled.
3. In case of possession through legal right or process of the Work or similar acts or interventions by third parties which may result in Supplier losing title to or a security interest in the Work, Customer shall inform Supplier immediately thereof in writing.

### IV. TIME FOR DELIVERY AND DELAY

1. Performance of the stipulated time for delivery or, as the case may be, for the completion of the Work, is subject to the timely receipt by Supplier of all required documentation, necessary permits, releases, and plans to be provided by Customer, and timely fulfillment of all obligations of the Customer herein. To the extent said conditions are not fulfilled on time, the time for delivery and/or completion shall be extended accordingly.
2. If non-performance of any obligation of Supplier is due to "Force Majeure", defined as impediments or other circumstances beyond Supplier's reasonable control, then Supplier's performance is excused and the time for delivery and/or completion is extended for the duration of the Force Majeure event and its consequences. Force Majeure events include, but are not limited to: natural disasters or catastrophic events such as nuclear accidents, fire, flood; acts or omissions by civil or military government authorities, such as foreign currency restrictions, revocation or suspension of export or import licenses, governmental priority orders; war declared or not, riots,

piracy, revolutions, terrorist acts and the threat thereof; strikes or lockouts, shortages of means of transport like cars, trains, ships, planes etc., fuel or energy shortages, delay or accident in shipping or transportation or (partial) destruction of manufacturing facilities.

3. If Supplier is solely responsible for a delay in delivery (in case this Contract is a pure purchasing contract) or, as the case may be, completion of the Work (in case this Contract is not a pure purchasing contract), and Customer can prove that it suffered a loss from such delay, Customer may claim liquidated damages of zero point five per cent (0.5 %) of the price of that part of the Work, which, because of the delay, could not be put to the intended use for every completed week of delay.
4. Subject to Clause XV paragraph 2 payment of the liquidated damages shall be the exclusive remedy of Customer for delay and under no circumstances shall the total aggregate liability of Supplier for such delay exceed five per cent (5 %) of the contract price of that Work, which, because of the delay, could not be put to the intended use.
5. If dispatch or delivery is delayed by more than one month after notice was given of the readiness for dispatch by Supplier due to reasons for which Supplier is not responsible, Supplier may charge Customer storage costs for each commenced month thereafter of 0.5 % of the price of the respective Work. If Customer causes a delay to the provision of the Work, Customer shall reimburse Supplier all additional costs and expenses incurred due to such delay.

### V. TRANSFER OF RISK

1. If the Works delivered by Supplier are erected by Customer or its subcontractors, and irrespective whether such erection is supervised by Supplier or whether Supplier advises on the erection of the Work, and/or whether the commissioning or performance tests are carried out by Supplier or with its assistance, the risk of accidental loss and damage to the Works shall transfer in accordance with the applicable law and at the latest upon delivery of the Work or any portion thereof under Clause VII or their acceptance pursuant to Clause VIII.
2. If the performance of the Work including but not limited to the dispatch, the delivery, the beginning or completion of assembly or erection, the commissioning, the trial run or the taking over by Customer is delayed for reasons within Customer's responsibility, or if Customer has failed for other reasons to accept delivery, the risk of accidental loss or damage to the Work shall transfer to Customer on the date when it would have passed but for such reasons or failure of Customer.

### VI. WORK ON SITE

Unless otherwise agreed in writing, Work outside Supplier's own workshop or factory including but not limited to assembly, installation, commissioning, testing, expertise and repair of the Work or any portion thereof shall be subject to the following provisions:

1. Customer shall provide at its own expense and in a timely manner:
  - a) Unrestricted access to the Work Area, including but not limited to entry permits and security passes;
  - b) Comprehensive assistance with regard to obtaining import, export and customs clearance for personal belongings and goods of Supplier's and its subcontractors' personnel and of the equipment, tools and goods required for the Work;
  - c) Comprehensive assistance to Supplier's and its subcontractor's personnel for obtaining visas, work and residence permits to the extent required for the carrying out of the Work as well as with regard to any permits required for leaving the country;
  - d) Repatriation of Supplier's personnel in case of emergencies including but not limited to war, civil war, civil disturbance and epidemics;
  - e) All earth-moving and construction work and other ancillary services not specific to Supplier's trade as well as the necessary skilled and unskilled labour, materials and tools;
  - f) The equipment and materials necessary for Supplier's performance of the Work such as scaffolding, lifting equipment etc.;

- g) Electrical and other energy including but not limited to fuels and lubricants as may be required, water at the point of use, including connections, heating, and lighting;
  - h) Suitable, dry and lockable rooms of sufficient size at the site for the storage of machine parts, apparatus, materials, tools etc. and adequate working and recreation rooms for Supplier's and its subcontractors', if any, personnel, including telephones and communication lines and appropriate sanitary facilities. Furthermore, Customer shall take all reasonable measures for the protection of the property of Supplier and its assembly personnel;
  - i) The Work Area exempt from any health or safety risks going beyond what is normal and usual for the type of work to be performed by Supplier; and
  - j) All health and safety measures in the event the same become necessary to protect Supplier's and its subcontractors' personnel.
2. Before the start of Work, Customer shall
    - a) Make available, at its own cost and expense, all necessary information concerning the location of concealed electric power, gas and water lines or of similar installations as well as all required data concerning static and sub-surface conditions of the site, and
    - b) Provide all necessary materials and equipment to start work at the site and carry out all preparations to such a point that the assembly or installation can be started as agreed and carried out without interruption. Access roads and the site shall be clear and prepared for erection, assembly or installation of the Work.
  3. If Work is delayed by circumstances for which Supplier is not responsible, Supplier shall be entitled to an equitable adjustment in schedule, price and other pertinent provisions of the Contract.
  4. For any Work performed by Supplier (and its subcontractors, if any) on a time and material or other cost reimbursable basis, Customer shall certify to Supplier, at weekly intervals, the hours worked by Supplier's (and its subcontractors') personnel and shall promptly confirm in writing the status of the Work.

## VII. TAKING DELIVERY OF HARDWARE

1. Without prejudice to Clauses VIII and IX, Customer shall be obliged to accept delivery unless the complete Work is substantially defective, and Customer provides Supplier specific written notice thereof within three (3) days of delivery of such Work.
2. Upon taking delivery or receipt of shipping documents, Customer shall
  - a) check the Work and b) notify the last carrier, with a copy to Supplier, of any damage caused to the Work during transport or objections regarding forwarding or transport and c) secure evidence including but not limited to making photographs of any damage.

## VIII. ACCEPTANCE

1. Customer shall accept Work including engineering, factory tests, erection, assembly, commissioning and testing separately upon their respective completion.
2. Acceptance of Work comprising scheduled outage services or maintenance services, irrespective of whether or not such services comprise the installation or provision of hardware, shall be deemed to be given by Customer after performance of the respective services.
3. If, after completion, Supplier requests acceptance of the Work or a part of it, Customer shall provide written acceptance within two weeks of request. However, the Work is deemed to be accepted if Customer refuses acceptance, but does not give written reasons therefore within two weeks or does not respond within two weeks of request. The Customer's reasons shall at least detail the Work Customer regards as unfinished or substantially defective. The Work or any part of it is also deemed to be accepted if put to use by Customer.
4. Customer may not refuse acceptance in case of a) defects which only insignificantly impair the use of the respective Work, b) minor deviations of the Work from the specification of the Work, c) part identification numbers of the Work or parts thereof differ from those of the parts originally installed or ordered due to technical developments, d) defective installation or erection not carried out by

Supplier, or e) inappropriate foundation or particular external influences not explicitly assumed to have an impact on the Work.

5. As long as a defect of the Work is capable to be remedied and Supplier has not definitely refused to undertake the required remedial efforts, Customer shall not be entitled to definitely refuse acceptance of the Work.
6. If Work or any portion thereof is ready for delivery or performance and cannot be delivered or performed for reasons beyond Supplier's control, acceptance shall be deemed to have taken place upon Supplier's notification to Customer of readiness for delivery or performance.
7. If performance tests, functional tests, and/or trial runs are to be done by Supplier after the Work has been accepted under Clauses VII and/or VIII paragraphs 3 and 7, any such acceptance shall not be affected by any failure to pass said tests.
8. All costs and expenses of Customer or any third party for inspections, tests, approvals, and acceptance procedures shall be borne by Customer.

## IX. DEFECTS LIABILITY

Supplier shall be liable to Customer for defects and non-conformity with express warranties or performance guarantees as follows:

1. Supplier shall, at its option and subject to the following paragraphs, repair any defect or perform again, modify or replace any Work or any portion thereof that is defective in accordance with the following provisions.
2. Supplier shall only be liable if
  - a) Customer proves that it complied with the instructions or recommendations contained in the operation and maintenance manuals or other documentation of the original equipment manufacturer and the Supplier including but not limited to the use of the Works in places/areas not defined as suitable in said manuals or documentation
  - b) Customer notified Supplier during the defects liability period in writing of the defect without undue delay after Customer's discovery of the respective defect or after Customer should have discovered the same if Customer had exercised due care and in either case if Customer did allow Supplier a reasonable opportunity to investigate if requested
  - c) the defect is due to circumstances that existed in the Work before the transfer of risk occurred and not due to normal wear and tear
  - d) Customer has immediately taken all appropriate steps to mitigate a damage caused by a defect
  - e) all modifications or repairs to the Work or within the area where the Work has been installed by Supplier have been performed by Supplier, unless agreed in writing otherwise by the Parties
3. Supplier shall under no circumstances be liable for defects
  - a) of parts, equipment or services provided by Customer, unless Supplier has explicitly undertaken the repair of such specific defect in the Contract,
  - b) if the non-conformity was caused by faulty or negligent handling, excessive strain or other abuse by Customer or any third party
  - c) if Customer prevents Supplier from remedying a defect.
4. If Supplier carries out remedial Work on a defect, Supplier shall be paid for such remedial Work in accordance with any prices agreed with Customer for such type of Work or failing this, its price schedules in effect at the time the Work is carried out, unless Supplier accepts responsibility for said defect or Customer proves that Supplier was responsible for the defect and that the conditions under IX paragraph 2 are fulfilled. In this case, Supplier shall only be reimbursed for the travel and accommodation costs paid by Supplier directly linked to the remedial Work, as the case may be. The terms in this Contract shall apply to the carrying out of that remedial Work.
5. Supplier shall be given adequate time and opportunity to remedy the defect. For this purpose, Customer shall grant Supplier working access to the non-conforming Work, including disassembly and reassembly,

reasonable access to operating and maintenance data, and the control system without cost to Supplier. Clause VI shall apply accordingly.

6. Except for the express warranties stated in the Contract, Supplier disclaims any other express or implied warranties, including but not limited to implied warranties of satisfactory quality and fitness for a particular purpose, or otherwise.
7. With the exception of second-hand products, repaired products and spare parts, the products supplied by Supplier are covered by a warranty against any manufacturing defect or defect in raw materials for a period of twelve months from the delivery date originally agreed.

The replacement of the parts during the warranty period shall not have the effect of extending the warranty period for the products. The parts replaced shall revert to Supplier's ownership.

Only new spare parts are covered by a warranty against any manufacturing defect or defect in raw materials for a period of six months from the delivery date.

The period of limitation for claims of Customer related to all Works under this Contract including claims for Intellectual Property infringements shall be 12 months.

8. Except as expressly provided in this Clause IX and Clause XV paragraph 2 b ii., any other defect liability remedies, warranties or claims of Customer including any right to terminate or rescind from the Contract or to obtain restitution because of a substantial error or mistake in the Work, is excluded. In particular, Customer is not entitled to challenge the Contract for substantial error, including any challenge of the Contract for an error related to defects in the Work. Clause XIII ("Limitation of Liability") shall remain unaffected.

**X. CONFIDENTIALITY / INTELLECTUAL PROPERTY**

1. Customer having received from Supplier cost estimates, drawings or any other data or information whether orally, in writing or electronically (hereinafter "Information") agrees not to reproduce, reverse engineer or disclose such Information to any third party, without Supplier's prior written consent. In addition, Customer shall only use the Information as authorized by Supplier. Customer shall not use any Information for other purposes than the operation and maintenance of the Work.
2. Customer agrees to duly restrict access of such Information to employees who have a need to know it in their scope of employment. Customer agrees to carefully protect Supplier's Information, and to do this at least with the same degree of care used in protecting its similar information.
3. If Supplier has consented to the disclosure of Information to a third party by Customer, Customer shall procure that such third party undertakes to be bound by the confidentiality obligations imposed on Customer by this Contract and Customer shall indemnify and hold harmless Supplier from any damage incurred through the breach of said confidentiality obligation by the third party.
4. The confidentiality obligations shall not apply to Information which: a) is or becomes part of the public domain through no fault of the Customer; b) is disclosed to Customer in good faith by a third party who has a right to make such disclosure; or c) as evidenced by Customer's written records, is or becomes developed independently by Customer without reliance on the Information or is or has been known to the Customer prior to its disclosure by Supplier; or d) must be disclosed by law, except to the extent eligible for special treatment under an appropriate protective order and subject to the Customer's obligation to notify Supplier of the requirement in a timely manner.
5. Customer shall only be entitled to take photographs or videos or to otherwise record the Work of Supplier with prior Supplier's consent. In addition, only personnel of Customer which operates the plant shall be entitled to be present during the carrying out of the Work by Supplier.
6. Supplier reserves all rights, title and interest in all intellectual property rights in its Information including but not limited to patents or copyright.

7. If a third party asserts legitimate claims against Customer, because of an infringement of an intellectual property right by the Work, Supplier's liability towards Customer shall be as follows:
  - a) Supplier shall, at its own option and expense, either: (i) obtain a right to use the intellectual property right in connection with the Work, (ii) modify the Work so as not to infringe the intellectual property rights, or (iii) replace the relevant Work. If none of the foregoing is reasonably possible to be accomplished as determined by Supplier, Supplier shall take back the relevant Work and refund the price received for such Work.
  - b) Supplier's obligations in Clause X paragraph 7a) are subject to the following conditions: (i) Customer has immediately notified Supplier in writing of the claims asserted by the third party and has furnished Supplier with a copy of each communication, notice or other action relating to the alleged infringement, (ii) Customer has not acknowledged an infringement and has provided Supplier with authority, information and assistance necessary to defend or settle such claim as Supplier shall determine, and (iii) Supplier is given sole control of the defense (including the right to select counsel), and the sole right to compromise and settle such claims. If Customer stops using the Work or any relevant portion thereof, it shall inform the third party in writing that the suspended use is not acknowledgment of an infringement of intellectual property rights.
8. Claims of Customer under all legal theories, (e.g. indemnity, contract, tort, statutory duty) shall be excluded if Customer (including its agents, employees or contractors) is responsible for an infringement of intellectual property rights.
9. Claims of Customer shall also be excluded if the infringement of intellectual property rights was caused by specific demands of Customer, by a use of the Work not foreseeable by Supplier or by the Work (or any portion thereof) being altered by Customer or being used together with products not provided by Supplier.
10. This Clause X sets forth Supplier's entire liability under all legal theories for infringement of third party intellectual property rights. Any further rights and remedies of Customer (including Customer's right to claim damages) shall be excluded.
11. Customer's obligations arising out of this Clause X shall survive the expiration or termination of this Contract.

**XI. IMPOSSIBILITY OF PERFORMANCE**

1. If it is impossible for Supplier to carry out the Work or parts thereof or if Supplier fails to perform any obligation arising under this Contract for reasons for which Supplier is responsible including but not limited to Supplier's failure to achieve specified performance guarantees, and if subject to the requirements set forth in Clause XV Customer has terminated the Contract with regard to that (part of the) Work, which, owing to such impossibility, cannot be put to the intended use, Customer's claim for damages shall be limited to ten per cent (10 %) of the price of such part of the Work. Payment of liquidated damages pursuant to Clause IV paragraph 3 for late performance with regard to said (part of the) Work shall be taken into consideration in the calculation of that 10 per cent (10 %) cap.
2. Without prejudice to Clause IV, Supplier is entitled to an adequate adaptation of the Contract and/or the Contract Price in order to compensate the Supplier especially for increased cost of and an extension of time for the Supplier to complete the Work in case of changes of the applicable law or other relevant laws or changes of the engineering standards affecting Supplier's business or/ and in case of Force Majeure as defined in Clause IV paragraph 2. Where in the reasonable opinion of Supplier this is not economically reasonable, Supplier may terminate the Contract. Notwithstanding any other provision in this Contract, Supplier may terminate the Contract when a Force Majeure event has continued for more than 90 days. Any such termination shall be without liability to Supplier.
3. If Supplier exercises the right of termination set forth in Clause XI 2, Supplier shall notify Customer in writing without undue delay after becoming aware of the significance of the event. This notification requirement shall apply even where at first an extension of the time for delivery has been agreed between the Parties.

**XII. EXPORT CONTROL**

1. If Customer transfers Works provided or performed by the Supplier to a third party Customer shall comply with all applicable national and international (re-) export control regulations. In any event of such transfer of Works Customer shall comply with the (re-) export control regulations of France, the Federal Republic of Germany, of the European Union and of the United States of America.
2. Prior to any transfer of Works provided by the Supplier to a third party Customer shall in particular check and guarantee by appropriate measures that
  - a) There will be no infringement of an embargo imposed by the European Union, by the United States of America and/ or by the United Nations by such transfer, by brokering of contracts concerning those Works or by provision of other economic resources in connection with those Works, also considering the limitations of domestic business and prohibitions of by-passing those embargos;
  - b) Such Works are not intended for use in connection with armaments, nuclear technology or weapons, if and to the extent such use is subject to prohibition or authorization, unless required authorization is provided
  - c) The regulations of all applicable Sanctioned Party Lists of the European Union and the United States of America concerning the trading with entities, persons and organizations listed therein are considered.
3. If required to enable authorities or the Supplier to conduct export control checks, Customer, upon request by the Supplier, shall promptly provide the Supplier with all information pertaining to the particular end customer, the particular destination and the particular intended use of the Works provided by the Supplier, as well as any export control restrictions existing.
4. Customer shall indemnify and hold harmless Supplier from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with export control regulations by Customer, and Customer shall compensate Supplier for all losses and expenses resulting thereof.

**XIII. LIMITATION OF LIABILITY**

Notwithstanding other provisions of this Contract, the following provisions shall exclusively govern the liability of Supplier for damages, costs and expenditures, regardless of the legal theory upon which it is based including but not limited to liability in Contract, in tort, indemnity, under warranty or otherwise

1. Without prejudice to Clause IV paragraphs 3 and 4, Supplier shall under no circumstances be liable for: a) indirect, consequential, incidental, punitive or special damages; b) any financial or economic loss such as loss of production, cost of purchased or replacement power, loss of profit or revenue, loss of use of equipment power system, loss of savings, payment of interest and financing expenses; c) loss of information and data; d) without prejudice to Article XI 1 damages based on Customer's third party contracts such as Customer's purchasers, other contractors/suppliers or clients; or e) specific performance.
2. Supplier's total aggregate liability towards Customer in relation with the Contract shall be limited to the extent of Supplier's negligence and only then to 50% of the Contract Price. For the avoidance of doubt, the same shall apply to damage or loss caused to the Works by defects or remedial work carried out by Supplier after as the case may be delivery to or provisional acceptance of the Works by Customer.
3. If a third party becomes the owner of or acquires any other right in the Work or part thereof, or if Supplier performs Work on third party's parts, or if Work is to be performed at or delivered to any location owned or operated by a third party, Customer shall obtain written assurances from such third party providing that Supplier's and its subcontractors, sub-suppliers', agents', advisors', directors' and employees' total liability towards these third parties and the Customer resulting from the Work shall not in aggregate exceed the limits of liability as agreed in this Contract. In any event, Customer hereby holds

Supplier harmless and indemnifies Supplier from any claims in excess of said limitations of liability.

4. In case Supplier has undertaken to pay Customer a penalty, Customer shall only be entitled to the penalty if Customer has indeed incurred substantial damage. Payment of the penalty shall constitute the exclusive remedy of Customer for Supplier's failure to meet the respective obligation.
5. Customer hereby holds Supplier harmless and indemnifies Supplier from all claims for pollution and environmental impairment caused by the Work whether based on any claim of negligence on the part of Supplier, or any other cause whatsoever.
6. The limitations of liability and obligations to indemnify set forth in Clause XIII 1 to 5 above shall not apply a) in cases of willful misconduct and gross negligence of Supplier's board of directors, but they do to willful misconduct and gross negligence of any other party acting for Supplier, including without limitation Supplier's subcontractors, agents and employees; or b) if liability is mandatory.
7. Any and all liability of Supplier under or in connection with this Contract shall cease with the expiry of the defects liability period specified in Clause IX.
8. The limitations of liability and any entitlement to be held harmless and/or indemnified set forth in this Contract shall also apply for the benefit of Supplier's subcontractors, sub-suppliers, agents, advisors, directors and employees. For the avoidance of doubt, any liability cap set forth in this Contract constitutes the aggregate and joint liability cap of the Supplier and all the other parties mentioned in the preceding sentence towards the Customer.

**XIV. CHANGE OF CONTROL**

1. Supplier may terminate this Contract if, after the conclusion of this Contract, Customer at any time comes under the direct or indirect control or direction of any other person or entity than the one that exercised this control at the time of the conclusion of this Contract.
2. Supplier shall be entitled to assign the whole Contract to an affiliated company, i.e. any company, corporation or other legal entity ("Company") which directly or indirectly: (a) is controlled by Supplier; or (b) controls Supplier; or (c) is controlled by a Company which directly or indirectly controls Supplier. For the avoidance of doubt (i) a Company is directly controlled by another Company if such other Company holds shares, quotas or voting rights carrying in the aggregate fifty per cent (50%) or more of the votes exercisable at shareholder meetings, and (ii) a particular Company is indirectly controlled by a Company or Companies, hereinafter called the "parent Company", if a series of Companies can be specified beginning with the parent Company or parent Companies and ending with the particular Company, so related that each Company of the series, except the parent Company or parent Companies, is directly controlled by one or more of the Companies earlier in the series.
3. Supplier may terminate this Contract if Customer assign its rights and /or delegates its duties under this Contract without the prior written approval of Supplier.

**XV. TERMINATION / SUSPENSION**

1. A Party may terminate this Contract by written notice, a) if any proceeding is instituted against the other Party seeking to adjudicate such Party as bankrupt or insolvent, or if the other Party makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the insolvency of the other Party, and, in the case of any such proceeding instituted against the other Party (but not by the other Party itself), if such proceeding is not dismissed within forty-five (45) days of such filing, or b) if the other Party is insolvent or itself files a petition seeking to take advantage of any law relating to bankruptcy, insolvency, winding up or composition or readjustment of debts or (c) if the other Party is guilty of serious misconduct and has failed to remedy the same after having received reasonable notice thereof
2. Customer may only terminate the Contract,

- a) in case Supplier is responsible for the late completion or as the case may be late delivery of the Work provided:
  - i. an adequate extension of time granted to Supplier has not resulted in completion and/or delivery, and
  - ii. the aggregate limit specified in Clause IV paragraph 4 has been reached, and
  - iii. Supplier has not voluntarily paid liquidated damages pursuant to Clause IV paragraph 3 in excess of the aggregate limit specified in Clause IV paragraph 4 within ten (10) business days after receipt of a notice of termination issued by Customer, or the amount of liquidated damages due to Customer pursuant to Clause IV paragraph 3 would have exceeded 25 per cent of the Contract Price if there were no aggregate limit specified in Clause IV paragraph 4; or
- b) In case of any other material breach of Contract by the Supplier provided:
  - i. The Customer has notified the Supplier of the breach and its intention to terminate in writing, and
  - ii. The Customer has granted the Supplier adequate time to remedy the breach after receipt of that notice it being understood that the Supplier is entitled to undertake 3 separate efforts to remedy a defect.
- 3. The Customer's right to terminate shall be limited to the performance of the part of the Work with which Supplier is in breach, and require that Customer is materially deprived of the full benefit of the terminated Work due to Supplier's breach.
- 4. In case of termination by Customer the rights and remedies of the Parties are exclusively set out as follows: Supplier is only entitled to the Contract Price for the Work performed except for such Work that is of no use for Customer. Accordingly Supplier shall reimburse Customer any overpayments. Customer shall be entitled to damages subject to the limitations set forth in this Contract.
- 5. In the following events Supplier may suspend the provision of its obligations in this Contract and the time for completion, if any, shall be adequately extended and Customer shall pay any cost thereby incurred by Supplier
  - a) Customer fails to make payment of any amount when due and payable, or
  - b) Customer fails to perform its obligations necessary for Supplier to deliver or complete the Work, or
  - c) Delivery and/or completion of the Work is prevented by export or other legally mandated restrictions for more than 6 months; or
  - d) Customer is insolvent or any proceeding as referred to in Clause XV paragraph 1 is instituted against Customer.
- 6. If Supplier suspends its obligations in this Contract the Customer shall pay Supplier for all Work performed until the giving of the suspension notice as well as for all additional cost reasonably incurred due to such suspension including but not limited to waiting time, demobilization and remobilization cost as well as cost for the protecting the Work. Supplier shall be entitled to take back the Work and Customer shall be obliged to return the Work upon Supplier's request. The taking back, the assertion of the retention of title or of a security interest or the taking possession through legal right or process of the Work by Supplier shall not mean termination of the Contract and restitution, unless expressly stated by Supplier.
- 7. Without prejudice to Clause XIV, paragraph 1 and 3 Supplier may give Customer notice of its intention to terminate the Contract in case the requirements set forth in Clauses I paragraph 11 or XV paragraph 5 a), b) or c) are given. In the event said requirements are still given 30 days after Customer has received Supplier's notice Supplier shall be entitled to terminate a part or the whole Contract with immediate effect by giving Customer written notice of termination.
- 8. In the event of termination by Supplier, the Customer shall pay to the Supplier the Contract Price less any savings due to such earlier termination, subject to a minimum 90 % of the Contract Price. If Customer terminates the Contract for convenience the Customer shall promptly pay Supplier the Contract Price in full. Customer in all events shall be entitled to obtain the Work as is in the point in time Supplier has received or as the case may be has issued the termination notice, except for in case of termination pursuant to Clause XIV paragraph 1

whereupon Customer shall be obliged to return to Supplier all Work already received.

- 9. Termination of the Contract in whole or in part however occasioned shall not affect or prejudice the provisions of Clauses X, XII, XIII or XVI.

**XVI. APPLICABLE LAW / DISPUTE SETTLEMENT**

- 1. If the Customer has his registered office within France, this Contract, or its subject matter, shall be subject to the substantive laws of France, with the express exclusion of the Vienna Convention on international sales of goods, and the exclusion of all rules relating to conflict of laws that may result in the application of laws other than French laws. Any dispute relating to the formation, performance and cessation of this Contract will be exclusively brought before the French competent Courts, whatever the supply conditions and the payment mode accepted, even in the event of introduction of third parties or plurality of defendants.
- 2. If the Customer has his registered office outside of France, this Contract, or its subject matter, shall be subject to the substantive laws of Switzerland, with the express exclusion of the Vienna Convention on international sales of goods, and the exclusion of all rules relating to conflict of laws that may result in the application of laws other than Swiss laws. Any dispute relating to the formation, performance and cessation of this Contract shall be governed by the Alternative Dispute Resolution Rules in force under the International Chamber of Commerce (ICC). If the dispute has not been settled pursuant to said ADR Rules within 45 (forty-five) days following the filing of the request for ADR by the most diligent Party, the dispute shall be finally settled in accordance with the Rules of Arbitration ("Rules") in force of the ICC.

The tribunal shall consist of three arbitrators. Each party shall nominate one arbitrator for confirmation by the ICC. Both arbitrators shall agree on the third arbitrator within thirty (30) days after their appointment. The seat of arbitration shall be Geneva, Switzerland. The language to be used in the ADR and the arbitration proceeding shall be English.

**XVII. MISCELLANEOUS PROVISIONS**

- 1. Mistakes, unintended gaps and contradictions in the Contract are to be treated and construed in accordance with the spirit of this Contract on the basis of mutual trust and of the mutual interests of both Parties.
- 2. In the event of any inconsistency between the English version of this Contract and any signed version or translation in another language, the English version shall prevail.
- 3. Each Party shall, at its own expense satisfy any laws or requirements with respect to declaring, filing, recording or otherwise rendering this Contract valid.
- 4. Both Parties agree to comply with all applicable anti-corruption laws or regulations in connection with this Contract. Each Party or any person or entity acting on its behalf shall not commit any illegal or unlawful act in connection with this Contract; in particular each shall not make any payments or provide anything of value to any person or government entity that would be considered improper or illegal under any law that may apply to either Party.
- 5. No change or amendment to this contract, including this Clause shall be valid, unless it occurs in writing and will be duly executed by the Parties.