

## **SIGNIFICANT CONDITIONS OF PURCHASE - ACCEPTANCE FORM**

[\_\_\_] [place] [\_\_\_] [date]

Name and other details of the Contractor: [\_\_\_]

The Contractor is represented by: [\_\_\_]

Acting on behalf of the Contractor we declare that:

Prior to entering into Contract for [modernization of the mechanical rail head hardening system in DWD Dąbrowa Górnicza](#), regarding the implementation of the project entitled “[Reliable and durable in operation, modern railway rails with a length of 120 m, characterized by high mechanical properties, high resistance to cracking and a modified microstructure of the material due to the modernization of the cooling process after rolling](#)”. (project no. POIR.01.01.01-00-0438/17), co-financed from the funds of the European Regional Development Fund and as part of the [Smart Growth Operational Program 2014-2020, sub-measure 1.1.1 “Industrial research and development work carried out by enterprises”](#), the Contractor has received, read and accepted the SIGNIFICANT CONDITIONS OF PURCHASE of ArcelorMittal Poland S.A. which shall apply to the above-mentioned Contract and constitute part thereof.

We accept that provisions of the Contract supersede the provisions of these Significant Conditions of Purchase.

For the Contractor,

\_\_\_\_\_

\_\_\_\_\_



## **SIGNIFICANT CONDITIONS OF PURCHASE**

### **ArcelorMittal Poland S.A.**

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## **1 CONTRACTUAL DEFINITIONS**

The following words, when employed in capital letters in the present CONDITIONS or in any CONTRACT to be entered into between the BUYER and the CONTRACTOR, shall have the meaning defined thereafter:

### **1.1. BUYER**

Shall mean ARCELORMITTAL POLAND S.A. with its registered office in Dąbrowa Górnicza.

### **1.2. BUYER'S TECHNICAL SPECIFICATIONS**

Shall mean the technical description and the BUYER's technical requirements (including the TESTS and expected performances) concerning the WORKS AND/OR EQUIPMENT ordered or to be ordered by the BUYER.

### **1.3. CONFIDENTIAL INFORMATION**

Shall mean all information, data, technology, know-how, trade secrets, formulas, processes, studies, reports, results, patents applications (for their confidentiality period of eighteen (18) months as from their respective filing date), designs, sketches, photographs, plans, drawings, samples, business and/or financial reports, status of customers, prices lists, instructions and other information element relating directly or indirectly to the scope of the CONDITIONS and/or of one or several CONTRACTS and disclosed by either PARTY to the other.

### **1.4. CONTRACT(S)**

Shall mean any contract and/or order for the purchase of the WORKS AND/OR EQUIPMENT, including all its appendices and further addenda, to be entered into between the BUYER and the CONTRACTOR and referring to the CONDITIONS.

### **1.5. CONTRACTOR**

Shall mean any company, acting indifferently as supplier, seller of goods, building contractor, designer and/or erector, which enters or has entered into a CONTRACT with the BUYER.

### **1.6. CONTRACTOR'S TECHNICAL QUOTATION**

Shall mean the technical description made by the CONTRACTOR of the WORKS AND/OR EQUIPMENT to be delivered to the BUYER.

### **1.7. CONTRACTUAL TIME SCHEDULE**

Shall mean the basic time schedule agreed upon by both PARTIES for the performance of any CONTRACT as attached as an appendix to such CONTRACT and with which the detailed time schedule shall comply.

### **1.8. DATE ZERO**

Shall mean the date agreed upon by the PARTIES in the CONTRACTUAL TIME SCHEDULE and at which the CONTRACTOR shall begin to work on the WORKS AND/OR EQUIPMENT under a CONTRACT.

### **1.9. DAYS**

Shall mean calendar days.

### **1.10. DEVELOPMENTS**

Shall mean any and all inventions, data, improvements, works, know-how, or any other information or development whether patented or not, patentable or not, and/or all elements of the DOCUMENTATION conceived, reduced to practice, modified, developed or discovered by either PARTY in the course of the preparation or performance of any CONTRACT, and notably those relating to the WORKS AND/OR EQUIPMENT, but under strict exclusion of SPECIFIC SOFTWARE.

### **1.11. DOCUMENTATION**

Shall mean all information that the CONTRACTOR has to hand over and deliver to the BUYER under the LAWS, the compulsory legal requirements applicable to the SITE and/or the concerned CONTRACT with regard to the WORKS AND/OR EQUIPMENT (including in particular DEVELOPMENTS, SPECIFIC SOFTWARE, STANDARD SOFTWARE, CONTRACTOR'S SOFTWARE), which may include among other things all plans and documentation related to safety and environmental protection, spare parts, engineering, TESTS, training, exploitation, operation, inspection, maintenance and repair of the WORKS AND/OR EQUIPMENT, studies, drawings, diagrams, plans, notices, technical documents, safety certificates and calculation notes related to the WORKS AND/OR EQUIPMENT, as well as the exhaustive lists of spare parts of the WORKS AND/OR EQUIPMENT.

### **1.12. ACCEPTANCE**

Shall mean the contractual event set out in Clause 20.2 of the CONDITIONS.

### **1.13. CONDITIONS**

Shall mean the present Significant Conditions of Purchase.

### **1.14. INCOTERMS**

Shall mean the latest applicable edition of the INCOTERMS issued by the I.C.C. (International Chamber of Commerce).

### **1.15. INDUSTRIAL COMMISSIONING**

Shall mean the contractual event set out in Clause 18 of the CONDITIONS.

### **1.16. INTELLECTUAL PROPERTY RIGHTS**

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

### **1.17. LAWS**

Shall mean (i) all laws, decrees, rules and regulations (including European Union regulations) applicable to a CONTRACT and/or to the WORKS AND/OR EQUIPMENT at the signature date of the said CONTRACT, or which enactment or application was reasonably foreseeable for the time of performance of the CONTRACT until the date of the ACCEPTANCE by a properly informed company involved in the CONTRACTOR's activity, as well as (ii) all applicable standards known at the date of signature of such CONTRACT.

### **1.18. MINOR DEFECTS:**

Shall mean deviations from the technical specification agreed between the BUYER and the CONTRACTOR and attached to the CONTRACT that will have, to the best knowledge of the BUYER and CONTRACTOR no effect on the final performance, reliability, maintenance, operation, safety of the WORKS AND/OR EQUIPMENT. This definition applies only to clause 18 last paragraph and clause 20.2.1 and does not limit BUYER's claims under WARRANTY or statutory warranty.

### **1.19. PARTY OR PARTIES**

Shall mean, as the case may be, in the CONDITIONS or in any CONTRACT, either the BUYER or the CONTRACTOR when referred to individually, or the BUYER and the CONTRACTOR when referred to collectively.

### **1.20. R.F.I.O. (OR READY FOR INITIAL OPERATION)**

Shall mean the event(s) whereby the CONTRACTOR evidences that the WORKS AND/OR EQUIPMENT are in a state sufficient to ensure safe initial operation and use with respect to the staff as set forth in Clause 17 of the CONDITIONS.

### **1.21. SITE**

Shall mean the place or plant where the WORKS AND/OR EQUIPMENT have to be delivered and/or performed by the CONTRACTOR. The location of the SITE is precisely defined in the concerned CONTRACT.

### **1.22. SOFTWARE**

#### **1.22.1 CONTRACTOR'S SOFTWARE**

Shall mean any software, program and/or data-base, owned by the CONTRACTOR at the signature date of the concerned CONTRACT and necessary or used for operating, monitoring, maintaining the WORKS AND/OR EQUIPMENT or any part of them, as well as all operations relating thereto.

#### **1.22.2 SPECIFIC SOFTWARE**

Shall mean any software, program and/or data-base developed and/or modified for the performance of any CONTRACT.

### **1.22.3 STANDARD SOFTWARE**

Shall mean any software, program and/or data-base owned by a third party at the signature date of the CONTRACT and necessary or used for operating, monitoring, maintaining the WORKS AND/OR EQUIPMENT or any part of them, as well as all operations relating thereto.

### **1.23 TEST(S)**

Shall mean all tests, verifications, inspections and controls to be carried out in relation to the performance of any CONTRACT and as more precisely defined in said CONTRACT. The TESTS may include among other things erection tests, cold tests, no load tests, hot tests, load tests, commissioning tests, performance tests and statutory tests.

### **1.24 WORKS AND/OR EQUIPMENT**

Shall mean the industrial equipment and related spare parts to be delivered by the CONTRACTOR to the BUYER under any CONTRACT. The WORKS AND/OR EQUIPMENT expressly include:

- (i) all services, supplies and works to be provided by the CONTRACTOR in relation to the above-mentioned delivery and either specified in the concerned CONTRACT or necessary for the performance of such CONTRACT (such as for example studies, engineering works, delivery and sale of goods, assembly and erecting of equipment, performance of all required TESTS ...);
- (ii) all implementation, erecting and assembling works to be carried out by the CONTRACTOR off SITE in relation to any delivery of equipment; and
- (iii) all DEVELOPMENTS and SPECIFIC SOFTWARE, CONTRACTOR'S SOFTWARE, STANDARD SOFTWARE related thereto, as well as any documents and other elements constituting the DOCUMENTATION of the WORKS AND/OR EQUIPMENT, casting patterns, moulds, calibres and special tools that are conceived or manufactured for or in relation to the implementation of the CONTRACT by the CONTRACTOR.

Final scope of supply to be agreed upon in the CONTRACT.

### **1.25 GUIDELINES**

Shall mean the Guidelines of the Ministry of Development with regard to eligibility of expenditure under the European Regional Development Fund, the European Social Fund, and the Cohesion Fund for the years 2014-2020 dated 19 July 2017, ref. no. MR/H 2014-2020/23(3)07/2017, with further amendments, and guidelines which are to replace the above-mentioned document in the future.

## **2 APPLICATION AND ACCEPTANCE OF THE CONDITIONS AND CONTRACTS**

### **2.1. APPLICATION OF THE CONDITIONS**

The present CONDITIONS shall apply to all CONTRACTS related to the purchase of any WORKS AND/OR EQUIPMENT, financed from public, including European Union funds, and entered into by and between the BUYER and the CONTRACTOR.

The CONDITIONS are not subject to change and modification by the CONTRACTOR, whose offer was selected by the BUYER. The CONTRACTOR can, pursuant to the tender regulations applicable in ArcelorMittal Poland S.A., request the BUYER to introduce specific changes at the stage before selection of the offers of the bidders. The BUYER is entitled, but not obliged, to accept the changes proposed, accept them partially or reject them. The changes will be applicable towards all the bidders.

### **2.2. PREVAILING CONTRACTUAL DOCUMENTS**

The CONDITIONS and each CONTRACT shall prevail over all general conditions of the CONTRACTOR. The acceptance of the CONDITIONS by the CONTRACTOR is of paramount consideration of the BUYER for entering into any CONTRACT, because the CONDITIONS are considered as an integral part of each CONTRACT.

The particular provisions stipulated in any CONTRACT entered into by and between the BUYER and the CONTRACTOR and which could contradict the CONDITIONS shall prevail over the corresponding provisions of the CONDITIONS. However, the CONDITIONS shall prevail over the contradicting terms and conditions included by the CONTRACTOR in the CONTRACTOR'S TECHNICAL QUOTATION.

### **2.3. LANGUAGE VERSION**

Polish language version of contractual documents prevails or otherwise as agreed upon in the CONTRACT.

### **3 SCOPE OF EACH CONTRACT**

Each CONTRACT will define precisely, and notably:

- the scope of the WORKS AND/OR EQUIPMENT to be supplied by the CONTRACTOR as well as the results to be achieved in connection therewith, in particular if applicable:
  - design of the WORKS AND/OR EQUIPMENT,
  - verification of the plans provided by the BUYER,
  - overall studies (such as, but not limited to, overall plans of the WORKS AND/OR EQUIPMENT, quality plans, civil engineering, anchoring, detailed planning, verifying plans), and detailed studies (such as, but not limited to, detailed plans of the WORKS AND/OR EQUIPMENT, execution plans of the WORKS AND/OR EQUIPMENT),
  - manufacturing works in the CONTRACTOR's workshops,
  - sale and supply of goods or equipment in relation to the WORKS AND/OR EQUIPMENT,
  - cold assembling of the WORKS AND/OR EQUIPMENT in the CONTRACTOR's workshops,
  - assembling of the WORKS AND/OR EQUIPMENT on SITE,
  - execution of all TESTS relating to the WORKS AND/OR EQUIPMENT,
  - statutory TESTS and all TESTS required by LAWS as regards the WORKS AND/OR EQUIPMENT,
  - management and coordination of all TESTS, including all operating constraints,
  - assistance to INDUSTRIAL COMMISSIONING until achievement of all contractual performances as stipulated in BUYER'S TECHNICAL SPECIFICATION and in the CONTRACTOR'S TECHNICAL QUOTATION,
  - training of BUYER's employees,
  - sale and delivery of the spare parts of the WORKS AND/OR EQUIPMENT as required,
  - delivery of all DOCUMENTATION notably those necessary for INDUSTRIAL COMMISSIONING, operating and maintenance of the WORKS AND/OR EQUIPMENT;
- the price of the WORKS AND/OR EQUIPMENT to be paid by the BUYER;
- the CONTRACTUAL TIME SCHEDULE;
- the concerned SITE; and
- any other matter to be defined between the PARTIES.

During the whole term of each CONTRACT and with respect to the duly, properly and timely delivery of the WORKS AND/OR EQUIPMENT, the CONTRACTOR expressly undertakes to:

- (i) fully comply with the terms of the CONDITIONS and of each CONTRACT, in particular with respect to safety, deadlines of the CONTRACTUAL TIME SCHEDULE, quality, characteristics and performances; and
- (ii) fully comply with the LAWS as well as with BUYER's standards of safety; and
- (iii) carry out the WORKS AND/OR EQUIPMENT ordered by the BUYER professionally and in compliance with the state of the art known at the signature date of each CONTRACT or as specified in the concerned CONTRACT; as well as
- (iv) to propose to the BUYER to carry out, if possible without any additional costs, complementary tasks to comply with any evolution in the state of art occurring between the signature date of the concerned CONTRACT and the ACCEPTANCE of the WORKS AND/OR EQUIPMENT.

Moreover, without limiting the warranty of results as stated here above, the WORKS AND/OR EQUIPMENT to be delivered by the CONTRACTOR shall be suitable and fully compliant with BUYER'S TECHNICAL SPECIFICATION and the WORKS AND/OR EQUIPMENT's description of the CONTRACTOR'S TECHNICAL QUOTATION as attached to the concerned CONTRACT.

The CONTRACTOR acknowledges being fully aware of the concerned SITE's industrial activities and all risks and constraints related thereto, as well as of the industrial, social and human environment in which each CONTRACT is to be performed and undertakes to properly inform itself about these aspects during the whole performance of the concerned CONTRACT.



## **4 CONTRACTOR'S EXPERTISE AND OBLIGATION OF INFORMATION OF THE PARTIES**

### **4.1. CONTRACTOR'S OBLIGATION OF INFORMATION**

The CONTRACTOR recognizes being a specialist regarding the WORKS AND/OR EQUIPMENT entrusted to it by the BUYER. As a specialist, the CONTRACTOR has a duty of advice, information and proposal at every stage of the negotiation and performance of any CONTRACT. This duty of information and advice shall at least take into account the latest state of art, technology and improvement known before and during the implementation of the said CONTRACT and/or reasonably foreseeable at that time.

The CONTRACTOR further acknowledges to have examined thoroughly the adequacy of the technical specifications of the concerned CONTRACT to the needs expressed by the BUYER to the CONTRACTOR.

The CONTRACTOR shall also notify in writing without any delay to the BUYER any event or circumstance which could affect or impair in any way the performance of a CONTRACT or the delivery of the WORKS AND/OR EQUIPMENT. Every notification to the BUYER shall contain all necessary and/or appropriate information, it being specified that an absence of reaction of the BUYER with regard to such a notification shall not be considered as any acceptance thereof.

### **4.2. BUYER'S DOCUMENTATION**

Any and all documentation given by BUYER to the CONTRACTOR is for information purpose only, except if expressly listed or referred to in the concerned CONTRACT, it being specified that in such case the said documentation shall be deemed as certified by BUYER. BUYER shall compile such documentation with due care but shall not be liable for any mistake, omission and/or incomplete or inaccurate information it may contain.

As a specialist, the CONTRACTOR shall check all information contained in such documentation (such as for example dimensions, weight, load, material, drawings, plans...).

If any part of the documentation delivered by BUYER within the frame of a CONTRACT has been expressly certified by BUYER in the said CONTRACT, BUYER shall be liable for the consequences of any inaccuracy, incompleteness, mistake, error and/or omission in the said part of the documentation, provided that:

- (i) the CONTRACTOR was not aware thereof before the performance of the said CONTRACT; or
- (ii) the said inaccuracy, incompleteness, mistake, error and/or omission should not have become obvious to the CONTRACTOR within the course of normal execution process of the concerned CONTRACT for a specialist and man of the art as the CONTRACTOR without additional investigation.

In any case, the CONTRACTOR shall inform BUYER immediately of every noted inaccuracy, mistake, error or omission relating to the content of the documentation delivered by BUYER and shall propose suitable corrections in relation therewith.

## **5 PRICE**

### **5.1. CONTRACTUAL PRICE**

The price of the WORKS AND/OR EQUIPMENT ordered by the BUYER to the CONTRACTOR is specified in each CONTRACT. Except otherwise expressly stipulated in a CONTRACT, the price of the WORKS AND/OR EQUIPMENT is fixed and is not subject to any revision.

### **5.2. SCOPE OF THE CONTRACTUAL PRICE**

The contractual price agreed upon in each CONTRACT includes all taxes (except VAT), contributions and accessory expenses of all kinds, as well as delivery DDP (Delivery Duty Paid, according to the INCOTERMS) unloaded on SITE.

This provision shall apply provided the PARTIES have not expressly agreed in the concerned CONTRACT upon another applicable INCOTERM.

Such price also includes the delivery of the WORKS AND/OR EQUIPMENTS as well as (i) all supplies, sold goods, means, services, CONTRACTOR's employees, subcontractors, and among others the tools and equipment necessary or appropriate for the implementation of the concerned CONTRACT, (ii) all works studies, (iii) the performances of the TESTS, (iv) the CONTRACTOR's insurance costs, (v) the granting to the BUYER of a license in accordance with the provisions of the CONDITIONS and/or the concerned CONTRACT of the DEVELOPMENTS as specified in Clause 31.4.2 hereunder, the STANDARD

SOFTWARE and the CONTRACTOR'S SOFTWARE, (vi) the transfer to the BUYER in accordance with the provisions of the CONDITIONS and/or the concerned CONTRACT of the INTELLECTUAL PROPERTY RIGHTS regarding the DEVELOPMENTS as specified in Clause 31.4.1 hereunder, the SPECIFIC SOFTWARE, and/or items and special tools as per Clause 23 hereunder, (vii) the delivery of all DOCUMENTATION as well as all matching accessories, devices and/or appropriate tools in view of a complete and functional use and maintenance of the WORKS AND/OR EQUIPMENTS, (viii) all loading, handling and unloading operations, (ix) all packaging and transport costs, (x) all protecting, lashing and securing materials, (xi) all training costs and (xii) all other matters linked to the implementation of the WORKS AND/OR EQUIPMENTS on SITE in compliance with the concerned CONTRACT.

## **6 PAYMENT TERMS AND CONDITIONS**

### **6.1. PAYMENT TERMS**

Invoices shall be paid by the BUYER within sixty (60) DAYS as from the acceptance date of the corresponding contractual event(s) as agreed upon by the PARTIES in the concerned CONTRACT, Advance Payment shall be made within thirty (30) DAYS..

In any case, the BUYER shall be expressly entitled to set off against all sums remaining due by the BUYER to the CONTRACTOR under any CONTRACT (i) any sum the BUYER has paid to any third party (and in particular to any CONTRACTOR's subcontractor) in relation to any CONTRACT according to mandatory laws, preliminary injunctions, national court or arbitration decisions and/or (ii) any penalty or damages owed by the CONTRACTOR to the BUYER.

### **6.2. EVENTS CONDITIONING THE PAYMENTS**

The due achievement of any contractual event shall be subject to BUYER's prior quantitative and qualitative acceptance, which will take into account the respect of the CONTRACTUAL TIME SCHEDULE. No payment shall be due by the BUYER before BUYER's quantitative and qualitative acceptance of the corresponding contractual event and/or of the corresponding results or performances stated in the concerned CONTRACT.

No payment shall be due by the BUYER as long as the CONTRACTOR has not remedied its breach(es) resulting in the non-achievement of the corresponding contractual event(s). Any delay affecting the achievement of a contractual event exclusively attributable to the CONTRACTOR shall automatically result in the postponement of the payment of the scheduled price instalment related to the said contractual event.

A. For the purpose of this clause, the REPORTING PERIOD is understood as the period from achievement of the contractual event, which entitled the CONTRACTOR to certain portion of the payment, as per the CONTRACT until the achievement of another contractual event, which entitles the CONTRACTOR to certain portion of the payment, as per the CONTRACT.

B. The CONTRACTOR shall be obliged make the payment to the subcontractors of the building works within the meaning of art. 647<sup>1</sup> of the civil code, in full and on time in accordance with agreements concluded with them. As soon as the given contractual event, defined in the CONTRACT which allows the CONTRACTOR to issue the VAT invoice is achieved, The CONTRACTOR shall provide, before the payment due date, written declaration stating that the CONTRACTOR has no arrears in settlement of the required payables to the subcontractors of the building works resulting from agreements between subcontractors of the building works and the CONTRACTOR. The following is to be attached to the declaration:

- a. the list of Subcontractors performing Works in given REPORTING PERIOD,
- b. written declarations of the subcontractors of the building works, issued at the earliest 14 days before issuing of the CONTRACTOR's declaration to the BUYER, that the Contractor paid all receivables to each subcontractor of the building works, due in a given REPORTING PERIOD, or other documents

evidencing that the CONTRACTOR paid the receivables to the subcontractors of the building works in full in a given REPORTING PERIOD.



C. Each case of arrears to any subcontractor of the building works shall be immediately reported to the BUYER by the CONTRACTOR who shall also explain the reasons for non-settlement or delay in payment. The latter also refers to contingent payments.

D. Each payment made by the BUYER to the subcontractors of the building works, to which the BUYER will be obliged under Art. 647<sup>1</sup> of the Civil Code, shall be deducted from the Price payable to the CONTRACTOR. For the needs of the Contract settlement, the Parties shall consider this payment as settled to the CONTRACTOR.

E. The CONTRACTOR is not entitled to receive the payment for a contractual event regarding building work under Civil Code until the written statement of the CONTRACTOR issued pursuant to the clauses A-D above is submitted to the BUYER, if applicable for this CONTRACT.

### **6.3. PAYMENT OF THE LAST INVOICE BY BUYER**

The payment of the last and final invoice by the BUYER shall not release the CONTRACTOR from any of its warranties and/or liabilities under the concerned CONTRACT.

## **7 INVOICES**

### **7.1. GENERALITIES**

Each instalment shall require for its payment a separate invoice, which shall be issued and sent in three (3) copies to the BUYER.

The absence of any express rejection by the BUYER of an invoice shall not form an acceptance thereof. Moreover, any payment made by the BUYER shall not imply that the BUYER waives any of its rights nor that the BUYER accepted the WORKS AND/OR EQUIPMENT or any part thereof.

### **7.2. INVOICE RELATED TO THE ACCEPTANCE**

By presenting the invoice related to the ACCEPTANCE, the CONTRACTOR declares and acknowledges that any and all claims, whether potential or not, in connection with the concerned CONTRACT have been put forward. Accordingly, the CONTRACTOR shall not be entitled to further raise any claims having their cause by the date of the ACCEPTANCE and/or that the CONTRACTOR was aware of at that date.

For the claim(s), if any, put forward by the CONTRACTOR, the PARTIES shall negotiate in good faith the way to settle it (them) for a maximum time period of four (4) months as from the date of the ACCEPTANCE. After expiration of this four (4)-month period, the PARTIES agree to apply the provisions of Clause 42 of the CONDITIONS.

## **8 BANK GUARANTEE(S)**

If specified in the concerned CONTRACT, the CONTRACTOR shall supply bank guarantees as a security for the performance of one or several of its obligations. Unless otherwise expressly specified, these bank guarantees, which model is attached as an appendix to the concerned CONTRACT, shall be issued by a first-rate bank having at least a subsidiary, a branch or an office in the concerned SITE's country. Any bank guarantee shall at least remain in full force until the acceptance by the BUYER of the corresponding contractual event.

The BUYER shall be entitled to reject any bank guarantee submitted by the CONTRACTOR which does not comply with BUYER's requirements and to require the submission of another bank guarantee fully compliant with said BUYER's requirements.

## **9 SUSTAINABLE DEVELOPMENT: SAFETY, ENVIRONMENT, LABO(U)R AND TAX**

### **9.1. SUSTAINABLE DEVELOPMENT, SAFETY & ENVIRONMENT**

Within the framework of sustainable development, the BUYER is strongly committed in terms of safety, health, social dialogue and protection of the environment.

Safety at work, in particular safety of the Buyer's personnel and those of its suppliers, contractors, and visitors, is a mandatory priority for the BUYER, and as a fundamental value, no other priority may override safety.

It is BUYER's ambition to wholly act itself and with its suppliers to respect environment. To this extent, the BUYER aims continuous improvement of environmental performance including a constant care of neighbourhood and an extreme attention to nuisance prevention, as well as a transparent communication.

The CONTRACTOR fully endorses these policies and adopts them as its own, in so far as they relate to the performance of its obligations under any CONTRACT.

The CONTRACTOR shall provide the BUYER with WORKS AND/OR EQUIPMENT which wholly meet the safety, health, social and environmental rules specified by LAWS, international treaties, the BUYER itself and/or the SITE. Furthermore, during the whole implementation of any CONTRACT on SITE, the CONTRACTOR shall comply and have its subcontractors fully comply with all such regulations and particularly with those applicable under LAWS and the conditions and/or internal rules especially applicable on SITE.

The CONTRACTOR shall expressly and forthwith inform the BUYER, throughout the performance of the concerned CONTRACT, of any circumstance and/or requirement concerning safety, health and environment and related to the WORKS AND/OR EQUIPMENT supplied by it. The CONTRACTOR shall also seek information from the BUYER with regard to all special features (configuration, activities, transportation, traffic ...) of the SITE. All documents in connection thereto shall be communicated by the BUYER to the CONTRACTOR without undue delay upon CONTRACTOR's request. The said information shall in no way affect the CONTRACTOR's liability.

The CONTRACTOR shall therefore wholly accept liability with respect to any adverse effect arising from its action, omission or negligence with respect to safety, health and the environment and do so towards the BUYER, the SITE as well as any third party. If, as a consequence of the above, the BUYER applies its right to cancel or terminate the concerned CONTRACT, this shall occur with exclusive tort to the CONTRACTOR.

The CONTRACTOR's Health and Safety obligations specified in CONTRACT shall be those applicable at DATE ZERO in the country of the SITE. Should the BUYER request any changes in this connection, the Parties shall mutually discuss and agree on those in good faith.

## **9.2. CONTRACTOR'S DUTY OF INFORMATION TO EMPLOYEES AND SUBCONTRACTORS**

The CONTRACTOR shall inform its employees (whichever shall be the type and duration of their contract of employment), representatives, agents and subcontractors of the relevant provisions of the CONDITIONS as well as those of the concerned CONTRACT, and especially those related to health, safety and the environment but in any case before their first intervention on SITE, train its employees, agents, representatives and subcontractors if appropriate and verify specifically their qualifications, specific licences and accreditation.

The CONTRACTOR shall pass on its subcontractors all relevant obligations of the CONDITIONS and the concerned CONTRACT (including those of Clause 21 hereunder).

## **9.3. CONTRACTOR'S AND SUBCONTRACTOR'S COMPLIANCE WITH TAX AND LABOR OBLIGATIONS**

Throughout the performance of each CONTRACT, the CONTRACTOR and its subcontractors shall comply with all LAWS, especially those relating to tax, employment and social contributions.

For the purpose of the above and in compliance with the periodicity as legally provided, the CONTRACTOR shall in particular provide the BUYER, for the first time upon signature of the concerned CONTRACT and in any case without undue delay upon BUYER's request, with any and all documents evidencing that the CONTRACTOR and its subcontractors (i) comply and/or have duly complied with their obligations with respect thereof and (ii) are up-to-date with all their respective payments as regards any and all taxes, duties, salaries and social contributions.

For the purpose of this Clause 9.3, the concerned subcontractors are those intervening or having to enter on SITE as well as those having their registered offices and/or production premises in the country where the SITE is located or within the European Union.

## **9.4. FRAUD & CORRUPTION**

The CONTRACTOR shall take all necessary steps, in accordance with good industry practice, to prevent any fraudulent activity by the CONTRACTOR (including its shareholders, members, directors and employees) and/or by any of the CONTRACTOR's suppliers, agents, contractors, subcontractors and/or their

employees in connection with the receipt of monies from the BUYER. The CONTRACTOR shall notify the BUYER immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

The CONTRACTOR shall not offer or give, or agree to give, to any employee, agent, servant or representative of the BUYER any gift, commission or other consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of any CONTRACT or any other agreement(s) with the BUYER, or for showing or refraining from showing favour or disfavour to any person in relation to a CONTRACT or any other agreement(s) with the BUYER.

The CONTRACTOR warrants that it has not paid commission, nor has agreed to pay commission to any employee, agent, servant or representative of the BUYER in connection with any CONTRACT or any other agreement(s) with the BUYER.

Where the CONTRACTOR or CONTRACTOR's employees, servants, subcontractors, suppliers or agents or anyone acting on the CONTRACTOR's behalf, engages in conduct prohibited by the provisions here above in relation to any CONTRACT or any other agreement(s) with the BUYER, the BUYER shall be entitled to:

- (i) terminate the concerned CONTRACT and recover from the CONTRACTOR the amount of any loss suffered by the BUYER resulting from such termination; or
- (ii) recover in full from the CONTRACTOR any other loss sustained by the BUYER in consequence of any breach of this clause 9.4 whether or not the concerned CONTRACT has been terminated.

## **10 CONSORTIUM, SIMILAR ASSOCIATION**

### **10.1. RESPONSIBILITY AND LIABILITY OF THE CONSORTIUM MEMBERS**

When a CONTRACT is entered into between the BUYER and a consortium or a similar association of CONTRACTORS of whatever form, each member of such consortium or similar association shall be deemed as being a CONTRACTOR of the concerned CONTRACT and shall be jointly and severally responsible and liable with all the other members of said consortium or similar association for complying with all contractual obligations as set out in the concerned CONTRACT.

### **10.2. LEADER OF THE CONSORTIUM**

The members of the consortium or similar association shall designate one of them as leader, which shall have full power to represent them, to coordinate the consortium or similar association and to ensure the due performance of the concerned CONTRACT. Such designation shall be notified to the BUYER as soon as possible and at the date of signature of the concerned CONTRACT by both PARTIES at the latest.

## **11 SUBCONTRACTING**

### **11.1 INFORMATION OF BUYER BY THE CONTRACTOR**

The CONTRACTOR may subcontract to third parties any part(s) of the WORKS AND/OR EQUIPMENT after BUYER's prior written authorization and approval of the proposed subcontractors, which shall not be unreasonably withheld. When the subcontracted part(s) of the WORKS AND/OR EQUIPMENT have to be implemented by any subcontractor in whole or in part on SITE, the foregoing provision shall apply whichever shall be the ranking of the contemplated subcontractors.

For the purpose of this provision, the concerned CONTRACT may specify the name and details of the proposed subcontractors, for which BUYER has given its prior written authorization and approval, and if possible the list of the parts not subject to such approval.

The CONTRACTOR shall provide the BUYER, if possible before signing the concerned CONTRACT, with the list of the subcontractors (including vendors of components and/or other goods) it may require. The CONTRACTOR shall also provide the BUYER upon first request with the significant order(s) and/or contract(s) the CONTRACTOR entered into with its subcontractors for the performance of a CONTRACT (except for their financial conditions, unless legally required). These documents shall contain at least the purpose and the scope of the subcontracting, the subcontractor's name, the precise description of entrusted

works, supplies and/or service(s), the time of performance, the equipment and material to be used, the manufacturer, the manufacturing place and the delivery date.

For the purpose of this provision, the CONTRACTOR is not obliged to provide BUYER with the significant order(s) and/or contract(s) in extenso, but shall at least provide BUYER in writing with all such information duly certified by the CONTRACTOR as being true, complete and accurate.

## **11.2 RESPONSIBILITY AND LIABILITY OF THE CONTRACTOR FOR ITS SUBCONTRACTORS**

In any case, any subcontracting shall be at the CONTRACTOR'S sole risks and costs and under its entire responsibility and liability.

BUYER's approval of any subcontracting shall not limit in any way the responsibility and the liability of the CONTRACTOR under the concerned CONTRACT, nor entail any BUYER's responsibility. Subcontracting shall not release the CONTRACTOR of any of its contractual obligations, undertakings or liability, the CONTRACTOR remaining fully liable for any action, deficiency, failure, omission or negligence of its subcontractors and their agents as it is for itself and for its own agents.

The CONTRACTOR shall also be responsible for the due compliance by its subcontractors with all health, safety, environment, work conditions and social LAWS and obligations, especially those related to illegal work, as well as with the related provisions of the CONDITIONS and of the concerned CONTRACT. In any case, all CONTRACTOR's subcontractors working on the concerned SITE for the implementation of any part of a CONTRACT shall have been duly, properly and prior insured for the risks related to their activities and works on SITE.

Any failure to comply with these obligations may result in the non payment of the part(s) of the WORKS AND/OR EQUIPMENT achieved in such conditions, without prejudice of any claim for the damages suffered by the BUYER in connection therewith. All relevant registration, business licence certificates or any other legal or statutory requirement shall be obtained and evidenced by the CONTRACTOR and all subcontractors throughout the performance of each CONTRACT.

## **12 DOCUMENTATION**

### **12.1 GENERALITIES**

The CONTRACTOR shall provide the BUYER with the whole DOCUMENTATION by the due date set out in the corresponding CONTRACTUAL TIME SCHEDULE, and according to the form and contents agreed by and between the PARTIES. The CONTRACTOR shall remain wholly liable for the consequences of any inaccuracy, incompleteness, mistake, error and/or omission in the DOCUMENTATION delivered to the BUYER, whether or not the BUYER has raised any reserves with respect to the DOCUMENTATION.

### **12.2 DOCUMENTATION RELATED TO THE QUALITY OF THE CONTRACTOR'S PERFORMANCE OF EACH CONTRACT**

At the date defined in the corresponding CONTRACTUAL TIME SCHEDULE, the CONTRACTOR shall provide the BUYER with a quality, safety and coordination schedule for the performance of its contractual obligations and the specific steps to be achieved in connection therewith. This quality, safety and coordination schedule shall define, among other things:

- the CONTRACTOR's safety schedule;
- the rules for organizing meetings with the BUYER during the CONTRACT;
- the follow-up and control schedule to be followed by the CONTRACTOR in relation to the construction and the implementation of the WORKS AND/OR EQUIPMENT;
- the CONTRACTOR's reporting scheme in relation to the performance of the different steps of the concerned CONTRACT; and
- the CONTRACTOR's management rules regarding the potential changes of the scope of the WORKS AND/OR EQUIPMENT.

### **12.3 DETAILED TIME SCHEDULE**

The CONTRACTOR shall, in compliance with the CONTRACTUAL TIME SCHEDULE, transmit to the BUYER a detailed time schedule with respect to the full performance of the CONTRACT. This detailed time schedule shall fully comply with the CONTRACTUAL TIME SCHEDULE itself and include all steps and stages required for the due, proper and timely delivery of the WORKS AND/OR EQUIPMENT.

## **13 FOLLOW-UP, INSPECTION**

### **13.1 FOLLOW-UP BY THE CONTRACTOR**

The CONTRACTOR shall be liable for itself as well as for its subcontractors for all controls and inspections verifying the due fulfilment of its obligations and undertakings as stated in the concerned CONTRACT. Moreover, the CONTRACTOR shall provide the BUYER on a regular basis with a progress report on the studies, procurement, manufacture and/or performance of the WORKS AND/OR EQUIPMENT as well as a statement of all faced problems and corresponding corrective actions and measures carried out or proposed in relation thereto.

### **13.2 INSPECTIONS BY BUYER**

The BUYER may, at its own expenses and during working DAYS, perform any inspection related to any CONTRACT either in the CONTRACTOR's workshops, in the ones of the CONTRACTOR's subcontractors or on SITE. The time, duration, and conditions of such inspections shall be determined by the PARTIES so as not to interfere with, nor unreasonably delay the progress of the concerned manufacturing operations.

When during such inspections the BUYER detects defaults or defects, the BUYER may reject the WORKS AND/OR EQUIPMENT in whole or in part. If rejection seems not to be justified or necessary, the BUYER may give to the CONTRACTOR any comments that the BUYER deems appropriate in order to make the WORKS AND/OR EQUIPMENT comply with the concerned CONTRACT. The CONTRACTOR shall promptly remedy said defaults and defects and carry out any appropriate corrective actions.

The inspection of the WORKS AND/OR EQUIPMENT by the BUYER shall not mean nor imply any BUYER's acceptance of the concerned WORKS AND/OR EQUIPMENT or any part thereof. Moreover, the CONTRACTOR shall remain in any case fully liable and bears all risks related to the WORKS AND/OR EQUIPMENT until their ACCEPTANCE.

## **14 TRANSPORT, PACKAGING, HANDLING, DELIVERY**

For the transportation, handling, delivery and storage of the WORKS AND/OR EQUIPMENT and/or any part thereof, the CONTRACTOR shall take into consideration the environment and the situation of each concerned SITE and comply with all SITE's safety rules.

### **14.1 TRANSPORT OF THE WORKS AND/OR EQUIPMENT**

The CONTRACTOR shall transport at its own expenses and risks all goods related to the WORKS AND/OR EQUIPMENT to be delivered to the BUYER under the concerned CONTRACT. The CONTRACTOR shall bear all costs, risks and responsibilities in relation to (i) import and export licences and duties as well as (ii) the transportation, lashing and securing of the WORKS AND/OR EQUIPMENT and/or any part thereof to be delivered on SITE.

Except as otherwise provided in the concerned CONTRACT, the term of delivery shall be DDP (Delivery Duty Paid, according to the INCOTERMS) unloaded, all unloading operations being at the CONTRACTOR's risks and liability.

All documents related to transportation, customs and/or deliveries of any part of the WORKS AND/OR EQUIPMENT shall be submitted to the BUYER in due time before delivery.

### **14.2 PACKAGING OF THE WORKS AND/OR EQUIPMENT**

The WORKS AND/OR EQUIPMENT shall be packed sufficiently and protected in such a way that no damages can arise during their transportation, their handling and their storage on SITE. ***Unless otherwise specified in the concerned CONTRACT, the CONTRACTOR shall take back at its own expenses the packaging material after delivery.***

### **14.3 TIME AND PLACE OF DELIVERY OF THE WORKS AND/OR EQUIPMENT**

The CONTRACTOR undertakes to deliver the WORKS AND/OR EQUIPMENT according to the concerned CONTRACTUAL TIME SCHEDULE and at the place designed in each CONTRACT. For coordination purposes, the PARTIES agree that no shipment may be made without prior notice to the BUYER, which reserves the right to postpone at that time any shipment when reasonably necessary, for safety or coordination reasons and/or to comply with compulsory regulations.

The CONTRACTOR shall immediately notify the BUYER in writing of any delay(s) which may occur with respect to the CONTRACTUAL TIME SCHEDULE and simultaneously give all information about (i) the



reason and extent of said delay and (ii) the corrective actions and measures the CONTRACTOR will carry out in order to avoid, strive with or recover said delay.

#### **14.4 HANDLING AND/OR UNLOADING OF THE WORKS AND/OR EQUIPMENT**

If the use of any BUYER's lifting and/or handling equipment is needed to deliver and/or handle on SITE any part of the WORKS AND/OR EQUIPMENT, this shall take place at the CONTRACTOR's own risks and only after the express prior authorization of a duly authorized BUYER's representative. For the purpose of the above, the BUYER shall be notified at least twenty-four (24) hours in advance.

### **15 IMPLEMENTATION CONDITIONS ON SITE**

#### **15.1 CONTRACTOR'S STAFF AND MATERIALS**

The CONTRACTOR shall employ qualified and skilled staff and provide sufficient necessary or appropriate materials, means and/or tools, including inspected and certified ones when requested, at any stage of the performance of each CONTRACT in order to fulfil its contractual obligations and to ensure the due and proper implementation of any and all WORKS AND/OR EQUIPMENT.

The CONTRACTOR shall designate for each CONTRACT a qualified representative managing its staff and all its subcontractors. The BUYER shall appoint a "Project Manager" for the coordination of each CONTRACT, such Project Manager having also to ensure interface with other involved departments of the BUYER.

The CONTRACTOR undertakes to comply with all provisions contained in labo(u)r, safety and health LAWS regarding its staff, to execute or cause to be executed as the case may be all forms and other documents it has or may have to fulfil with regard to taxes, salaries, social contributions and insurance, and to pay or to have instructed payment of all duties and taxes, salaries, social contributions, penalties at its charge, or to cover these with specific guarantees (in particular payment guarantees) accepted by the BUYER.

The CONTRACTOR's staff shall duly conform to BUYER's internal rules as notified by the BUYER and/or the SITE, including those related to protective clothing and safety equipment. The BUYER may require immediate replacement and not allow entrance to anyone of CONTRACTOR's staff and/or subcontractors who act(s) in a careless or disrespectful manner and/or in breach of any applicable regulations, internal rules and/or any further safety directions given by the SITE.

#### **15.2 PREVENTION PLAN, SAFETY COORDINATION AND WORK AUTHORISATIONS**

The implementation of the WORKS AND/OR EQUIPMENT on SITE shall only begin after the making out of a prevention and safety plan by the BUYER, the CONTRACTOR, its staff and any subcontractor or third party involved, in accordance with the LAWS. The BUYER shall provide the CONTRACTOR with access to the SITE at any reasonable time as from the agreed starting date of the CONTRACTOR's activity on SITE, provided that (i) the CONTRACTOR has previously obtained from the BUYER all required authorizations of works (in particular in relation to safety matters) according to the regulations of each concerned SITE and that (ii) all CONTRACTOR's staff (including its subcontractors' staff) intervening on SITE has prior successfully attended the safety introduction meeting organized on SITE. The BUYER may not unreasonably refuse such authorizations of works.

Prior to the CONTRACTOR's arrival on the concerned SITE to perform any CONTRACT, the PARTIES shall agree upon the location plan of the CONTRACTOR's working and recreation facilities, sanitary appliances and storage facilities. Only areas approved by the BUYER may be covered by the above-mentioned installations. No accommodation facilities for overnight stays on SITE of the CONTRACTOR's employees shall be allowed.

The CONTRACTOR shall be responsible for the safety coordination of all works and/or services the CONTRACTOR performs directly or indirectly in relation to the supply of the WORKS AND/OR EQUIPMENT, and as such it shall notably be responsible for its staff, representatives, agents and subcontractors with respect to all safety instructions in accordance with the LAWS.

The CONTRACTOR shall in any case before and throughout the performance of any CONTRACT provide its employees, agents, representatives and subcontractors with all relevant information concerning the SITE as well as all risks and constraints relating thereto.

The CONTRACTOR further undertakes to (i) duly and immediately inform the concerned SITE's representatives of any accident, personal injury, accidental contamination and/or pollution occurred on or nearby the SITE as well as of any hazardous or radioactive product noted or discovered during the

implementation of the concerned CONTRACT, especially in relation to the WORKS AND/OR EQUIPMENT, and (ii) take all appropriate measures and actions to mitigate the consequences arising or which may arise therefrom.

### **15.3 SITE CLEANUP & CLEARANCE**

The CONTRACTOR shall not introduce in any SITE any hazardous and/or radioactive product without BUYER's prior express agreement. Failing to do so, the costs incurred for the compulsory or appropriate evacuation and treatment of those products as well as any damages arising from such introduction, evacuation or treatment shall be entirely borne by the CONTRACTOR, including in case of personal injuries.

When the CONTRACTOR has been authorised to introduce hazardous products in a SITE, the CONTRACTOR shall (i) handle and store them in due compliance with applicable LAWS and SITE's internal rules, as well as (ii) take any and all preventive measures to avoid any contamination or pollution on SITE and/or to any person intervening on SITE.

All wastes, including hazardous products, shall be treated and removed regularly in due compliance with applicable LAWS and SITE's internal rules at the CONTRACTOR's sole expenses and risks. If the CONTRACTOR fails to fulfil this obligation upon receipt of one (1) request and after one (1) DAY grace period, the BUYER shall be entitled to appoint any third party to carry out this obligation at the CONTRACTOR's costs. A container for the CONTRACTOR's own household waste shall be provided by the CONTRACTOR.

Retrievable scraps on SITE shall be left at BUYER's disposal by the CONTRACTOR at the designated place(s).

The SITE shall be kept in clean and tidy conditions by the CONTRACTOR. Rubbish, scraps and all unnecessary materials and equipment shall be removed daily by the CONTRACTOR. All residual materials, the CONTRACTOR's own staff facilities and waste shall be removed from BUYER's premises and/or the SITE and at the latest upon completion of erection the WORKS AND/OR EQUIPMENT.

### **15.4 CONDUCT ON SITE**

The CONTRACTOR shall adapt its operations to the SITE and to the SITE's operations and activities at any stage of the performance of the WORKS AND/OR EQUIPMENT. Any other works or activities carried out on SITE either by the BUYER or any third party during the same period shall be taken into consideration by the CONTRACTOR, which shall implement and comply with all instructions given by BUYER's coordinator or representatives.

The CONTRACTOR shall carry out all measures so as the implementation of the WORKS AND/OR EQUIPMENT may not affect nor impair in any way the BUYER's productivity and/or activities on the concerned SITE, it being specified that the modalities of any unavoidable disruption or suspension of BUYER's productivity and/or activities due to CONTRACTOR's operations shall be expressly prior agreed by the PARTIES. The CONTRACTOR shall also take all protective measures to avoid any nuisance to neighbours (especially in terms of noise, dust, oil and any other pollution) so that BUYER's responsibility will not be investigated by any public administration or any third party in relation to the CONTRACT and/or the WORKS AND/OR EQUIPMENT, the CONTRACTOR being fully responsible for the consequences arising therefrom.

### **15.5 USE OF BUYER'S PREMISES**

The CONTRACTOR shall use at its own risks and costs the premises and facilities put by the BUYER at its disposal on or near the SITE for and during the implementation of any CONTRACT. The BUYER may recover at any time such premises and facilities after a five (5)-DAY prior notice. The CONTRACTOR shall be responsible for the custody of such premises and facilities, including any equipment, machines, tools, materials and other staff's equipment.

The CONTRACTOR undertakes to maintain these premises and facilities in good state and condition, clean and safe throughout the performance of the concerned CONTRACT and not to modify them without BUYER's prior express agreement.

The BUYER shall not be liable for any losses or damages related to the use of said premises and facilities by the CONTRACTOR, in particular in case of theft, fire, etc., caused to or suffered by the CONTRACTOR's equipment, machines, tools, materials and other staff's and/or subcontractors' equipment.

If the BUYER makes its roads, railways and/or other internal transport means existing on or available to the concerned SITE, available to the CONTRACTOR for implementing any part of the WORKS AND/OR EQUIPMENT, the CONTRACTOR shall use them at its own risks, in compliance with the LAWS, the concerned CONTRACT and/or any other regulations and/or conditions applicable with this respect as well as in such a way so as not to hinder BUYER's own activities and production and/or traffic and to optimize the use of said roads, rails and internal transport means.

## **15.6 BUYER'S SUPPLIES**

### **15.6.1 SUPPLY OF POWER, FLUIDS AND GAS**

The BUYER may provide electricity, gas, water, steam or compressed air to the CONTRACTOR (i) for the strict performance of the concerned CONTRACT and/or WORKS AND/OR EQUIPMENT on SITE and (ii) provided that the capacity, quantity and/or frequency of the concerned supply(ies) as specified by the CONTRACTOR is available on the concerned SITE.

The CONTRACTOR shall use such supplies in such a way to keep their consumption within normal limits and to avoid any disruption of BUYER's networks. The BUYER may request compensation for the costs engaged in relation to these supplies, provided it was agreed in the concerned CONTRACT.

Utilization and consumption of these supplies are at the CONTRACTOR's own risks, the BUYER not being liable for any failures in relation to such supplies and facilities, except in case of BUYER's fault in this respect.

In case no power is available on the concerned SITE during a time period of more than twenty-four (24) hours and provided that the use of power is substantial at that moment without any possibility to find any other suitable solution, the CONTRACTUAL TIME SCHEDULE shall be amended by the PARTIES provided that the deadlines specified in the said CONTRACTUAL TIME SCHEDULE have been effectively affected thereby.

### **15.6.2 LOAN OF MATERIALS AND TOOLS BY THE BUYER**

Upon the CONTRACTOR's express request, the BUYER may lend some materials and/or tools from time to time (for example hardware, software already included in SITE's equipment and/or facilities, crane, travelling crane, etc.) to the CONTRACTOR. For significant materials and/or tools to be lent to the CONTRACTOR, either regularly or for a specific time period, a list of these materials and/or tools as well as the conditions applicable thereto shall be especially agreed upon by the PARTIES in a specific written document.

In any case, the CONTRACTOR shall prior check the conformity, suitability and adequateness of such materials and tools to the use it intends for them.

All tools and/or materials lent to the CONTRACTOR by the BUYER shall be returned to the BUYER by the ACCEPTANCE, complete and at least in the same state as they were at the date they have been put at the CONTRACTOR's disposal.

As from the date the BUYER put them at the CONTRACTOR's disposal and throughout the time period during which the CONTRACTOR has said materials and tools in its custody, the CONTRACTOR shall bear all risks of operation, control, deterioration, depreciation and loss of these materials and tools. As a consequence, the CONTRACTOR shall be responsible for all these tools and materials, for their use and safe keeping in quantity and quality and shall compensate the BUYER accordingly. These tools and materials (except those specified in a specific written document as mentioned here above) may be withdrawn at any time by the BUYER without compensation nor any prior notice.

The materials and tools provided by the BUYER shall remain its property. If the CONTRACTOR has any doubts about the quality of the tools and/or materials put at its disposal by the BUYER, the CONTRACTOR shall inform the BUYER forthwith.

The transport of BUYER's tools and materials from BUYER's warehouses or stores to the utilization place as well as the loading, lashing, securing, unloading and handling of such tools and materials shall be at the CONTRACTOR's entire responsibility and costs. Residual quantities of the materials provided under this Clause (including scrap) shall be returned free-of-charge and without undue delay to the location on the SITE or any such other place near the SITE as designated by the BUYER. The CONTRACTOR shall, at BUYER's request, document the consumption of all materials provided by the BUYER under this Clause.

### **15.6.3 SUPPLY BY THE BUYER OF MATERIAL AND SERVICES TO BE INCORPORATED IN THE WORKS AND/OR EQUIPMENT**

If the PARTIES agree that the BUYER or any third party will provide some goods, materials or services to the CONTRACTOR for their incorporation in the WORKS AND/OR EQUIPMENT, then the CONTRACTOR

shall control the quality of their implementation and/or incorporation, and bear all risks and costs related to these goods, materials and services, the BUYER or the concerned third party remaining however liable for (i) hidden defects of the goods, materials and services, which have been directly provided by them, as well as for (ii) a lack of quality of those goods, materials and services with respect to the specification prior submitted for this purpose by the CONTRACTOR, provided and to the extent that this lack of quality could not have been detected upon the CONTRACTOR's reasonable inspection.

#### **15.6.4 CONTRACTOR'S LIABILITY IN RELATION TO BUYER'S SUPPLIES**

The CONTRACTOR's liability under the concerned CONTRACT cannot be altered by the fact that goods, materials, services and/or tools provided by the BUYER or BUYER's subcontractors have been lent, performed, provided and/or installed by the BUYER or such subcontractors. The CONTRACTOR shall supervise the appropriate implementation and/or incorporation of said materials, services or tools and check that applicable requirements have been duly and properly met. The CONTRACTOR shall notify without undue delay to the BUYER and as the case may be the concerned subcontractor(s), all defects or problems relating to such supplies. In any case, the BUYER shall not be liable for any mistake, omission or incorrect performance resulting from insufficient, wrong and/or inappropriate CONTRACTOR's supervision, check and/or instructions.

The Parties agree that the deliveries of BUYER based on Contractor's Engineering, if any, are manufactured under BUYER's own responsibility and therefore are not deliveries as defined in Articles 15.6.3 and 15.6.4 of the CONDITIONS unless otherwise specified in the CONTRACT. This clause is not applicable in case of defects of Contractor's Engineering.

## **16 TESTS**

### **16.1 GENERALITIES**

The execution modalities of all TESTS to be performed under any CONTRACT are described in the said CONTRACT. The TESTS shall be carried out by the CONTRACTOR in the presence of BUYER's representatives, and if necessary with other involved (sub)contractors, in order to carry out the INDUSTRIAL COMMISSIONING of the WORKS AND/OR EQUIPMENT and for the CONTRACTOR to cure all defects and malfunctions detrimental to their operation. All TESTS shall be evidenced by written reports signed by both PARTIES as well as any involved (sub)contractors.

### **16.2 TESTING STAFF AND MATERIALS**

All TESTS in relation to the WORKS AND/OR EQUIPMENT (whether load/hot TESTS or no-load/cold TESTS) shall be performed by the CONTRACTOR. After the R.F.I.O and at the CONTRACTOR's reasonable request, the BUYER agrees to dedicate, free of charge and for an appropriate time period, a sufficient number of qualified and experienced operators and/or workers for the performance of the TESTS, such TESTS being performed under the CONTRACTOR's direction and supervision. The BUYER shall also reasonably provide at its own costs and during an appropriate period of time materials, consumables, supplies and/or the services of the BUYER internal laboratories as needed for the execution of the TESTS and as prior agreed by the PARTIES, all other costs in connection with the TESTS being for the CONTRACTOR's account.

### **16.3 OPERATION DURING TESTS**

During the TESTS, the WORKS AND/OR EQUIPMENT (including coordination with all related systems) shall be operated under the CONTRACTOR's direction and supervision, in accordance with the requirements of the concerned CONTRACT and the operation manuals and instructions of the CONTRACTOR. Consequently, the CONTRACTOR shall, at its own costs and under its sole responsibility, provide a sufficient number of its own skilled employees and/or engineers as deemed appropriate for the safe completion of the TESTS as well as for the TESTS' direction and supervision.

### **16.4 REPETITION OF TESTS**

Any TEST which results are not in conformity with the parameters, requirements and performances agreed upon in any CONTRACT shall be performed again under the CONTRACTOR's direction and supervision until those parameters, requirements and performances are duly fulfilled. The BUYER shall reasonably accept further repetitions of the same TESTS, provided that such additional TESTS shall be performed by the CONTRACTOR at its own costs and that the direct costs incurred by the BUYER in connection therewith shall be reimbursed by the CONTRACTOR, under exclusion of BUYER's production costs of sellable products. When after fair evaluation, the reasons of a TESTS' repetition are on both PARTIES, each PARTY shall support its own costs in connection therewith.



A TEST may be repeated twice at the same terms and conditions as applicable to the concerned original TEST. For any further repetition of TEST(S) due to any PARTY's failure or default, the said PARTY shall reimburse to the other PARTY the evidenced direct costs relating to the said repetition of TEST(S).

#### **16.5 CONTRACTOR'S LIABILITY DURING TESTS**

All TESTS shall be performed under the CONTRACTOR's direction, supervision and liability. Accordingly, all consequences arising from and/or occurred during the performance of such TESTS shall be borne exclusively by the CONTRACTOR until the ACCEPTANCE of the WORKS AND/OR EQUIPMENT, except for the consequences arising from BUYER's omission or act in breach of the CONTRACTOR's instructions and/or standard operating practices provided by the CONTRACTOR.

#### **17 R.F.I.O. (READY FOR INITIAL OPERATION)**

17.1. As soon as the CONTRACTOR considers that the WORKS AND/OR EQUIPMENT are ready for a safe initial operation, the CONTRACTOR shall notify this circumstance in writing to the BUYER.

17.2. The R.F.I.O. shall be evidenced by the CONTRACTOR under its sole liability and shall focus in particular on the fact that the WORKS AND/OR EQUIPMENT:

- are compliant to the LAWS and specific rules regarding safety;
- have necessary collective protection and safety equipment;
- include equipment insuring the accessibility for safe operation, maintenance, disassembling and/or dismounting;
- function in manual and/or automatic mode as appropriate at this stage;
- have appropriate warnings for defects, alarms and security reasons;
- have operation manuals and DOCUMENTATION as appropriate at this stage;
- have undergone all necessary controls prior to their commissioning;
- include identification on SITE and tagging of field instruments, motors, fluids and cables in compliance with the LAWS, as requested at this stage.

The evidence of the R.F.I.O. shall be deemed as not having been demonstrated if any of the above-listed items is not duly fulfilled.

17.3. The absence of BUYER's formal refuse or remarks at this stage shall not mean nor imply any BUYER's acceptance of the concerned WORKS AND/OR EQUIPMENT or any part thereof, provided that BUYER shall not unreasonably withhold his decision, which shall be provided to CONTRACTOR in writing.

The request from the CONTRACTOR to issue an RFIO should be prepared according to Contractual conditions.

BUYER shall not delay or unreasonably withhold approval or acceptance of RFIO as required under the CONTRACT Payment milestone, which may be required under the CONTRACT, for fulfilled CONTRACTOR's obligations.

BUYER shall give acceptance or reject CONTRACTOR'S request giving reasons for rejection within a period of 15 working days after receipt of such request from the CONTRACTOR.

If no response received by CONTRACTOR, CONTRACTOR shall further notify the BUYER to respond within 10 calendar days. In case of no further communication from BUYER or if BUYER does not reject CONTRACTOR'S request giving reasons for rejection, the CONTRACTOR shall be allowed to raise invoice for the said milestone for Payment.

#### **18 INDUSTRIAL COMMISSIONING**

The INDUSTRIAL COMMISSIONING shall be carried out under the CONTRACTOR's direction and liability after the execution of the TESTS agreed upon with the BUYER in the concerned CONTRACT.

The BUYER shall only pronounce the satisfactory INDUSTRIAL COMMISSIONING provided that:

- the WORKS AND/OR EQUIPMENT's assembling and erection phases have been achieved in accordance with the concerned CONTRACT;
- the R.F.I.O. has been pronounced and all related reservations, if any, have been raised;



- all TESTS to be carried out prior to the INDUSTRIAL COMMISSIONING have been achieved and all related certificates have been handed over to the BUYER;
- the WORKS AND/OR EQUIPMENT can be industrially run in an entire safe way;
- the training of BUYER's operation and maintenance staff, as defined in the concerned CONTRACT, has been completed; and
- the DOCUMENTATION with respect to the use of the WORKS AND/OR EQUIPMENTS has been handed over to the BUYER.

The INDUSTRIAL COMMISSIONING, evidenced by a written report signed by both PARTIES, shall end when all contractual obligations related to the INDUSTRIAL COMMISSIONING as defined in the concerned CONTRACT have been regularly and constantly achieved for the period of time specified in the said CONTRACT and if not specified, this shall be for a period of at least fifteen (15) DAYS. Then, a statement of INDUSTRIAL COMMISSIONING shall be established by the BUYER and handed over to the CONTRACTOR.

This report shall not in any way be construed as an approval nor an acceptance by the BUYER of the WORKS AND/OR EQUIPMENT or any part thereof.

If the INDUSTRIAL COMMISSIONING cannot be pronounced due to CONTRACTOR's reasons, the CONTRACTOR shall, at its own expenses and risks, carry out all appropriate actions so that the WORKS AND/OR EQUIPMENT meet the conditions and requirements of the concerned CONTRACT in compliance with the CONTRACTUAL TIME SCHEDULE.

All adjustments, tunings, repairs, etc. shall be performed according to a program established under mutual agreement of both PARTIES.

The INDUSTRIAL COMMISSIONING cannot be refused in case of MINOR DEFECTS that do not prevent the efficient, reliable and safe operation and/or use of the WORKS AND/OR EQUIPMENT, provided that the CONTRACTOR commits itself to remedy these defects as soon as possible and in any case by the ACCEPTANCE, such minor defects having to be specified in the INDUSTRIAL COMMISSIONING report, together with the corrective measures to be carried out and the applicable reasonable time schedule to be complied with in this respect.

## **19 TRAINING**

When specified in the concerned CONTRACT, the CONTRACTOR shall organise practical and theoretical training sessions for the staff as designated by the BUYER. The purpose of these training sessions shall be at least to train BUYER's operation and maintenance staff to operate, inspect, maintain and repair safely and effectively the WORKS AND/OR EQUIPMENT.

The CONTRACTOR shall carry out all appropriate measures to provide the BUYER and its staff with all necessary information with respect to all aspects of the WORKS AND/OR EQUIPMENT in relation to their operation and maintenance, including process, know-how, technology, safety, spare parts and material, so as theoretical and practical training sessions be adapted to the development of risks and new risks which may arise with respect to the WORKS AND/OR EQUIPMENT and the best training results be achieved. All training sessions shall be documented by the CONTRACTOR and all related handbooks and documentation shall be handed over to the BUYER no later than the day at which each training session shall take place.

The CONTRACTOR shall notify in due time to the BUYER which of BUYER's employees it considers unable to fulfil efficiently the training. Any non performance of the WORKS AND/OR EQUIPMENT may not be blamed on a deficient training of BUYER's operating personnel.

The training modalities, conditions, objectives and duration as well as the number of people to be trained, the number of sessions, etc., shall be defined in detail by the PARTIES in the concerned CONTRACT.

## **20 ACCEPTANCE OF THE WORKS AND/OR EQUIPMENT**

### **20.1 GENERALITIES**

The CONTRACTOR shall request from the BUYER the acceptance of the WORKS AND/OR EQUIPMENT either after the due completion of all TESTS stipulated in the concerned CONTRACT if the WORKS AND/OR

EQUIPMENT do not justify any INDUSTRIAL COMMISSIONING phase, or after the completion of the INDUSTRIAL COMMISSIONING in all others cases.

Each acceptance, shall be evidenced by a written report signed by both PARTIES, which may give rise to reservations in so far as those reservations do not interfere substantially with the operation of the WORKS AND/OR EQUIPMENT. If these reservations interfere substantially with the operation of the WORKS AND/OR EQUIPMENT, acceptance shall be refused by the BUYER. The CONTRACTOR shall then, within the shortest time period agreed upon with the BUYER, remedy at its own expenses all defects and reservations noted before asking the BUYER for any new acceptance.

Any non-acceptance of the WORKS AND/OR EQUIPMENT for reasons due to the CONTRACTOR shall entitle the BUYER to freely use the WORKS AND/OR EQUIPMENT, provided that the BUYER complies with the CONTRACTOR's operation manuals relating to the WORKS AND/OR EQUIPMENT during the said period of use. In any case, this shall not imply (i) any transfer of risks or liability to the BUYER or (ii) any commencement of any warranty period. In such case, the CONTRACTOR shall be entitled to reasonably carry out necessary repairs and/or replacements to cure its failure as well as to reasonably perform the related TESTS.

## **20.2 ACCEPTANCE**

20.2.1 The ACCEPTANCE of the WORKS AND/OR EQUIPMENT shall only be pronounced provided that:

- the acceptance/performance TESTS and/or trial runs, as mentioned in the concerned CONTRACT, have been achieved with a positive result;
- all LAWS' requirements have been duly met;
- the DOCUMENTATION and DEVELOPMENTS, listing of drawing and files, manuals of instructions and procedures have been prior delivered to the BUYER,
- the SPECIFIC SOFTWARE, including the related source codes and rights have been delivered and transferred to the BUYER;
- the due evidence that the licenses and other rights of use, operation, etc. of the STANDARD SOFTWARE as specified in Clause 31.5 hereunder have been priority granted to the BUYER;
- the training as specified in the concerned CONTRACT has been duly completed by the CONTRACTOR; and
- the SITE cleaning and clearance have been done correctly by the CONTRACTOR; and
- any additional conditions specified for this purpose in the concerned CONTRACT have been prior met.

In any case, the ACCEPTANCE shall only be pronounced after the due expiration of a period of reliable operation of the WORKS AND/OR EQUIPMENT after the INDUSTRIAL COMMISSIONING, as specified in the concerned CONTRACT. When there is no provision with this regard in the CONTRACT, the above-mentioned period shall last three (3) months.

The ACCEPTANCE cannot be refused in case of MINOR DEFECTS that do not prevent the efficient, reliable and safe operation and/or use of the WORKS AND/OR EQUIPMENT, provided that the CONTRACTOR commits itself to remedy these defects as soon as possible and in any case within max. 12 months, such MINOR DEFECTS having to be specified in the ACCEPTANCE report, together with the corrective measures to be carried out and the applicable reasonable time schedule to be complied with in this respect.

### **20.2.2 POSTPONEMENT OF ANY ACCEPTANCE EXCLUSIVELY ATTRIBUTABLE TO THE BUYER**

If the ACCEPTANCE is postponed due to reasons exclusively attributable to the BUYER and under exclusion of any Force Majeure event:

- (i) for more than three (3) months as from the most current scheduled date of the ACCEPTANCE, the payment instalment corresponding to the contractual event of ACCEPTANCE shall be paid by the BUYER upon the simultaneous receipt of:
  - a) a bank guarantee for the amount corresponding to the said contractual event (as well as to any previous contractual event(s) which would be still pending at the above-mentioned date) and valid for at least the time period agreed upon by the PARTIES;
  - b) as well as if applicable and requested by the BUYER, the bank's certificate evidencing that the corresponding bank guarantee issued at the beginning of the completion of the concerned CONTRACT to warrant the due and full completion of the CONTRACT by the CONTRACTOR has been duly extended up to the latest date at which the BUYER foresees that the ACCEPTANCE could take place.

The costs related to the above items a) and b) shall be borne by the BUYER solely;

- (i) for more than six (6) months as from the most current scheduled date of the ACCEPTANCE, the consequences attached to the ACCEPTANCE (i.e. transfer of risks, transfer of ownership and the related warranties) shall occur, it being expressly specified and agreed that such situation shall not be construed as an acceptance by the BUYER of the WORKS AND/OR EQUIPMENT or any part thereof. The PARTIES shall confirm the above without undue delay in a written statement, which shall be communicated to their respective insurers.
- (ii) for more than eighteen (18 months) as from the most recent scheduled date of the ACCEPTANCE, the ACCEPTANCE shall be deemed as having been given, except in case the PARTIES have been agreed otherwise prior to the said deadline or BUYER has reasonable doubts in respect to the compliance of the WORKS AND/OR EQUIPMENT with the concerned CONTRACT or in any other cases when ACCEPTANCE is postponed for reasons other than exclusively attributable to the BUYER.

20.2.3 If a CONTRACTOR's serious breach prevents the ACCEPTANCE of the WORKS AND/OR EQUIPMENT for more than six (6) months as from the date of the INDUSTRIAL COMMISSIONING, the BUYER may definitively refuse the WORKS AND/OR EQUIPMENT, provided that the CONTRACTOR:

- (i) did not prior deliver to the BUYER a credible corrective actions plan to remedy the said serious breach; or
- (ii) did not comply therewith. If the PARTIES agree upon another solution, they shall also specify the latest date at which the transfer of risks related to the WORKS AND/OR EQUIPEMENT shall occur.

## **21 TRANSFER OF OWNERSHIP AND RISKS**

The transfer of ownership and/or risks shall not release the CONTRACTOR from all its remaining obligations, whether contractual or legal.

### **21.1 TRANSFER OF OWNERSHIP**

21.1.1 The transfer of ownership of the WORKS AND/OR EQUIPMENT to the BUYER shall take place at the date of the ACCEPTANCE.

21.1.2 Advanced transfer of ownership

The BUYER shall be entitled to pronounce, without any previous inspection and in accordance with the general principles of the LAWS (especially real estate LAWS and contract LAWS) the advanced transfer of ownership for the amount of down-payments and/or instalments already made, of all or part(s) of the WORKS AND/OR EQUIPMENT, erected or not, in particular in case of, but not limited to, CONTRACTOR's seizure, bankruptcy, concordat, winding-up or insolvency.

In any case, the related risks and liability shall remain on the CONTRACTOR until the ACCEPTANCE.

### **21.2 TRANSFER OF RISKS**

21.2.1 The transfer of risks related to the WORKS AND/OR EQUIPMENT to the BUYER shall occur at the date of the ACCEPTANCE.

21.2.2 Notwithstanding the provisions of Clause 21.2.1 here above, in case the scope of a CONTRACT is strictly limited to the sale and delivery of the WORKS AND/OR EQUIPMENT without any erection on SITE, the transfer of risks related to the said WORKS AND/OR EQUIPMENT shall occur at the date of acceptance by the BUYER of the last part of the WORKS AND/OR EQUIPMENT delivered by the CONTRACTOR on SITE in compliance with Clause 14.1 of the CONDITIONS.

## **22 SPARE PARTS**

### **22.1 LIST OF SPARE PARTS**

On the DAY defined in each CONTRACTUAL TIME SCHEDULE (or within two (2) months after the signature of any CONTRACT if nothing is expressly agreed thereon in the concerned CONTRACTUAL TIME

SCHEDULE), the CONTRACTOR shall provide the BUYER with a detailed, exhaustive and updated list (including trademarks, technical specifications, producers' code numbers and prices) of all spare parts (i) necessary for commissioning and (ii) recommended for two (2) years of the WORKS AND/OR EQUIPMENT's operation and maintenance, the CONTRACTOR having to clearly identify which of these spare parts shall be considered as strategic, as having a long delivery time or as being subject to ordinary wear and tear.

## **22.2 TIME GUARANTEE CONCERNING THE SUPPLY OF SPARE PARTS**

The CONTRACTOR warrants and shall cause its subcontractors or licensees to warrant the sale and supply of:

- (i) patented items manufactured or assembled by the CONTRACTOR and/or its subcontractors or licensees and any other spare parts for the time period during which any related INTELLECTUAL PROPERTY RIGHTS exist and at least for a period of ten (10) years as from the date of ACCEPTANCE of the WORKS AND/OR EQUIPMENT; and
- (ii) computer hardware for a period of five (5) years as from the date of ACCEPTANCE of the WORKS AND/OR EQUIPMENT.

## **22.3 ALTERNATIVE SOLUTION**

If any spare part is no longer manufactured by the CONTRACTOR itself, by its subcontractors, agents, representatives, and/or licensees under reasonable conditions and fulfilment of quality standards or due to technological changes, the CONTRACTOR shall (i) inform the BUYER thereof as soon as possible, (ii) provide an alternative solution compatible with the WORKS AND/OR EQUIPMENT implemented on SITE and (iii) not invoke any INTELLECTUAL PROPERTY RIGHTS against the manufacture and supply of those spare parts by any third party for BUYER's needs.

## **23 CASTING PATTERNS AND MOULDS**

All casting patterns, moulds, calibres and/or special tools that are exclusively manufactured for any CONTRACT by the CONTRACTOR shall become with all their related INTELLECTUAL PROPERTY RIGHTS BUYER's property.

In case a CONTRACTOR's subcontractor refuses to transfer the ownership of the INTELLECTUAL PROPERTY RIGHTS related to any moulds and/or casting patterns together with the said moulds and/or casting patterns as specified above, the CONTRACTOR commits itself that the said subcontractor grants to BUYER, a non exclusive and royalty free licence of the INTELLECTUAL PROPERTY RIGHTS subsisting or embodied in or used in connection with the said moulds and/or casting patterns, for the whole term of protection of such possible INTELLECTUAL PROPERTY RIGHTS, in order to use, copy, reproduce, modify, operate, monitor, repair, or maintain the said moulds and/or casting patterns, with the right to sub-contract such tasks to any third party for the needs of BUYER, of the SITE or the needs specified in the concerned CONTRACT.

Such granting of rights to BUYER shall be included in the price of the WORKS AND/OR EQUIPMENT.

The ACCEPTANCE shall only be pronounced provided that the due evidence that the above-mentioned licence has been formerly granted to BUYER.

Such casting patterns, moulds, calibres and/or special tools shall be delivered to the BUYER before the ACCEPTANCE. The CONTRACTOR shall control in due time such models, tools and goods, and shall inform the BUYER forthwith about any mistake or default noted with this respect. Failing to do so, the CONTRACTOR shall be liable for any damage arising from such mistake or default.

If casting patterns, moulds, calibres and/or special tools are put at the CONTRACTOR's disposal by the BUYER in relation to the WORKS AND/OR EQUIPMENT, they shall remain BUYER's property and may not be used for any other purpose than the implementation of the WORKS AND/OR EQUIPMENT, except with BUYER's prior written agreement. In any case, those casting patterns, moulds, calibres and/or special tools shall all be returned to the BUYER in excellent state and complete by the ACCEPTANCE.

## **24 DEADLINES, SUSPENSION OF THE PERFORMANCE OF A CONTRACT**

### **24.1 DEADLINES**

The deadlines to be complied with by the CONTRACTOR to implement the WORKS AND/OR EQUIPMENT under any CONTRACT will be fixed in the CONTRACTUAL TIME SCHEDULE attached to said CONTRACT.



It will be the CONTRACTOR's sole responsibility to take all necessary or appropriate steps and to implement special measures to comply with the CONTRACTUAL TIME SCHEDULE, without additional costs to the BUYER and provided that the faced delay is not due to circumstance(s) strictly beyond the CONTRACTOR's control. The CONTRACTOR's control includes any action or omission by the CONTRACTOR in accordance with the principles of art. 474 of the Civil Code (with the restriction of liability stipulated in clause 27.1 of the CONDITIONS). The CONTRACTOR is obliged to evidence and document the existence of the circumstances beyond CONTRACTOR's control

The CONTRACTOR shall be responsible for obtaining official approvals in due time for working overtime as well as on Saturdays, Sundays and/or public holidays.

The consequences of weather conditions reasonably expectable as per the calendar and the location of the SITE shall not be considered as sufficient grounds for deadline postponements or cost increases, unless it constitutes a force majeure event as defined hereunder.

For the purpose of the above and provided that the scope of the WORKS AND/OR EQUIPMENT requests the performance of works on SITE, which may be reasonably affected thereby, the CONTRACTUAL TIME SCHEDULE may take into account for its finalization, at the CONTRACTOR's request, a number of bad weather DAYS, which is equal to the average number of bad weather DAYS as officially recorded during the last five (5) calendar years. If the CONTRACTOR does not comply with the CONTRACTUAL TIME SCHEDULE due to the fact that the actual number of officially stated bad weather DAYS is strictly above the above-mentioned average and provided that the CONTRACTOR could not have reasonably been able to absorb them in whole or in part by an adapted organization, the CONTRACTOR may evoke them with respect to the deadlines.

The CONTRACTOR shall inform the BUYER by any appropriate means and without undue delay of any circumstance which affects or may affect the due compliance with the CONTRACTUAL TIME SCHEDULE, and specify the reasons, consequences and expected duration of such circumstances. Any CONTRACTOR's request to postpone one or more deadline(s) of the CONTRACTUAL TIME SCHEDULE shall be justified by the CONTRACTOR and prior expressly agreed upon in writing with the BUYER.

#### **24.2 SUSPENSION OF THE PERFORMANCE OF A CONTRACT BY THE BUYER**

On the BUYER's written request, the CONTRACTOR shall suspend the performance of the concerned CONTRACT in whole or in part, in the manner deemed necessary by the BUYER and for the maximum aggregate duration of twelve (12) months. The CONTRACTOR shall, for the duration of this suspension, maintain in good condition the WORKS AND/OR EQUIPMENT already executed and/or stored on the SITE, unless the BUYER expressly release in writing the CONTRACTOR from this obligation.

All additional expenses and costs incurred by the CONTRACTOR as a result of the BUYER's instructions pursuant to this Clause shall be (i) determined without undue delay and specified in a mutual agreement signed by both PARTIES and (ii) borne by the BUYER. Notwithstanding the foregoing, if the suspension arises from the BUYER's decision with respect to safety on SITE, to non performance or breach of the concerned CONTRACT by the CONTRACTOR, to weather conditions officially stated threatening the safe implementation of the WORKS AND/OR EQUIPMENT or any part thereof and/or of any works related thereto or to circumstances under CONTRACTOR's control threatening either safety and/or the quality of the WORKS AND/OR EQUIPMENT, such additional expenses and costs shall be borne by the CONTRACTOR. In case of BUYER's decision with respect to safety on SITE, provided that such decision is not related to any CONTRACTOR's failure, the additional documented and reasonable expenses and costs incurred in relation thereto by BUYER shall be borne by BUYER.

### **25 FORCE MAJEURE**

Neither PARTY shall be held responsible for any failure or delay in the performance of any CONTRACT caused by a force majeure event, i.e. an unforeseeable and irresistible event beyond the PARTIES' reasonable control and which prevents the performance by the affected PARTY of its obligations under any CONTRACT. Are for example considered as force majeure events: irresistible and unforeseeable natural phenomena (such as floods, hurricane, lightning,...), wars, invasions, revolutions, riots, governmental acts, general strikes or similar events, epidemics, etc.



A strike of BUYER's employees or of the employees of any BUYER's subcontractor shall not be considered as force majeure event unless it effectively prevents the CONTRACTOR from performing its contractual obligations under a CONTRACT.

Should any such force majeure event occur and prevent either PARTY from performing in whole or in part its contractual obligations, or may reasonably affect the future performance of its contractual obligations, then such PARTY shall (i) duly inform the other PARTY of said force majeure event without undue delay, (ii) take all necessary steps and actions to mitigate the effects resulting from said force majeure event, including the intervention of any third party if reasonably possible and (iii) inform the other PARTY thereof.

When it turns out that, despite the implementation of the above-mentioned steps and actions, the execution of the concerned CONTRACT has definitely become impossible or will have to be postponed for more than six (6) months as from the notification date of such force majeure event, then the said CONTRACT may be terminated by either PARTY in writing upon a fifteen(15)-DAY prior notice, it being specified that the PARTIES shall do their best endeavours to settle the practical consequences of such termination in equity according to the circumstances.

In any case, each PARTY shall bear the costs and expenses it engaged from the starting point of the force majeure event up to the ending point of said force majeure event or up to the termination date of the CONTRACT.

## **26 WARRANTIES**

### **26.1 GENERALITIES**

The CONTRACTOR warrants that the WORKS AND/OR EQUIPMENT shall conform to the specifications and requirements as set out in the concerned CONTRACT, be free from defects in engineering, design, execution, materials and workmanship, such defects occurring either directly or as a consequence of a decrease of performances as finally agreed by the PARTIES at the ACCEPTANCE, and meet and satisfy all applicable LAWS and other compulsory legal requirements applicable, especially those relating to environment, health and safety.

In any case and whichever shall be the nature of the CONTRACTOR's intervention, all warranties given by the CONTRACTOR under any CONTRACT shall not be less than the compulsory requirements and compulsory laws (including compulsory EU regulations) applicable to the SITE, in particular for building and civil works as well as for sold goods and equipment as performed and/or supplied within the frame or the concerned CONTRACT.

This WARRANTY is fully transferrable by the BUYER, without any additional consent of the CONTRACTOR together with the transfer of the WORKS and/or EQUIPMENT.

The only warranties and representations made by CONTRACTOR are those expressly stated in these CONDITIONS and the concerned CONTRACT; any other warranties and representations are excluded.

For the sake of clarity, this Clause 26 shall not be construed as amending or impairing in any way the terms and conditions set forth in Clause 31 hereunder.

### **26.2 WARRANTY PERIOD**

26.2.1. Unless otherwise expressly stipulated, the duration of the warranty shall be twenty (20) months as from the date of the ACCEPTANCE of the WORKS AND/OR EQUIPMENT.

For any items delivered after such ACCEPTANCE, the warranty period shall be for the above-mentioned time period as from the date of delivery of such items. It is also understood and agreed that the warranty period applicable to ordinary wear and tear parts shall be the normal life time of such items, such ordinary wear and tear parts having to be listed in an appendix attached to the concerned CONTRACT.

Notwithstanding above, buildings and civil works, including steel structure, roofing and cladding, are covered by a specific warranty period of 5 years counting as from the date of the relevant ACCEPTANCE of the WORKS AND/OR EQUIPMENT.

26.2.2. Notwithstanding Clause 26.2.1 here above, buildings and civil works, including steel structure, roofing and cladding, are covered by a specific warranty period counting as from the date of the relevant ACCEPTANCE and corresponding to:

- (i) the compulsory legal period of warranty, if such legal period of warranty is ten (10) years or more, or

(ii) a time period of five (5) years in all other cases.

26.2.3. Any other warranty period derogating from the above-mentioned warranty periods shall be expressly agreed upon by the PARTIES in a specific appendix attached to the concerned CONTRACT.

### **26.3 EXTENT OF WARRANTY**

At any time before the end of any warranty period, the BUYER may notify in writing any defects noted on any part of the WORKS AND/OR EQUIPMENT. Upon receipt on such notification, the CONTRACTOR shall, at its own expenses and risks, and without unreasonably hindering BUYER's activities, start without undue delay and achieve as soon as possible to make all replacements, repairs, corrections, modifications, debugging that are necessary or useful for remedying any and all defects and particularly defects in design, construction, operation or erection of the WORKS AND/OR EQUIPMENT. The CONTRACTOR shall be entitled accordingly to reasonably carry out necessary repairs and/or replacements to cure the said defects, the PARTIES having to prior agree on the time schedule of such intervention(s).

The warranty period for all repaired, replaced or modified parts of the WORKS AND/OR EQUIPMENT as specified in:

- (i) Clauses 26.2.1 and 26.2.3 shall entirely restart for their respective time period as specified here above, as from the date of their respective replacement, repair or modification on; and
- (ii) Clause 26.2.2 shall continue to count until the expiration of the initial time period as specified in the said Clause, provided that the remaining time period as from the date of their respective replacement, repair or modification is longer than the time period as specified in Clause 26.2.1. If the said remaining time period is shorter, the applicable time period of warranty shall be duly extended for the time period as specified in Clause 26.2.1.

The following provisions shall apply in addition to point (i) of the second paragraph of Clause 26.3:

In case the warranty shall apply once more for the repair and/or replacement of the same part of the WORKS AND/OR EQUIPMENT for the same cause of defect, the warranty shall apply accordingly.

In such case:

- a. the PARTIES shall analyse the said cause of defect by taking into account all available information, reasonably investigate the real cause of the said defect as well as determine the most appropriate, durable and reliable solution to settle the cause of such defect;
- b. the CONTRACTOR undertakes to implement the above-mentioned solution, it being specified that in any case the warranty period as referred to in Clause 26.2.1 shall restart only once and definitively expires after the end of the said restarted time period;
- c. provided the real cause of such repeated defect is mostly due to BUYER's fault in operating the WORKS AND/OR EQUIPMENT, BUYER will reimburse the documented and justified costs related to the second CONTRACTOR's intervention in relation to the above-mentioned repair and/or replacement.

Subject to provisions of Clause 30 of the CONDITIONS, in any case of BUYER's notification in respect to noted defects and provided this is necessary for the analysis of the causes of such defects, the CONTRACTOR shall be entitled to consult, on SITE and in the state they are at that date, available automatic or re-transcribed monitoring records or reports relating to measured technical data of the WORKS AND/OR EQUIPMENT.

### **26.4 DISCLAIMER**

The CONTRACTOR shall not be liable nor shall provide any warranty for defects and/or faults arising from:

- a) a force majeure event, as defined in the CONDITIONS;
- b) BUYER's negligence or non-compliance with the operation and/or maintenance instructions related to the WORKS AND/OR EQUIPMENT, if such action has had a direct impact on the warranty and provided that no CONTRACTOR's act or omission has concurred to the occurrence of such negligence or non-compliance;
- c) ordinary wear and tear parts and consumables as listed in a specific appendix attached to the concerned CONTRACT;

- d) any major change by the BUYER of models or designs of the WORKS AND/OR EQUIPMENT and/or spare parts, if such changes were carried out without the CONTRACTOR's written approval and have had an effective impact on the warranty;
- e) removal or transfer of the WORKS AND/OR EQUIPMENT or any part thereof and spare parts by the BUYER from the place where they were originally installed on SITE without the CONTRACTOR's prior information, if such removal or transfer has had a direct impact on the warranty;
- f) operation of the WORKS AND/OR EQUIPMENT or any part thereof under conditions more severe than those specified in the concerned CONTRACT.

For each of the above-listed points, due evidence of the occurrence of such fact and of its effective impact on the CONTRACTOR's obligations shall be given by the CONTRACTOR within a reasonable time period.

## **27 LIABILITY**

### **27.1 GENERALITIES**

The CONTRACTOR is liable for damages pursuant to this Clause 27, whether arising in LAW or the CONTRACT, resulting from defective WORKS AND/OR EQUIPMENT or from the performance of a CONTRACT.

27.1.1. Notwithstanding any other provision of the CONTRACT, neither PARTY shall be liable to the other for loss of income, loss of anticipated profits, loss of use, loss of capital, loss of business and/or loss of business opportunity, loss of contracts, loss of revenue, loss of goodwill or reputation, or for punitive or exemplary losses whether arising in statute, tort, contract, under any indemnity provision or otherwise.

27.1.2 The exclusion or limitation of liability for damages in this Clause 27, including the cap, shall not be applicable:

- (i) in the case of personal injury, fraud, willful misconduct, gross negligence and harm intentionally inflicted; or
- (ii) in respect of any penalty imposed for breach of an applicable LAW relating to the performance of the WORKS AND/EQUIPMENT by the CONTRACTOR;

The cumulative liability of each PARTY for damages must not exceed 115% of the CONTRACTUAL PRICE including without limitation, all liquidated damages, indemnities, liabilities and re-payment of CONTRACTUAL PRICE payable by the CONTRACTOR and/or replacement of the WORKS AND/OR EQUIPMENT incurred or engaged by the CONTRACTOR in the CONTRACT, however, excluding:

- (a) any damages caused by CONTRACTOR's gross negligence, or willful misconduct or harm intentionally inflicted;
- (b) any contractual obligation of the CONTRACTOR to indemnify and keep the BUYER harmless from third party claims;
- (c) in respect of any penalty imposed for breach of an applicable LAW relating to the performance of the WORKS AND/EQUIPMENT by the CONTRACTOR;
- (d) arising from abandonment, repudiation or wrongful termination of the CONTRACT or wrongful suspension of performance of the WORKS AND/OR EQUIPMENT;
- (e) in respect of any indemnity provided by a PARTY under the CONTRACT;
- (f) in respect of any loss or damage to the BUYER'S property for which the CONTRACTOR has assumed custody and control;
- (g) in respect of any loss or liability of the BUYER because of the CONTRACTOR'S failure to pay any sub-contractor; or

(h) any damages to the environment caused by the CONTRACTOR (for example, but not limited to soil/water contamination, wrong waste management, contamination with hazardous substances, etc).

27.1.3 For the avoidance of doubt, any amounts received from either PARTY's insurance policies to cover damages or losses shall not reduce the maximum liability set out above.

27.1.4 The CONTRACTOR shall be liable pursuant to this Clause 27, irrespectively of the fact that a portion of the WORKS AND/OR EQUIPMENT may be procured by the CONTRACTOR from third parties. The participation of such third parties, shall not release, decrease nor limit in any way the liabilities or obligations of the CONTRACTOR under any CONTRACT. The inspections, TESTS and verifications performed under the CONTRACT, or any approvals given by the BUYER regarding the WORKS AND/OR EQUIPMENT shall not modify, reduce nor extinguish the CONTRACTOR's liability under the relevant LAWS and CONTRACT.

27.1.5 Notwithstanding the above, the CONTRACTOR's liability under the CONDITIONS, the CONTRACT, the LAWS and/or compulsory requirements applicable to the SITE, for any and all damages suffered by the BUYER to existing premises and/or installations, shall be limited to the maximum amount of twenty million euros (EUR 20.000.000).

In case of excess cost for covering purchases from other sources related to the lost production or product processing and/or for maintaining the production as spent by BUYER in order to reasonably mitigate the consequential damage arising from or in relation to any property damages caused or suffered by BUYER's existing premises and/or installations the limitation amounts to the maximum amount per incident of X= 50% (fifty percent) of the said liability limitation.

27.1.6 In case of losses and/or damages suffered by and/or caused to the BUYER, the BUYER shall inform the CONTRACTOR without undue delay of the occurrence of the said losses and/or damages and shall make its best efforts to mitigate the detrimental consequences arising therefrom.

## **27.2 LIABILITY FOR THIRD PARTY'S CLAIMS**

### **27.2.1 Indemnification by the CONTRACTOR**

The CONTRACTOR shall indemnify and hold BUYER, harmless from any third parties' actions, suits, claims and demands (including in particular personal injuries, death, property loss, liquidated damages, punitive damages, reasonable and documented attorney's fees and/or court costs) in connection with injuries or tangible damages arising from CONTRACTOR's act or omission, its employees' or agents' act or omission (other than such attributable to BUYER, its agents or employees) suffered by or caused to BUYER and/or its employees, agents, representatives, subcontractors, licensees provided and to the extent that such injuries or tangible damages should have been indemnified by the CONTRACTOR to said third parties according to applicable laws. For the purpose of the above, the PARTIES agree that the subcontractors of the CONTRACTOR shall not be granted of any rights and remedies under this Clause and shall not accordingly be considered as being third parties. In such case, applicable laws shall apply, in particular art. 474 of Polish civil code.

The indemnity in clause 27.2.1 is a continuing obligation separate and independent from the CONTRACTOR'S other obligations and survives termination of the CONTRACT.

Subject to clause 27.1.1 BUYER shall indemnify and hold the CONTRACTOR harmless for any third parties actions, suits, claims and demands (including in particular personal injuries, death, property loss, liquidated damages, punitive damages, reasonable and documented attorney's fees and/or court costs) in connection with injuries or tangible property damages arising from BUYER's act or omission, its employees or agents act or omission (other than such attributable to the CONTRACTOR, its agents or employees) suffered by or caused to the CONTRACTOR and/or its employees, agents, representatives, subcontractors, licensees provided and to the extent that such injuries or tangible property damages should have been indemnified by BUYER to said third parties according to applicable laws. BUYER's liability under this clause is limited to the maximum total amount of 50% of the CONTRACTUAL PRICE.

For the purpose of the above, the PARTIES agree that the subcontractors of the CONTRACTOR shall not be granted of any rights and remedies under this Clause.

### **27.2.2 Notification to the CONTRACTOR**

In the event of any claim against the BUYER arising from matters referred to in Clause 27.2 and in respect of which the CONTRACTOR is liable, the CONTRACTOR shall be promptly notified thereof, and shall at its own expenses conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. The BUYER may, if so agreed upon by the PARTIES and at the CONTRACTOR's expenses, choose to conduct such negotiations.

#### 27.2.3 Assistance from the BUYER or the CONTRACTOR

The BUYER shall, at the CONTRACTOR's request, afford all necessary and reasonable assistance for any such purpose and shall be reimbursed for all expenses incurred in doing so. In case the BUYER elects to conduct the negotiations, the CONTRACTOR shall, at BUYER's request but at CONTRACTOR's entire costs, afford all necessary and reasonable assistance for any such purpose.

#### 27.2.4 BUYER's costs

The CONTRACTOR shall in particular reimburse the BUYER for any and all expenses incurred in relation to payments to third parties or to federal, state, administrative and municipal authorities, as a result of joint and/or several liability of the BUYER and arising from the non-compliance by CONTRACTOR and/or its subcontractors with the LAWS. The BUYER may set off any sums which reimbursement is due by the CONTRACTOR hereunder against any payments to be made by the BUYER to the CONTRACTOR.

## **28 INSURANCE**

### **28.1 GENERALITIES**

Before the beginning of any works, tasks and/or supplies on the concerned SITE, the CONTRACTOR shall take out and/or maintain as the case may be any and all insurance coverages required under LAWS as well as under the CONTRACTOR's applicable laws, in particular with respect to:

- workers' compensation insurance including the coverage of personal injuries;
- professional liability insurance;
- general public liability insurance;
- automobile liability covering all owned, hired and used vehicles; and
- the covering of the warranty period regarding buildings and civil works.

The CONTRACTOR should ensure the correct wording and design of any insurance against any loss and damage for which the CONTRACTOR may be liable. The insurance conditions must be previously agreed with the BUYER. The general public/civil liability insurance policy must be for a minimum value of EUR 5 million for an event with an annual accumulation of up to EUR 15 million. The policy will be valid / extended for the entire duration of the CONTRACT to the value indicated above.

28.2 Without prejudice to insurance coverage as specified in Clause 28.1 here above, the CONTRACTOR shall provide adequate erection and construction all risk insurance coverage against any losses and damages for which the CONTRACTOR could be liable, excepted as specified in Clause 28.2 b) hereunder, i.e. covering:

- a) the WORKS AND/OR EQUIPMENT together with all materials and equipment for incorporation on the SITE or in BUYER's premises or in the WORKS AND/OR EQUIPMENT, to their respective full replacement cost against all insurable damages or losses;
- b) the CONTRACTOR's equipment, tools and any other materials brought onto the SITE by the CONTRACTOR, for a sum sufficient to provide their replacement on SITE, except in case the CONTRACTOR formally undertakes to replace forthwith said equipment, tools and other materials when they get damaged and/or destroyed, whichever shall be the cause;
- c) BUYER's existing equipment, buildings, tools, and any industrial installation that could be damaged by the CONTRACTOR during the performance of any CONTRACT on SITE, it being specified that in case only a specific amount is covered on a "first loss" basis under the above, then the outstanding balance shall be covered by the insurance coverage referred to in Clause 28.3 of the CONDITIONS; and d) any additional costs of, and incidental to, the rectification of losses or damages including professional fees and costs of demolishing and removing of any part of the WORKS AND/OR EQUIPMENT as well as the removal of all debris relating thereto.



For both items (a) and (d) here above, the CONTRACTOR shall notify its insurer(s) that the BUYER and/or its employees and agents are “Co-insured” under those insurance policies.

- 28.3 The CONTRACTOR shall take out and maintain insurance coverage(s) for its legal liability towards the BUYER and any third parties arising from or in relation to the performance of any CONTRACT, including in particular torts resulting from any act or omission attributable to the CONTRACTOR, to its legal successors, agents and/or employees.

To work with the BUYER and without prejudice to a specific amount specified in the concerned CONTRACT, such insurance coverage(s) shall be in force for a minimum amount of EUR 5.000.000 (five million euros) per event and EUR 15.000.000 (fifteen million euros) of annual aggregate and for at least the whole duration of the concerned CONTRACT.

- 28.4 The CONTRACTOR may choose to substitute the insurance coverage required under Clauses 28.2 and 28.3 here above by a global insurance policy covering, inter alia, the elements referred to in said Clauses, the CONTRACTOR having to notify its insurer(s) that the BUYER and/or its employees and agents are “Co-insured” under the said insurance policy as specified in Clause 28.2 (a) and (d).

- 28.5 Except for the insurance coverage provided for in Clauses 28.6 and 28.7 hereunder, the insurance coverages referred to in:

- (i) Clauses 28.1 and 28.3 here above shall be communicated to the BUYER within thirty (30) DAYS as from the date of signature of the concerned CONTRACT and be valid as from the date of signature of the concerned CONTRACT until the end of the said CONTRACT; and
- (ii) Clause 28.2 here above shall be communicated at the latest thirty (30) DAYS before the first CONTRACTOR's intervention or entry on SITE and be valid as from the said date of first CONTRACTOR's intervention or entry on SITE until the due achievement of the ACCEPTANCE as specified in the concerned CONTRACT,

it being specified that all insurance coverages as specified here above are subject to BUYER's prior approval, which shall be reasonable with respect to the actual state of the insurance market at the date of signature of the CONTRACT.

The CONTRACTOR's liability after the ACCEPTANCE of the concerned WORKS AND/OR EQUIPMENT may be covered by another appropriate insurance policy taken out and maintained by the CONTRACTOR for the minimum time period specified by the LAWS.

In any case, the CONTRACTOR shall deliver to the BUYER, upon its first request, certificates issued by its respective insurer(s) attesting the existence of the insurance coverage contemplated herein, as well as the payment of the corresponding premiums that the CONTRACT undertakes to duly pay.

## **28.6 INSURANCE COVERAGE ON BEHALF OF THE CONTRACTOR**

- 28.6.1. The BUYER may provide at its own choice or as specified in the tender conditions and in accordance with the LAWS, an insurance coverage on behalf of the CONTRACTOR for (i) direct damages caused and/or occurred to the WORKS AND/OR EQUIPMENT as well as for (ii) direct, indirect and consequential damages suffered by the BUYER (including loss of profits) also co-insuring the CONTRACTOR and its subcontractors for a period of time commencing with the first work activities on SITE. In such a case, the BUYER and its insurer(s) shall waive their respective rights of subrogation and/or action against the CONTRACTOR and its subcontractors within the limit(s) of this insurance policy provided and to the extent that BUYER's losses and damages have been compensated by the said insurer(s).

In case the BUYER provides an insurance coverage on behalf of the CONTRACTOR and without prejudice to the provisions set out in Clauses 28.1 and 28.3 here above, which shall remain fully applicable in such case, the CONTRACTOR shall only be liable with respect to the provisions set out in Clause 28.2 for taking out and maintaining adequate insurance coverage for all equipment, tools and any other materials brought onto the SITE by the CONTRACTOR to the extent set out in Clause 28.2 (b) of the CONDITIONS.

- 28.6.2. The insurance coverage on behalf of CONTRACTOR will be applicable on a permanent basis for all investment projects of the concerned SITE up to the maximum amount per BUYER's investment project of EUR 20.000.000 (twenty million euros), provided that the concerned SITE has taken out such permanent insurance coverage.

In any case, the applicable terms and conditions of such insurance coverage may change every year.

28.6.3. The insurance coverage on behalf of CONTRACTOR may be taken out for a specific investment project. In such case, the said insurance coverage shall be valid at least until the expiration of the contractual warranty as specified in Clause 26.2.1 of the CONDITIONS and the specific terms and conditions applicable in connection thereto will be attached to the concerned CONTRACT.

#### 28.6.4 Deductibles

In any case of damage, the amounts corresponding to the deductibles shall be borne by the PARTY which has caused the relevant damage, either directly or through its employees, representatives, appointees and/or subcontractors.

28.7 The CONTRACTOR hereby waives any actions, claims and/or recourses against the BUYER, all its employees and agents for any fault or omission of the latter with respect to damages referred to in Clause 28.2. The BUYER hereby waives any actions, claims and/or recourses against the CONTRACTOR within the limit(s) of the insurance policies applicable to the concerned CONTRACT, provided and to the extent that BUYER's losses and damages have been compensated under the said insurance policies.

The above provisions shall not apply in case of intentional fault and/or gross negligence.

28.8. Any insurance coverage provided by the BUYER and/or the CONTRACTOR shall not release the CONTRACTOR from any of its contractual or legal liabilities. The insured amounts can not be considered nor construed as limitations of liability.

## **29 CONSEQUENCES OF THE CONTRACTOR'S FAILURE**

### **29.1 GENERALITIES**

Non fulfilment of any of the CONTRACTOR's contractual obligations shall entitle the BUYER to the following remedies, without limiting nor prejudicing any other BUYER's rights:

- constrain the CONTRACTOR, without delay nor limit of means, to fully conform to the CONTRACT, to BUYER's TECHNICAL SPECIFICATIONS and to the CONTRACTOR's TECHNICAL QUOTATION, and/or
- postpone the date of the ACCEPTANCE of the WORKS AND/OR EQUIPMENT, and/or
- apply damages as specified in any CONTRACT, and/or
- after a formal prior notice as specified in Clause 29.3 hereunder:
  - (i) replace the CONTRACTOR or appoint any third party at BUYER's choice but at the CONTRACTOR's costs and risks for the provision of the CONTRACTOR's obligations or any parts thereof, which were not performed or did not comply with the concerned CONTRACT as well as, as the case may be,
  - (ii) terminate or cancel the concerned CONTRACT at the CONTRACTOR's expenses and liability, and/or
  - (iii) claim for damages against the CONTRACTOR.

Concerning contractual performances that are subject to Make Good, in case the CONTRACTOR failed to fulfil the Make Good after three months of the completion of acceptance/performance TESTS, BUYER at its option may provide additional time to the CONTRACTOR based on the agreement reached by the PARTIES for the action plan and the duration required to Make Good or act according to the stipulations under Clause 29.1 (i) to (iii).

### **29.2 LIQUIDATED DAMAGES**

Liquidated damages for late delivery and/or for non-achievement of the contractual performances if any shall be specified in each CONTRACT.

If any contractual deadline specified in any CONTRACT for a contractual event is not fully and properly complied with by the CONTRACTOR in due time and for which the CONTRACTOR is responsible for, BUYER shall be entitled to apply immediately contractual liquidated damages for delay as specified in the concerned CONTRACT.

In any case, the maximum amount for all such liquidated damages for delay shall stand at ten percent (10%) of the CONTRACTUAL PRICE of the said CONTRACT.

The application of said liquidated damages as BUYER's compensation for the incurred delay shall cease as soon as the CONTRACTOR will have remedied the said delay.

Any payment of contractual liquidated damages for delay shall not release the CONTRACTOR from complying with its contractual obligations.

When liquidated damages are paid by the CONTRACTOR to the BUYER in compliance with the foregoing provisions, the BUYER shall not be entitled to raise any other claim in strict relation to said delay, except in case the ascertained global delay incurred under the CONTRACT shall lead to an overrun of the maximum thresholds of liquidated damages for delay as specified here above. In such a case, the BUYER shall be entitled to recover all other rights and/or remedies against the CONTRACTOR if permitted by the LAWS and/or CONDITIONS/CONTRACT.

Provided a reference to "Reimbursable Damages" (or "RD") is expressly specified in front of the concerned event(s) in the CONTRACT, if the CONTRACTOR fully complies with the date of the INDUSTRIAL COMMISSIONING or the ACCEPTANCE as specified in said CONTRACT, the CONTRACTOR shall be paid back in whole or in part of the liquidated damages for delay the CONTRACTOR already paid due to the delay that affected the achievement of the above-mentioned event(s), provided and to the extent the BUYER did not directly nor indirectly suffer the losses arising from the above-mentioned delay.

Regarding contractual liquidated damages for non achievement of contractual performances, some expected performances and/or results may be specified either in the concerned CONTRACT or in the BUYER'S TECHNICAL SPECIFICATIONS as attached to the said CONTRACT, defining per expected contractual performance at least the following:

- *the relevant expected value [as well as the measurement method(s)];*
- *the applicable unit of measure;*
- *the applicable tolerance limit(s);*
- *the contractual **liquidated damages** applicable with the applicable tolerance limit(s); as well as*
- *any possible reference to "Make Good", it being specified that in such case the CONTRACTOR shall carry out any and all steps and actions necessary or appropriate to achieve the applicable tolerance limits.*

The amount of contractual liquidated damages for non achievement of contractual performances shall be specified per expected contractual performance in the concerned CONTRACT and shall be payable at the relevant date of ACCEPTANCE, it being specified that the global maximum amount for all such liquidated damages shall stand at ten percent (10%) of the total CONTRACTUAL PRICE of the said CONTRACT and that such liquidated damages shall be BUYER's sole remedy in case of non achievement of the expected performances as specified in the said CONTRACT, under the strict exclusion of the performances for which the Make Good shall apply.

In any case, the global aggregate amount of contractual liquidated damages to be paid by the CONTRACTOR under any CONTRACT pursuant to Clause 29.2 of the CONDITIONS shall be expressly limited to fifteen percent (15%) of the total CONTRACTUAL PRICE of the said CONTRACT.

### **29.3 PRIOR NOTIFICATION IN CASE OF CONTRACTOR'S FAILURE**

In any case of CONTRACTOR's failure as specified in Clause 29.1 here above, the BUYER shall prior require in writing that the CONTRACTOR remedies such failure within a reasonable period of time. Upon receipt of said notice, the CONTRACTOR shall provide the BUYER with a credible corrective actions plan to remedy its failure within the above-mentioned time period.

In case the CONTRACTOR fails to provide the BUYER with said actions plan or to comply with its actions plan, the BUYER shall be entitled to apply any rights and/or remedies as specified in Clause 29.1 here above.

Notwithstanding the foregoing, no prior formal notice shall be requested in case of urgency, in particular for safety reasons and/or for implementing any reasonable measures and/or steps to mitigate any consequences arising from any CONTRACTOR's failure, but the BUYER shall send to the CONTRACTOR a formal notice thereof without undue delay.

## **30 CONFIDENTIALITY**

30.1 The CONTRACTOR undertakes in its own name as well as on behalf of its SUBCONTRACTORS to comply with the obligation of confidentiality, non-disclosure and non-use for the benefit of third parties of any and all CONFIDENTIAL INFORMATION related to any contract and/or to which the contractor shall have access before and during the execution of such contract.

The BUYER undertakes to treat as strictly confidential any and all CONFIDENTIAL INFORMATION that has been forwarded or made available to the BUYER either in the form of documents or in any other form, and shall prevent any disclosure to third parties except as required for the protection or use of INTELLECTUAL PROPERTY RIGHTS either generated by or transferred to the BUYER as per the CONDITIONS or a CONTRACT and/or of the WORKS AND/OR EQUIPMENTS as provided for in Clause 30.3 hereunder, such as notably subcontractors in charge of repairs and maintenance on SITE and which have committed themselves to confidentiality and restriction of use undertakings.

The BUYER further guarantees not to use such CONFIDENTIAL INFORMATION for any other purpose than (i) for BUYER's needs, (ii) those permitted in the CONDITIONS and/or in the concerned CONTRACT as well as (iii) all requirements of industrial operation of the WORKS AND/OR EQUIPMENTS and/or DEVELOPMENTS, CONTRACTOR'S SOFTWARE, SPECIFIC SOFTWARE and/or STANDARD SOFTWARE delivered by the CONTRACTOR.

The PARTIES expressly agree that, for the purpose of the paragraph here above, the reference to the BUYER's needs expressly exclude the copy of the equipment (under strict exclusion of wear and tear parts as well as spare parts) as delivered by the CONTRACTOR under the said CONTRACT.

The above limitations of use of CONFIDENTIAL INFORMATION shall apply to all possible combinations of CONFIDENTIAL INFORMATION and/or piece(s) thereof, even if one or several pieces of CONFIDENTIAL INFORMATION considered individually would have corresponded to non confidential information as defined in Clause 30.2 hereunder.

30.2. For the purpose of the CONDITIONS, the following shall be not considered as CONFIDENTIAL INFORMATION by the PARTIES:

- a) Information already in possession of the receiving PARTY prior to the communication of such information by the other PARTY;
- b) Information communicated directly or indirectly to the public or to the receiving PARTY, from a source other than the other PARTY, without infringement of any third party's right nor any breach of confidentiality undertaking;
- c) Information become public knowledge without violation of the CONDITIONS nor the concerned CONTRACT by the receiving PARTY; and
- d) Information that must be communicated by judgment or compulsory laws, with obligation to the prosecuted PARTY to inform the other, in order to enable this PARTY to protect its interests.

The PARTY considering that any information is not a CONFIDENTIAL INFORMATION shall bear the proof of any condition specified in points a) to d) hereinabove.

30.3. The above obligation of confidentiality shall remain in force during the whole performance of each CONTRACT and for a period of six (6) years as from the ACCEPTANCE of the WORKS AND/OR EQUIPMENT or, as the case may be, the end of the concerned CONTRACT whichever shall be the cause.

However, any and all BUYER's CONFIDENTIAL INFORMATION to which the CONTRACTOR shall have access before and during the implementation of any CONTRACT, related to production and/or production

processes, needs, sales, techniques, products, customers, know-how and equipment used or developed by the BUYER out of the performance of any CONTRACT shall be considered by the CONTRACTOR as highly confidential and as CONFIDENTIAL INFORMATION, without time limit, as long as such information has not lost its confidentiality nature as per Clause 30.2 here above.

#### **30.4 NON-SOLICITATION:**

To protect ArcelorMittal rights in Confidential Information and any other proprietary property of ArcelorMittal, the Contractor agrees not to directly or indirectly encourage, nor seek to influence any executive officer (as defined below) to quit or leave ArcelorMittal's employment, nor to directly or indirectly encourage within the CONTRACTOR's group and its Affiliates to commence employment with the Contractor or any third party, during the Term of (i) this Contract or (ii) any other agreements entered into between ArcelorMittal Affiliate, without the prior written consent of ArcelorMittal's Head of Human resources.

For the purpose of this provision, executive officer means General Managers, Vice President and Executive President who is an employee of ArcelorMittal or any of its Affiliates.

The Contractor hereby acknowledges that a breach by the Contractor of the provisions relating to Confidential Information, ArcelorMittal proprietary information, or non-solicitation may cause ArcelorMittal and the Buyer irreparable injury and damage for which remedies at law would be inadequate. Therefore, the Contractor hereby agrees that ArcelorMittal shall be entitled to seek injunctive and/or other equitable relief to prevent a breach or threatened breach of this Contract, or any part of it, and to secure its performance.

### **31 INTELLECTUAL PROPERTY**

The provisions of this Clause 31 shall remain in full force and effect after the end of each CONTRACT for their own duration.

#### **31.1 INTELLECTUAL PROPERTY RIGHTS OF THE BUYER**

Any documentation communicated to the CONTRACTOR by the BUYER as well as BUYER's prior INTELLECTUAL PROPERTY RIGHTS shall be and remain the property of the BUYER and shall in no circumstance be divulged.

#### **31.2 INTELLECTUAL PROPERTY RIGHTS OF THE CONTRACTOR**

31.2.1. The CONTRACTOR warrants that it owns all INTELLECTUAL PROPERTY RIGHTS required for the performance and implementation of the CONTRACT and, if not, that it has been entitled to use them through a license including the right of sublicensing. The CONTRACTOR further warrants that it is properly entitled to the rights of use, diffusion, commercialisation, operation and modification of the WORKS AND/OR EQUIPMENT that it does not own and of which it may use for the purpose of the concerned CONTRACT. The CONTRACTOR also warrants that it has freely carried out any and all adaptations, modifications and uses as may be necessary with respect to the WORKS AND/OR EQUIPMENT without committing any offence, contravening any prohibitions nor being liable to any sanctions.

31.2.2. The payment of the contractual price established in the CONTRACT shall entail:

- (i) the granting of the right for the BUYER to make use (license) or to transfer of the copyright INTELLECTUAL PROPERTY RIGHTS to the BUYER (depending on provisions specified herein and in the CONTRACT) subsisting or embodied in or used in connection with the WORKS AND/OR EQUIPMENT, in the fields of exploitation indicated in these CONDITIONS and in the CONTRACT, in order to use, modify, operate, monitor, repair, or maintain the WORKS AND/OR EQUIPMENT, with the right to subcontract such tasks to any third party for the needs of the BUYER, of the SITE and/or the needs specified in the concerned CONTRACT, provided that such third parties have committed themselves to confidentiality and restrictions of use undertakings towards the BUYER to the extent specified in applicable BUYER'S CONDITIONS; and
- (ii) the granting of the right to the BUYER to make use of the DOCUMENTATION that is not DEVELOPMENTS for the purpose of:
  - operation, use, reproduction whatever the use and the process, on all existing or future media, reproduction, copying of a data files, storage on all storage media and in the data cloud;



- representation by all means and on all media, including transmission via networks Internet/Intranet, edition, diffusion and
- adaptation, modification, correction, development, integration, transcription, translation, bearing,

Such granting of rights to the BUYER shall be:

- a) applicable and valid in any relevant country throughout the world; and
- b) granted for at least the protection duration of the concerned INTELLECTUAL PROPERTY RIGHTS.

All above-mentioned BUYER's rights shall be assignable together with the WORKS AND/OR EQUIPMENTS.

### **31.3 CLAIMS BY THIRD PARTIES**

In the event of any threat of lawsuit, or any provisional or definitive prohibition of use of any element of the CONTRACTOR's DEVELOPMENTS, the STANDARD SOFTWARE, the SPECIFIC SOFTWARE, the CONTRACTOR'S SOFTWARE and/or the WORKS AND/OR EQUIPMENT arising from (i) a claim concerning violation of intellectual property rights or (ii) from a legal settlement, the BUYER shall inform the CONTRACTOR of such occurrence without undue delay and the CONTRACTOR shall at its own expenses and in the shortest possible period obtain on behalf of the BUYER the right to:

- continue the use of such element, or alternatively to
- replace or modify the disputed element by a non-counterfeiting element strictly equivalent thereto that will be not subject to the claim for violation of intellectual property rights.

In any case, no modification nor replacement in connection with the above shall result in a deterioration or reduction of functionality or fitness of the WORKS AND/OR EQUIPMENT for their use on SITE in compliance with the CONTRACT.

In case of any third party's claim, whether raised on an amicable basis or pursued before the courts, the CONTRACTOR shall immediately stand in for the BUYER, defend, indemnify and hold harmless the BUYER, and its respective officers, directors and employees, against all losses, liabilities, damages, costs and/or all expenses, including attorney fees and expert fees, arising directly or indirectly from any such claims, actions or lawsuits, alleging infringement of any INTELLECTUAL PROPERTY RIGHTS in connection with the WORKS AND/OR EQUIPMENT and use thereof as specified in the concerned CONTRACT.

The CONTRACTOR shall at its own expenses defend all such claims, proceedings or suits against the BUYER. In any case, all sums which may be disbursed by the BUYER with respect to costs, fees and/or damages due under penalties or legal decisions against the BUYER shall be fully reimbursed by the CONTRACTOR to the BUYER without prejudice to other BUYER's rights to claim for damages against the CONTRACTOR.

The PARTIES agree that for the purpose of this Clause, BUYER shall reasonably support the CONTRACTOR for the defence of the concerned claim (without any cost to the BUYER) and shall not voluntarily prejudice such defence.

### **31.4 DEVELOPMENTS**

31.4.1 Subject to clause 31.4.4, The DEVELOPMENTS resulting from sole inventive capacity of the CONTRACTOR shall belong to the CONTRACTOR. The CONTRACTOR grants the BUYER a non-exclusive license for DEVELOPMENTS, valid for an indefinite period, subsisting or embodied in or used in connection with the WORKS AND/OR EQUIPMENT, in the fields of exploitation indicated in these CONDITIONS and in the CONTRACT, in order to use, modify, operate, monitor, repair, or maintain the WORKS AND/OR EQUIPMENT, with the right to subcontract such tasks to any third party for the needs of the BUYER, of the SITE and/or the needs specified in the concerned CONTRACT, provided that such third parties have committed themselves to confidentiality and restrictions of use undertakings towards the BUYER to the extent specified in applicable BUYER'S CONDITIONS; and

- (ii) the granting of the right to the BUYER to make use of the DEVELOPMENTS for the purpose of:

- operation, use, reproduction whatever the use and the process, on all existing or future media, reproduction, copying of a data files, storage on all storage media and in the data cloud;
- representation by all means and on all media, including transmission via networks Internet/Intranet, edition, diffusion and
- adaptation, modification, correction, development, integration, transcription, translation, bearing,

Such granting of rights to the BUYER shall be:

- a) applicable and valid in any relevant country throughout the world; and
- b) granted for at least the protection duration of the concerned INTELLECTUAL PROPERTY RIGHTS.

All above-mentioned BUYER's rights shall be assignable together with the WORKS AND/OR EQUIPMENTS.

31.4.2 If a DEVELOPMENT (as for example any element of the DOCUMENTATION) is protected by any author's right or copyright, the CONTRACTOR shall transfer to the BUYER, in an exclusive way, the entirety of the rights of:

- a) exploitation, use, reproduction whatever the use and the process, on all existing or future media;
- b) representation by all means and on all media, including transmission via networks Internet/Intranet, publication, edition and diffusion,
- c) adaptation, modification, correction, development, integration, transcription, translation and bearing,
- d) commercialisation and diffusion whatever the way.

Such license granting to DEVELOPMENTS and any related INTELLECTUAL PROPERTY RIGHTS, including author's rights and copyrights, to the BUYER:

- a) occurs at a price which is an integral part of the contractual price paid by the BUYER to the CONTRACTOR as defined in the concerned CONTRACT;
  - b) is applicable and valid in the country where the SITE is located as well as in any country throughout the world;
  - c) is granted at least for the duration during which the concerned STANDARD SOFTWARE is protected by any INTELLECTUAL PROPERTY RIGHTS;
- and
- d) includes the right for the BUYER to transfer those rights and to grant licences and sublicenses of such rights.

31.4.3. Notwithstanding Clause 31.4.1 above, if any DEVELOPMENT and any related INTELLECTUAL PROPERTY RIGHTS arise from the BUYERS's sole inventive capacity independently of any CONTRACTOR's CONFIDENTIAL INFORMATION, then the related INTELLECTUAL PROPERTY RIGHT shall belong to the BUYER.

31.4.4. Specific conditions concerning the granting of the INTELLECTUAL PROPERTY RIGHTS to the BUYER or to the CONTRACTOR or concerning co-ownership the INTELLECTUAL PROPERTY RIGHTS to the DEVELOPMENTS, which will be or have been co-developed by the PARTIES during the performance of the concerned CONTRACT shall be agreed upon by the PARTIES.

## **31.5 SOFTWARE**

Each CONTRACT will specify the STANDARD SOFTWARE, SPECIFIC SOFTWARE and/or CONTRACTOR'S SOFTWARE to be provided and/or delivered under any CONTRACT by the CONTRACTOR to the BUYER.

In case a software and/or program is not specified in the concerned CONTRACT as being either a STANDARD SOFTWARE or a CONTRACTOR'S SOFTWARE, such software and/or program shall be considered and construed as being a SPECIFIC SOFTWARE.

### **31.5.1 STANDARD SOFTWARE**

The CONTRACTOR shall deliver to the BUYER any and all STANDARD SOFTWARE as necessary for the performance of the concerned CONTRACT. If the WORKS AND/OR EQUIPMENT include STANDARD SOFTWARE protected in whole or in part by INTELLECTUAL PROPERTY RIGHTS, the CONTRACTOR shall ensure that within the framework of the license/sub-license granted by the owner of rights to STANDARD SOFTWARE, the BUYER shall have the rights related to:

- operation, use, reproduction whatever the use and the process, on all existing or future media;
- representation by all means and on all media, including transmission via networks Internet/Intranet, edition, diffusion; and
- adaptation, modification, correction, development, integration, transcription, translation, bearing,

BUYER'S rights to use the STANDARD SOFTWARE (it is the license stated above) is assigned together with the relevant WORKS AND/OR EQUIPMENT.

In addition, the CONTRACTOR shall, upon BUYER'S request and at no additional cost, provide the BUYER with all information necessary to achieve the interoperability of the software operated by the BUYER with the STANDARD SOFTWARE. The license for the STANDARD SOFTWARE granted to the BUYER shall:

- a) occur at a price which is an integral part of the contractual price paid by the BUYER to the CONTRACTOR as defined in the concerned CONTRACT;
- a) be valid in the country where the SITE is located as well as in any other country(ies) in which the WORKS AND/OR EQUIPMENT may be further moved, sold and/or transferred;
- c) be granted at least for the duration during which the concerned STANDARD SOFTWARE is protected by any INTELLECTUAL PROPERTY RIGHTS;

and

- d) include the right for the BUYER to grant licences and sublicences of such rights for the operation, maintenance, modification and/or use of the WORKS AND/OR EQUIPMENT. The CONTRACTOR shall communicate to the BUYER the method and know-how related to the use of the STANDARD SOFTWARE with its best performance for the best practice by the BUYER of the WORKS AND/OR EQUIPMENT.

### **31.5.2 SPECIFIC SOFTWARE**

The SPECIFIC SOFTWARE, including the related source code, shall belong to the BUYER. Title to and ownership of the SPECIFIC SOFTWARE, including the related source code, and any related INTELLECTUAL PROPERTY RIGHTS, including author's rights and copyrights, shall be vested into the BUYER. Transfer of copyrights shall occur in the fields of exploitation:

- (i) the entirety of the rights for:
  - exploitation, use, reproduction whatever the use and the process, on all existing or future media;
  - representation by all means and on all media, including transmission via networks Internet/Intranet, publication, placing on the market, edition and diffusion;
  - adaptation, modification, correction, development, integration, transcription, translation, bearing;
  - commercialisation and diffusion whatever the way.

- reproduction of code or translation its form, including reverse engineering, for whatever purpose,  
and

(ii) the exclusive right to apply, under its own name and at its own costs and benefits, for INTELLECTUAL PROPERTY RIGHTS in any country throughout the world with respect to the SPECIFIC SOFTWARE.

Information obtained by the BUYER as a result of analysis of SPECIFIC SOFTWARE code may be used by the BUYER for the development, manufacturing and marketing its own software and may be handed over to entities belonging to ArcelorMittal group.

It is understood that a CONTRACTOR'S SOFTWARE owned by the CONTRACTOR at the signature date of the concerned CONTRACT, that is expected to be modified and/or adapted for the performance of said CONTRACT shall be deemed to be a SPECIFIC SOFTWARE.

The transfer of copyright to the BUYER of the SPECIFIC SOFTWARE, including the related source code, and any related INTELLECTUAL PROPERTY RIGHTS, including author's rights and copyrights, shall:

- a) occur at a price which is an integral part of the contractual price paid by the BUYER to the CONTRACTOR as defined in the concerned CONTRACT;
- b) be applicable and valid in the country where the SITE is located as well as in any country throughout the world; and
- c) be granted at least for the duration during which the concerned SPECIFIC SOFTWARE is protected by any INTELLECTUAL PROPERTY RIGHTS.

An exhaustive and updated copy of the source code of each SPECIFIC SOFTWARE, without any restriction of any kind, as well as programming documentation shall be communicated to the BUYER at any time upon BUYER'S first demand. Programming documentation is regarded as DOCUMENTATION.

### **31.5.3 CONTRACTOR'S SOFTWARE**

If the WORKS AND/OR EQUIPMENT include CONTRACTOR'S SOFTWARE protected in whole or in part by INTELLECTUAL PROPERTY RIGHTS, the CONTRACTOR grants to the BUYER the license related to:

- a) operation, use, reproduction whatever the use and the process, on all existing or future media;
- b) representation by all means and on all media, including transmission via networks Internet/Intranet, edition, diffusion; and
- c) adaptation, correction, development, integration, transcription, translation, bearing, operation, maintenance, modification and/or use of the WORKS AND/OR EQUIPMENT

The licence granted by the CONTRACTOR to the BUYER as to the CONTRACTOR'S SOFTWARE shall:

- a) be granted at a price which is an integral part of the contractual price paid by the BUYER to the CONTRACTOR as defined in the concerned CONTRACT;
- b) be applicable and valid in the country where the SITE is located as well as in any other country(ies) in which the WORKS AND/OR EQUIPMENT may be further moved, sold and/or transferred;
- c) be granted at least for the duration during which the concerned CONTRACTOR'S SOFTWARE is protected by any INTELLECTUAL PROPERTY RIGHTS; and
- d) include the right for the BUYER to grant licences and sublicences of such rights for the operation, maintenance, modification and/or use of the WORKS AND/OR EQUIPMENT.

Save any contrary specification in any CONTRACT, all software to be delivered under such CONTRACT and which are not STANDARD SOFTWARE shall be construed as being CONTRACTOR'S SOFTWARE and all provisions specified in Clause 31.5.3 shall apply accordingly.

## **32 MODIFICATION OF A CONTRACT – SUPPLEMENTARY WORKS – AMENDMENTS**

### **32.1 MODIFICATION OF A CONTRACT, CHANGE ORDER – SUPPLEMENTARY WORKS**

#### **32.1.1 MODIFICATIONS REQUESTED BY THE BUYER**

The CONTRACTOR shall examine, as soon as possible, any changes in any CONTRACT that may be requested by the BUYER, the CONTRACTOR agreeing for this purpose not to refuse such changes without sufficient examination and justification.

Changes or Modification to the CONTRACT, including to CONTRACTUAL TIME SCHEDULE may be implemented only in cases and in compliance with the rules specified in the CONTRACT, taking into account the GUIDELINES.

#### **32.1.2 MODIFICATIONS REQUIRED BY THE CONTRACTOR OR THE CIRCUMSTANCES**

Before and/or during the implementation of any CONTRACT, the CONTRACTOR shall notify immediately (by fax or by e-mail) to the BUYER:

- (i) any circumstance modifying the performance of the CONTRACT (and notably as to deadlines, scope of the CONTRACT, safety, , etc...); and
- (ii) any supplementary works (i.e. works being outside the scope of the CONTRACT) identified by the CONTRACTOR and agreed by the BUYER.

Such CONTRACTOR's notification shall contain a detailed description of all CONTRACT's items concerned by the changes and/or supplementary works identified by the CONTRACTOR.

#### **32.1.3 DECISIONS AS TO CHANGES**

The PARTIES shall decide together within five (5) DAYS if the required change(s) and/or supplementary works as set out here above are already included in the scope of the concerned CONTRACT or if they imply a modification of the scope and/or the contractual price agreed upon by the PARTIES, as well as the modalities to be applied in this respect. If all conditions of the change(s) and/or supplementary works outside the scope of the concerned CONTRACT are agreed between the PARTIES, this shall be subject to a written amendment of the concerned CONTRACT signed by both PARTIES.

The CONTRACTOR shall never request, at any stage of the implementation of the WORKS AND/OR EQUIPMENT, any extra cost for supplementary works or supplies outside the above procedure.

Supplementary works or supplies expressly agreed upon by the PARTIES shall be carried out for a price corresponding to the detailed estimate provided to the BUYER by the CONTRACTOR prior to their respective execution as well as according to the hourly rates and unit prices of the WORKS AND/OR EQUIPMENT as specified in the CONTRACT, if specified.

### **32.2 CHANGES TO TIME SCHEDULE.**

32.2.1. Should any of the following events occur, the CONTRACTUAL TIME SCHEDULE shall be extended for the corresponding time period upon the PARTIES' mutual agreement, strictly provided that such event directly causes a delay in the performance of the CONTRACT:

- a) event of Force Majeure;
- b) further BUYER's requests affecting the performance of the WORKS AND/OR EQUIPMENT by the CONTRACTOR in compliance with the concerned CONTRACT;
- c) delayed or insufficient supplies, tasks, services and/or information strictly attributable to the BUYER; and/or
- d) order(s) of any supplementary works affecting the CONTRACTUAL TIME SCHEDULE.

Any agreement to extend the CONTRACTUAL TIME SCHEDULE shall, except for item (a) here above, take into consideration the impact of said extension on the CONTRACTOR's costs.

#### **32.2.2 DELAY CAUSED BY THE BUYER**

The BUYER shall not be liable for any reimbursement of costs other than the CONTRACTOR's necessary and documented costs for additional supervision and management tasks, if the event(s) causing any delay with respect to the CONTRACTUAL TIME SCHEDULE is(are) duly notified by the BUYER to the CONTRACTOR at least sixty (60) DAYS prior to their occurrence and provided that the total of such delay does not last:

- (i) longer than four (4) months when caused by BUYER's express decision, and



- (ii) six (6) months otherwise.

If such notification is not provided, then the provisions of Clause 32.2.1 here above regarding the extension of the CONTRACTUAL TIME SCHEDULE shall apply.

In case the delay is in the phase of the project where the erection works are in the scope of the CONTRACTOR and were to start in less than 60 days from the date of the BUYER's notice as per the CONTRACTUAL TIME SCHEDULE or have already started, the PARTIES will identify and mutually agree any impacts on the CONTRACT.

### **32.3 AMENDMENTS**

Any modification of any CONTRACT has to be expressly agreed upon in a written amendment signed by both PARTIES. Such amendment shall be concluded under the same conditions as the concerned CONTRACT and form an integral part of said CONTRACT.

## **33 TERMINATION**

### **33.1 TERMINATION FOR MATERIAL BREACH**

In the event of any material breach of the CONDITIONS or of any CONTRACT by any PARTY (as for example non-compliance with safety, health and/or environmental rules applicable on the SITE, of the CONTRACTUAL TIME SCHEDULE or of the contractual performance, non-conformity of the WORKS AND/OR EQUIPMENT,...), the concerned CONTRACT may be terminated with immediate effect by the non-defaulting PARTY without any other formality than a registered letter with acknowledgment of receipt when the defaulting PARTY did not remedy or did not commence achieving appropriate steps as agreed by the PARTIES to remedy the above within fifteen (15) DAYS after having received a formal notice thereof.

Such termination of the concerned CONTRACT shall be made notwithstanding any other rights and remedies of the non-defaulting PARTY under the CONTRACT, under Clause 29.1 of the CONDITIONS as well as under LAWS.

### **33.2 TERMINATION FOR NON- MATERIAL BREACH AND/OR REPETITIVE DEFAULT**

In case of (i) any non-material breach of the CONDITIONS or of any CONTRACT by any PARTY, (ii) repetitive default of any PARTY or (iii) unsatisfactory performance of any obligations or undertakings of any PARTY under any CONTRACT, the non-defaulting PARTY shall require from the defaulting PARTY to remedy thereto within a reasonable time period.

If the defaulting PARTY fails to submit a remedy plan to the non-defaulting PARTY within said time period, or if the defaulting PARTY is not able to comply with such remedy plan, then the non-defaulting PARTY may, without any prejudice to any other rights and remedies of the non-defaulting PARTY under the CONTRACT, under Clause 29.1 of the CONDITIONS as well as under LAWS, terminate with immediate effect the concerned CONTRACT by sending to the defaulting PARTY a registered letter with acknowledgment of receipt at least fifteen (15) DAYS after the receipt by the defaulting PARTY of the non-defaulting PARTY's written warning or summon.

### **33.3 TERMINATION FOR FINANCIAL REASONS OR FOR IMPORTANT MODIFICATION OF THE CONTRACTOR'S LEGAL STRUCTURE OR CONTROL**

The BUYER may also terminate any CONTRACT in case of:

- (i) reasonable statement(s) that the CONTRACTOR's financial situation could be construed as preventing the concerned CONTRACT to be implemented properly by the CONTRACTOR; and/or
- (ii) important modification(s) affecting its legal structure or any important change(s) in the control of its share capital, the CONTRACTOR having in such case to notify without delay said modification(s) to the BUYER.

### **33.4 BUYER'S RIGHT TO USE AFTER THE TERMINATION OF ANY CONTRACT**

In each of the cases set forth in Clauses 33.1 and 33.2 here above and provided that the BUYER is not the defaulting PARTY, the BUYER or the third party which may have taken the place of the CONTRACTOR may use, at no cost and to the extent provided in Clause 30, for the execution of the CONTRACT:

- (i) the DOCUMENTATION, and

- (ii) materials, equipment, machines, tools and facilities that the CONTRACTOR has assigned to the performance of the CONTRACT, until the expiration of a time period of fifteen (15) DAYS after the effective termination date of the concerned CONTRACT. If the BUYER needs to use said materials, equipment, machines, tools and/or facilities for a longer time period, the PARTIES shall agree upon the modalities applicable thereto, it being specified that the CONTRACTOR undertakes not to take them back before the BUYER having found a reasonable alternative solution.

In any case, the CONTRACTOR undertakes not to hinder nor impair the resumption of any part of the WORKS AND/OR EQUIPMENT and/or of the concerned CONTRACT remaining to be performed either by the BUYER or any third party as designated by the BUYER.

### **33.5 CONSEQUENCES OF THE TERMINATION OF ANY CONTRACT**

In any case of termination as set forth in this Clause 33 and notwithstanding the provisions of Clause 21.1.2, the PARTIES shall agree upon the financial consequences of the termination, it being specified that all liquidated damages applicable and due under the concerned CONTRACT, the costs and expenses engaged by the BUYER (including costs relating to the substitution of the CONTRACTOR by any other supplier), the amount(s) overpaid or underpaid by the BUYER with respect to the state of the WORKS AND/OR EQUIPMENT at the effective date of termination, shall be paid or reimbursed by the CONTRACTOR to the BUYER or vice versa without undue delay as from the effective date of termination of the concerned CONTRACT.

### **33.6 TERMINATION FOR CONVENIENCE**

33.6.1 The BUYER may at any time terminate the CONTRACT for any reason by giving the CONTRACTOR a notice of termination which refers to this Clause 33.6 (a "Termination Order").

33.6.2 Upon receipt of a Termination Order, the CONTRACTOR shall either immediately or upon the date specified in the Termination Order:

- (a) cease all further work on the CONTRACT, except for such work as the BUYER may specify in the Termination Order for the sole purpose of protecting that part of the CONTRACT already executed or any work required to leave the WORKS AND/OR EQUIPMENT and associated work area on the SITE in a clean and safe condition; and
- (b) terminate all sub-contracts, except those to be assigned to the BUYER pursuant to paragraph (c)(ii) below; and
- (c) subject to, and only after, the payment specified in 33.6.5 below:
- (i) deliver to the BUYER the parts of the WORKS AND/OR EQUIPMENT completed by the CONTRACTOR up to the date of termination; and
- (ii) to the extent legally possible assign to the BUYER all right, title and benefit of the CONTRACTOR in any sub-contracts concluded between the CONTRACTOR and its sub-contractors; and
- (iii) deliver to the BUYER all applicable documents, due upon termination.

33.6.3 In the event of termination under Clause 33.6.1 above, the BUYER shall, within 60 Days of such termination issue a statement setting out the following payments due to the CONTRACTOR from the BUYER:

- (a) the contract price properly attributable to the parts of the WORKS AND/OR EQUIPMENT completed by the CONTRACTOR as on the date of termination (including CONTRACTOR'S overhead allocation and profit on such parts);
- (b) the costs of any work in process, raw materials, parts, or any other materials or products which have been purchased or incurred by CONTRACTOR prior to the date of such termination notice (together with CONTRACTOR'S overhead allocation and profit on such items);
- (c) the costs of any materials, parts, or any other products to which CONTRACTOR has committed prior to the date of such termination notice and which cannot be cancelled (together with CONTRACTOR'S overhead allocation and profit on such items); and
- (d) the reasonable costs properly incurred by the CONTRACTOR in complying with the instructions in Clause 33.6.2, including unavoidable costs and expenses incurred in connection with the termination of any sub-contracts, including orders for materials; and
- (e) All reasonable demobilization costs and expenses incurred by CONTRACTOR.

It is the intent of this provisions that upon a Termination for Convenience by the BUYER, that the CONTRACTOR shall not suffer any out of pockets costs or expenses relating to such termination, that the CONTRACTOR be entitled to receive its overhead and profit on all WORKS AND/OR EQUIPMENT performed prior to such termination and that the BUYER reimburse the CONTRACTOR for all such amounts.

33.6.4 The BUYER shall not be obliged to pay any profit or overhead contribution on the parts of the CONTRACT which have not been commenced at the date of termination under this clause 33.6.

33.6.5 Any amount identified by the statement issued under Clause 33.6.3 as properly payable to the CONTRACTOR shall be paid within 60 days from the date of the CONTRACTOR's invoice failing which the matter shall be referred to arbitration under Clause 42.

33.6.6 Upon a termination under this clause 33.6, the CONTRACTOR shall not be required to deliver or provide any parts, materials, work in process or other deliverables for which the BUYER has not paid until such time as the BUYER has made payments of all amounts due hereunder or the PARTIES have otherwise agreed on payment arrangements.

## **34 BUYER'S CONTRACTUAL RESCISSION RIGHT**

34.1 BUYER will have unconditional right to rescind the CONTRACT, with the effects for future (ex nunc). This right can be executed by the BUYER by written declaration, without necessity to give a CONTRACTOR any specific reason, within the period starting from conclusion of the CONTRACT and until the end of ACCEPTANCE.

34.2 BUYER will have also the right to rescind the CONTRACT, with the effects for future (ex nunc) in the following situations:

A. In case an agreement concluded between the BUYER and the public funding institution, shall be terminated for any reason, on any legal basis and by either of their parties – in such situation BUYER's right to rescind the CONTRACT can be executed by the BUYER by writing declaration within 90 days from the day on which the agreement with funding institution is terminated;

B. In case it shall be recognized that continuation of the PROJECT is impossible or inexpedient from the R&D point of view. Such situation shall be confirmed by a report prepared by the research team of the BUYER or the team appointed under the terms of the agreement concluded between the BUYER and research institution/university. In such situation BUYER's right to rescind the CONTRACT can be executed by the BUYER by writing declaration within 90 days from the day on which report mentioned above is accepted by the BUYER;

C. In case performance of the CONTRACT will be suspended on the basis of clause 24.2 of CONDITIONS for the aggregate duration of at least 12 months – in such situation BUYER's right to rescind the CONTRACT can be executed by the BUYER by writing declaration within 60 days from the day on which aggregate duration of performance suspension exceeds 12 months;

34.3 In case BUYER executes the right to rescind the CONTRACT according to clause 34.1 or 34.2, clause 33.6.2 to 33.6.6 will apply.

## **35 COVID-19**

The PARTIES acknowledge this CONTRACT was entered into at a time when Covid-19 has been declared a global pandemic and the impacts and developments of the pandemic are unforeseeable. As of the Effective Date of the CONTRACT, the PARTIES acknowledge that they have reviewed all the government mandated measures and recommendations and that, having reviewed them, there are no known Covid-19 related issues preventing the fulfilment of their contractual obligations. In case of any further impacts or developments of the pandemic or in case of new governmental measures or recommendations (or amendments to the current ones) that cause impacts to the WORKS or a party's

ability to perform its obligations under this Contract, the affected PARTY may declare force majeure in accordance with the CONDITIONS clause 25.

## **36 ASSIGNMENT**

- 36.1. The CONTRACTOR is not entitled to assign either in whole or in part any of its rights and/or obligations under the CONDITIONS or any CONTRACT without BUYER's prior written express agreement.
- 36.2. The BUYER is entitled to assign any CONTRACT in whole or in part to any company which directly and/or indirectly controls, is controlled by or is under the common control of ARCELORMITTAL POLAND S.A. (as defined in Clause 1.1 of the CONDITIONS), such assignment having to be notified in writing by the BUYER to the CONTRACTOR.

The PARTIES agree that this Clause shall apply provided that the concerned affiliate presents appropriate creditworthiness having regards to the part of the contractual price of the WORKS

AND/OR EQUIPMENT remaining unpaid under the concerned CONTRACT at the date of such assignment.

- 36.3. In case the SITE is sold or transferred by the BUYER to any third party during the time period during which the CONTRACTOR is implementing any CONTRACT concerning such SITE, the BUYER shall be expressly entitled to assign the said CONTRACT to the new owner of the SITE. Such assignment shall be notified by the BUYER to the CONTRACTOR at least one (1) month before the transfer date of the SITE to the said new owner.

The PARTIES agree that this Clause shall apply provided that at the date of such assignment the new owner:

- (i) presents appropriate creditworthiness having regards to the part of the contractual price of the WORKS AND/OR EQUIPMENT remaining unpaid under the concerned CONTRACT; and is not in on-going substantial litigation or arbitration procedure with the CONTRACTOR, the CONTRACTOR having to prior evidence it to BUYER.

In case the CONTRACTOR does not agree that the new owner presents appropriate creditworthiness having regards to the part of the contractual price of the WORKS AND/OR EQUIPMENT remaining due at the date of the contemplated assignment, the PARTIES will discuss the specific conditions to be applied in this respect.

- 36.4. If after the implementation of any CONTRACT, the SITE does not remain owned by the BUYER, the BUYER shall be expressly entitled to transfer or license any and all rights of use of CONTRACTOR's INTELLECTUAL PROPERTY RIGHTS subsisting or embodied in or used in connection with the WORKS AND/OR EQUIPMENT, for the term of protection of such possible INTELLECTUAL PROPERTY RIGHTS, in order to use, modify, operate, monitor, repair and/or maintain the WORKS AND/OR EQUIPMENT (including the right to subcontract such tasks to any third party) for the needs of the SITE.

## **37 SEVERABILITY**

If any provision of the CONDITIONS or of any CONTRACT is illegal, invalid or unenforceable under any LAWS, all other terms and conditions of the CONDITIONS or of the concerned CONTRACT shall remain unaffected thereby. The PARTIES agree to replace such provision by provision(s) having the same or a similar effect or meaning as the illegal, invalid or unenforceable provision, or being at least as close as possible to the economic purpose initially agreed upon by the PARTIES with respect to said provision.

## **38 APPLICABLE LANGUAGE**

- 38.1 The language applicable to any CONTRACT as well as to all documentation related thereto shall be the language of the SITE where the WORKS AND/OR EQUIPMENT are to be implemented or as otherwise agreed upon in the CONTRACT.

Unless otherwise expressly agreed upon between the PARTIES or required by mandatory LAWS, when the language of the BUYER and the CONTRACTOR are different, the English language shall apply for all commercial and contractual relationships between the PARTIES.

- 38.2 The CONDITIONS exist in several languages. In case of contradiction between the English version of the CONDITIONS and any of its official translations, the English version shall prevail.

### **39 UNITS OF MEASURE**

The only units of measure that are allowed for the performance of the CONTRACTS are the metric units, except otherwise duly agreed upon by the PARTIES in any CONTRACT.

### **40 NOTICES**

Any notice to be given in connection with any CONTRACT shall only be valid if given in writing, in the language of the CONTRACT as specified in Clause 38 here above, and by letter, telegram, fax, or electronic mail confirmed by fax; all communications shall be considered effective upon receipt thereof.

### **41 APPLICABLE LAW**

The CONDITIONS and each CONTRACT shall exclusively be governed by and construed in accordance with the POLISH LAW or as Agreed between the Parties in the CONTRACT. The UN Convention on Contracts for the International Sale of Goods of 1980 being expressly not applicable.

### **42 LITIGATIONS – JURISDICTION**

Any and all claims or disputes arising out of or in connection with any CONTRACT shall be notified in writing (including e-mail or fax) to the other PARTY. Such notice shall set out all details of the claim or dispute together with the provisional amount in dispute.

In case of dispute, the PARTIES shall do their best efforts to reach an amicable settlement within thirty (30) DAYS following the above-mentioned notification.

If the PARTIES' representatives failed to find such an amicable settlement within the above-mentioned time period of thirty (30) DAYS, the dispute shall be submitted to a common court or to an arbitration court, as agreed in the CONTRACT. In case of lack of relevant clauses in the CONTRACT, the dispute will be submitted to the common court having its jurisdiction over ArcelorMittal Poland S.A. seat.

**END**