

## **General Terms and Conditions of Sale of Products and/or Services of Thomassen Energy B.V.**

### **1. Definitions**

- “Contract”: Customer’s purchase order accepted by TEN for the supply of Products and/or Services in accordance with provisions of this GTC.
- “Customer”: a purchaser of Products and/or Services from TEN.
- “Defect”: a defect including omission at the time of delivery in the workmanship or material of the Products or a failure to prepare documentation or provide Services according to commercially reasonable skill and care.
- “Export Control Regulations”: all applicable national and international laws, regulations, orders, embargoes, administrative practices or resolutions that may prohibit or restrict the trade of Products or provision of Services.
- “GTC”: these general terms and conditions of sale of Products and/or Services of TEN.
- “Products”: goods to be sold and delivered by TEN in accordance with the Contract.
- “Party/Parties”: TEN and/or the Customer, all depending on the context.
- “Personnel”: manpower employed, engaged or contracted by TEN and being made available to the Customer for the execution of activities under a Contract.
- “Services”: activities to be performed by TEN, its Personnel or its sub-contractors under a Contract including (a) carrying out the projects;(b) training of Customer’s personnel, (c) feasibility study
- “TEN”: Thomassen Energy BV, who offers, sells and/or supplies Products and/or Services.
- Variation Order Purchase order for the urgent corrective measures requested by Customer from TEN. Variation order is prepared by TEN in its customary form. Variation order signed by the Customer shall become a binding Contract.

### **2. General.**

- 2.1. These GTC will apply to all quotations, offers, activities, orders, agreements, Contracts and deliveries of Products and/or Services by or on behalf of TEN. The GTC are also applicable to any additional or follow-up agreements.
- 2.2. The Parties can deviate from these GTC only if they expressly agree upon in writing.
- 2.3. Customer hereby agrees that these GTC are the sole provisions applicable to the delivery of Products and/or Services and shall supersede and prevail over the terms and conditions of the Customer. General terms and conditions of the Customer are expressly rejected. Customer shall be deemed to, by entering into a Contract with TEN, waive other conditions and/or stipulations even if the same are expressly referred to and/or are stated expressly in any request for quotation, purchase order or other document originating from the Customer.
- 2.4. In case of discrepancies between provisions of these GTC and any Contract or other specific terms and conditions mentioned by TEN in the offer or in the order confirmation issued by TEN or otherwise agreed between the Parties in writing, provisions of the Contract or provisions of specific terms and conditions shall take precedence over provisions of these GTC, unless otherwise stated in the GTC. In case of discrepancies between the different language versions of these GTC, the English text shall always take precedence.

- 2.5. TEN reserves the right to modify these GTC from time to time by giving to the Customer a prior written notice including modified text of the GTC.

### **3. Offers, purchase order and order confirmation.**

TEN shall be bound by the issuance of its written offer only, at the exclusion of any other verbal or written exchange between the Parties.

Unless otherwise agreed, all offers issued by TEN are valid for a period of thirty (30) days following the date of the offer.

A Contract shall be considered to be concluded between the Parties upon the earliest:

- a) submission of a purchase order by the Customer within the validity period of TEN's offer, which is confirmed by TEN in writing. In any case, no purchase order submitted by the Customer shall be deemed to be accepted by TEN until confirmed by TEN in writing
- b) commencement of performance by TEN in absence of a purchaser order issued by the Customer, but based on the Variation order prepared by TEN and signed by the Customer

### **4. Amendments to Contracts**

- 4.1. Customer shall bear sole responsibility for the correctness, accuracy and completeness of all specifications provided to TEN for the preparation of the offer or mentioned in the purchase order submitted by the Customer including, without being limited to the type, design, quality and the quantity of the ordered Products/Services.
- 4.2. Customer may request amendment of or addition to any Contract provided that he shall adhere to the principles of reasonableness and fairness in his requirements for the amendments or additions. Amendments of or addition to any Contract may be with respect to (i) specifications, drawings and data where the Products and/or Services to be furnished are specifically manufactured for Customer; (ii) method of shipment or packing; and (iii) place of delivery.
- 4.3. Amendments of or additions to any Contract will only be binding if authorised persons of the Parties have agreed upon them explicitly in writing.
- 4.4. TEN shall inform the Customer of the consequences of the required amendment/ addition with respect to the price, quality, usability, additional costs, delivery times and guarantees for the Products /Services to be provided by TEN.

### **5. Delivery of Products**

- 5.1. Delivery dates agreed with the Customer are indicative and TEN's best estimates.
- 5.2. Unless otherwise agreed in the Contract, TEN shall deliver the Products on FCA (TEN premises, Rheden, The Netherlands), Incoterms 2020 conditions. Obligations of TEN to deliver are completed in accordance with the applicable Incoterm.
- 5.3. TEN shall have the right to deliver all or a part of the Products.
- 5.4. If Customer does not take delivery (fully or partly) on the date agreed, Customer shall pay damages suffered by TEN, including but not limited to storage costs.
- 5.5. If the Customer does not take the delivery upon expiration of 14 days from TEN's notification on ready-to-deliver, the Customer shall pay to TEN the price as if delivery had been made.
- 5.6. TEN may alternatively terminate the Contract (or a part thereof) and claim damages from the Customer for any loss suffered, including loss of profit.

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- 5.7. If TEN is (partly) dependent on assistance from the Customer for the execution of the Contract and the Customer fails to provide the said assistance for whatever reason, the delivery term shall be extended by as much time as TEN requires and without any liability for TEN.
- 5.8. The same applies if delays in delivery occur as a result of requests from or on behalf of the Customer or from a government agency to change, adjust or add to that which have been agreed. Furthermore, the resulting additional costs incurred by TEN in connection with such a delay shall be at the expense of the Customer.

## 6. Delivery acceptance

- 6.1. Unless otherwise agreed in any individual Contract, prior to the shipment or upon receipt of the Products (which are not installed in connection with provision of Services) and as soon as it is practical but without undue delay, the Customer shall inspect the Products for any visible Defects, or shortage, and ensure that the Products are in conformity with the Contract.

The Customer loses its right to rely on a lack of conformity of the Products, if it does not give a written notice to TEN specifying the nature of the lack of conformity either during the pre-shipment inspection or (in the absence of the pre-shipment inspection), when the Products are received, within 3 (three) calendar days after it has discovered or ought to have discovered the non-conformity.

## 7. Delivery of Services

- 7.1. Delivery dates agreed with the Customer are indicative and TEN's best estimates only.
- 7.2. If TEN provides Services in phases, then TEN is authorized to suspend the start of the Services for any phase until the Customer has approved the results of the previous phase in writing.
- 7.3. Clauses 5.3 and 5.4 shall apply if the Customer does not accept (take delivery of) the Services or a part thereof as agreed.

## 8. Responsibility of Customer under provision of Services by TEN

### A. Customer shall provide:

#### a) Job Site Access and Security:

- Safe and appropriate access to the job site when required by TEN.
- Providing a safe working environment for TEN and its subcontractors.
- Implementing site security measures such as guards, fencing, cameras, and lightning protection. This includes safeguarding all TEN's tools, consumables, equipment, and goods when provided.

#### b) Approvals and Permits:

- Obtaining all necessary approvals, permits, licenses, etc. from local authorities for the execution of the Services in the name of TEN, with costs and expenses borne by the Customer.

#### c) Health, Safety and Environment:

- Ensuring proper waste management.
- General maintenance and cleaning of the job site.
- Supplying cleaning materials (solid and liquid) as required.
- Providing EHS Plan.
- Providing Safety Procedures.
- Providing First Aid Facilities.
- Providing Fire Extinguishers.
- Providing Safety Equipment, Signs, and Barricades.
- Providing Foreign Materials Exclusion (FME) Plan and Supplies.
- Providing Confined Space Permitting/Monitoring.
- Providing General Work Permits, Hot Work Permits for instance.

d) **Storage and Preparation:**

- Allocating at least thirty (30 ) square meters of storage space for a tool container close to the product on which the Services shall be provided
- Providing storage/laydown area for spare parts/removed parts.
- Performing a shutdown of the gas turbine at least eight (8) hours before starting the Services and implementing necessary security measures, such as disconnecting and blinding off fuel pipes and fire extinguisher systems.

e) **Site Facilities, Utilities, Equipment and Services:**

- Office facilities (tables & chairs) and supplies
- Furnishing necessary facilities, sanitary facilities, lockers, messing, showers, heating, air conditioning, lighting and waste handling facilities, and other consumables as reasonably required by TEN for the performance of Services.
- Communication means (internet, access hook-ups).
- local medical facilities in case of emergencies,
- Undertaking civil works, if applicable.
- Transportation of TEN Personnel to/from job site, if applicable.
- Supply Electrical Power.
- Compressed Air (+6 Bar).
- Potable Water.
- Service Water.
- Light Towers.
- Forklifts.
- Manlifts.
- Flat Bed Trailers and Trucks.
- Oxygen/Acetylene/Argon/Propane/other gases.
- Supply Replacement Insulation Materials and Blankets.
- Non-HAZMAT Consumables (Rags/Drill Bits/Files/Hones).
- HAZMAT Consumables (Solvents/Lubricants/Paints).
- Cribbing/Lumber/Blocking/Plywood.

f) **Technical Documentation:**

- Operation & Maintenance Manuals/OEM and/or third-party information bulletins, technical advisories, service bulletins, and technical information letters.
- Technical drawings, parts lists data sheets of equipment and installation.
- Previous inspections and assessment reports of plant equipment.

B. *If separately agreed in a Contract and per division of responsibilities between TEN and the Customer, other responsibilities of the Customer shall be:*

a) **Additional Services & Consumables:**

- Non-destructive Services (NDT & Supplies) (if needed).
- Media Blast Clean Services & Supplies (if needed).
- Waste Disposal / Trash Bins / Containers.
- Painting Services.
- HAZMAT Disposal / Receptacles.
- Receiving/Loading/Unloading of materials prior to (de)mobilization.
- Asbestos Monitoring/Removal/Disposal.
- Lube Oil Purification/Drain Tank/Cleaning of Reservoir/Equipment.
- Removal/Install Fire Protection/Detection Equipment.
- Heaters for Drying Generator (if needed).

b) **Tooling, Equipment, Workshop, Lifting means:**

- Non-specialty Standard & Metric Mechanics Hand Tooling.
- Measuring Tooling.
- Non-specialty Lifting & Rigging Tools.
- Slings/Shackles/Chain Hoists.
- Hydraulic Tooling & Pumps.

- Bolt Tensioning, Jacks/Rams.
- Electric Tools.
- Supplementary Lighting & Extension Cords.
- Pneumatic Tools.
- Air Hoses/Nozzles & Fittings.
- Welding/Brazing/Burning/Cutting Equipment.
- Overhead/Mobile Crane - Crane Inspection & Service.
- Work Tables/Bench Grinders/Bench Vises.
- Parts Storage and Storage Bins.
- Onsite Machining Equipment (if needed).
- Hydraulic Torque Wrenches.
- Riverhawk Hydraulic Tooling.
- Hydraulic & Mechanical Jacks/Rams & Pumps.
- Precision Measuring Tooling.
- Special OEM Tools/Slings/Fixtures/Devices.
- Rotor Turning Devices.
- Rotor lifting beam, Rotor stands.
- Equipment/Case/Crate/Material for transportation of parts and materials
- Commissioning Tools.
- Portable Combustion Dynamics Monitoring System (if needed).
- Performance Tools (if needed).
- Borescope Equipment.
- Generator Diagnostic Equipment (if needed).

c) **Manpower:**

- Ensuring adequately trained operating manpower
- Providing trained manpower to Support/Disassemble/Assembly Open/Close activities
- Crane Operators & Riggers (Mobile Crane).
- Crane Operators & Riggers (Overhead Crane).
- Other manpower as per Contract.

## 9. Liquidated damages for delay in performance under a Contract (optional)

- 9.1. TEN shall make proper efforts to take the delivery terms into account as much as possible.
- 9.2. If TEN is more than 30 calendar days late to perform under any Contract in accordance with the estimated delivery term for the reasons attributable solely to the fault of TEN, the Customer shall be entitled to payment of liquidated damages (not a penalty) in an amount equal to 0.5 % of the price of the delayed portion of the Products or Services for every full week of delay, up to a maximum of 1,5% of the whole Contract price.
- 9.3. Customer has to give a prior written notice of its intention to claim such liquidated damages no later than 1 month after completion of performance by TEN. Failure to give such a notice will deprive the Customer of claim for damages caused by delay.
- 9.4. Such liquidated damages shall not be due where TEN has failed to deliver only minor portion of the Products and/or Services which do not delay completion of the Contract or where Customer has not incurred any resulting loss or damage.
- 9.5. Payment of the liquidated damages shall be calculated starting from the 31<sup>st</sup> day of delay and constitute a full and complete satisfaction of any claim of Customer and the Customer's sole and exclusive remedy against TEN, arising from or in connection with any delay of TEN in connection with its performance. Any and all other claims for delay or late performance, including any delay in meeting any intermediate milestone or other dates, shall be excluded.

## 10. Prices and payment

- 10.1. Unless otherwise agreed, prices for the Products are FCA (TEN premises, Rheden, the Netherlands), Incoterms 2020. The prices do not include VAT or any other government levies due

in connection with the Contract nor the costs in connection with packaging, transport and insurance (if TEN arranges transportation of Products on behalf of, at the risks and costs of the Customer). TEN is entitled to invoice the items mentioned in the previous sentence separately and in full.

- 10.2. Prices for the Services do not include furnishing of special tools, instruments, etc.
- 10.3. All stamp taxes, fees and similar expenses pertaining to a Contract, including, without limitations, its execution, translation, registration, legalisation and authentication shall be for the account of the Customer.
- 10.4. If the costs for the execution of the Contract have become higher for TEN because cost factors relevant to the price such as wages, premiums of social and other types of insurance, materials, value of foreign currency and the like have risen after the moment of the last (price) offer made by TEN, TEN is entitled to make an additional charge for said higher costs through price adjustments.
- 10.5. If TEN and the Customer have agreed a price in a currency other than the Euro and said other currency devalues in relation to the Euro after the moment of the last (price) offer made by TEN, then TEN is entitled to adjust the price to the extent required to fully compensate the devaluation that occurred up to the moment of full payment.
- 10.6. Payment terms and conditions shall be those agreed by the Parties in each individual Contract.
- 10.7. If Customer does not pay on the due date, TEN may, with no effect on any other right or remedy that TEN may have under applicable law, or under these GTC, claim payment for reminders, collection charges and interest. Interest is fixed at 1.5 % per month of overdue amount. Interest will accrue daily from the due date until actual payment of the overdue amount or until the amount of interest reaches overdue amount, whichever is earlier. Interest stops accruing when the interest amount reaches the outstanding amount. TEN may also (i) make further delivery subject to guaranteed payment and suspend other deliveries until Customer has provided the guarantee required by TEN; or (ii) suspend the provision of further deliveries until Customer has paid the overdue amounts in full.
- 10.8. If TEN has any reason to doubt whether the Customer shall meet his obligations - whereby the following circumstances on the Customer's side constitute in any event sufficient reason for doubt: repeated default of payment, seizure of the Customer's property, moratorium, bankruptcy, full or partial stoppage of the company - then everything the Customer owes TEN shall become due immediately and TEN shall be entitled to postpone the fulfilment of his own obligations until the Customer has fulfilled its obligations, including full payment and/or - to TEN's satisfaction - providing security for the payment. If full payment is not made or satisfactory security is not given within 14 (fourteen) calendar days from the request to that effect, TEN is entitled to declare the Contract concerned as being annulled, without prejudice to its right to compensation for damages suffered and/or still to be suffered.
- 10.9. Customer is not authorized to suspend or settle payments due to (supposed) shortcomings on part of TEN.
- 10.10. Notwithstanding anything herein said, TEN shall be entitled to assign any of its accounts receivable under any Contract to any third party without Customer's consent.

## **11. Risk and title to the Products**

- 11.1. The risk to the Products shall pass to the Customer according to the applicable Incoterm. If at the time of delivery agreed between TEN and Customer, the Customer does not take receipt for reasons for which TEN cannot be accountable, the risk transfers to the Customer at that time. All such costs in connection with storage and transport, incurred by TEN and arising out of not timely receipt of delivery by the Customer, shall be at the risk and expenses of the Customer.

- 11.2. Title to the Products shall not pass to the Customer until TEN has received payment in full. If Customer fails to meet any payment obligations, TEN is entitled to take back (repossess) the Products at the sole cost of the Customer. Therefore, TEN or a third party appointed hereto by TEN has the right to enter the premises of the Customer or the subcontractors of the Customer, with the purpose of repossession of the Products or establishing whether the Customer respects its obligations under this Article 11.
- 11.3. The costs for repossession and, if necessary, the selling off of the Products shall be at the expense of the Customer. The commercial value of the repossessed Products shall be deducted from the amount, which the Customer still owes to TEN.
- 11.4. Products which are still subject to a retention of title, may be used by the Customer for his ordinary business activities only. However, the Customer is not allowed to transfer ownership or dispose the said Products or give the Products as security or burden them with other limited business rights.
- 11.5. Such retention of title does not affect the passing of risk to the Products, which shall be transferred to the Customer as indicated in clause 11.1 The Products which are subject to retention of title by TEN, shall be properly insured by the Customer, stored separately from other goods and clearly marked with the sign "Thomassen Energy BV property".

## 12. Commercial Warranty.

### A. Products

TEN warrants that Products delivered by TEN are free from Defects in material and workmanship during twelve (12) months from the date of installation, or eight thousand (8,000) factored (or equivalent) fired hours of operation from the date of installation (FFH), or three hundred (300) factored (or equivalent) fired starts (FFS) referring to GER 3620P or eighteen (18) months from the date of shipment of the Products (based on FCA, (Rheden, Netherland) Incoterms 2020), whichever occurs first, subject to normal use.

- 12.1 Factored hours, factored starts, equivalent hours, or equivalent starts, as applicable, shall be calculated per the procedures described by the original turbine manufacturer for the turbine in which the Products are installed.
- 12.2 If any failure to meet said warranty appears within the applicable warranty period (provided that TEN receives a detailed written notice from the Customer within 7 calendar days from a moment when the Defect is revealed), TEN shall at its sole option, repair or replace defective Product or a part thereof at no charge to the Customer.
- 12.3 Without prejudice to anything said in this Article 12, the warranty obligation of TEN is limited to the repair or replacement of Products or parts and does not include any responsibility or obligation with respect to any disassembly or reassembly of the equipment or removal or replacement of systems, structures or other parts of the gas turbine at Customer's facility.
- 12.4 All Products or parts thereof repaired or replaced under this warranty are re-warranted for the remainder of the original warranty period. For the avoidance of doubt, the warranty period of any Product or a part thereof which have been rectified by TEN during the warranty period shall expire at the initially scheduled expiration date of the said warranty period.
- 12.5 TEN may, at its sole option, remove the Product at its own expense and refund the Customer with all sums which have been already paid by the Customer to TEN for the relevant Product till the moment of removal. In this case TEN's maximum liability shall never exceed an amount which have been already paid by the Customer to TEN till the moment of removal of the Product.
- 12.6 To the maximum extent permitted by applicable law, TEN shall have no liability for any form of Defect under this Article 12, latent or otherwise, for which it will receive a written notification after expiration of the warranty period.

**B. Services:**

- 12.14 For Services purchased by Customer from TEN hereunder, TEN warrants to the Customer that the Services will be performed (a) in a competent and workmanlike manner by skilled and adequately trained Personnel, (b) free from Defects in workmanship and (c) with respect to any recommendations for corrective action made in connection with technical investigations or inspections at the time such Service is performed, such recommendations shall be based on TEN's reasonable judgment considering the facts then known to TEN at the time of performance of such Service.
- 12.15 The foregoing shall apply only to failures to meet said warranties which appear within 12 months from the date of the completion of the Services. If any failure to meet the warranty set forth in this paragraph appears within the applicable warranty period, on the condition that TEN be promptly notified in writing (notification period set forth for the Products above shall apply), TEN will correct such Defects by re-performing any defective Services furnished hereunder.
- 12.16 With respect to the Services related to the feasibility study, no warranty or guarantee is provided by TEN, the result of the Services are preliminary estimations of TEN only. TEN does not warrant or guarantee the correctness of any documents, data, information or assumptions supplied by the Customer or by a third party ("Documents"), nor does it accept any responsibility or liability for the accuracy, sufficiency, reliability or validity of such Documents or for any findings, observations and conclusions based upon such Documents. The Customer defends, indemnifies and holds TEN harmless from any liability of whatsoever nature that may result from the Documents provided by the Customer or by any third party.
- 12.17 The foregoing obligation is limited to the Services performed and does not include any responsibility or obligation with respect to any disassembly or reassembly of equipment or removal or replacement of systems, structures or other parts of the facility. All Services re-performed under this warranty are re-warranted for the remainder of the original warranty period.

**C. Exceptions to TEN commercial warranty**

TEN is relieved from its liability towards the Customer or any other third party for any damage or Defect in the Products or Services to the extent caused by:

- a) operation, maintenance, storage, installation or other use of the Products or any component thereof in a manner not in compliance with TEN's instructions, or in the absence of such instructions, not in accordance with good industry practices
  - b) use of Products, parts, lubricants, fuel, consumables and utilities not in conformity with written manuals issued by TEN or by original equipment manufacturer
  - c) Products are modified, repaired or altered where a modification, repair or alteration was not provided by or expressly authorized in writing by TEN;
  - d) Products are damaged so that TEN is unable to verify the nonconformity or Defect in the normal course of the Products testing;
  - e) Products are used in combination with any technology, hardware, software, product, material, fuel which are not recommended by TEN;
  - f) no fault of TEN
  - g) any failure of upstream and/or downstream equipment;
  - h) normal wear and tear ;
  - i) natural phenomena, such as erosion, condensation; or corrosion of Products
  - j) an event of Force Majeure to the extent such event occurs after beginning of the warranty period;
  - k) misuse, accident, negligent handling, damage or willful misconduct on the part of the Customer or any third party caused to the Products
  - l) non-compliance by the Customer with applicable law or regulation
- D. All liability of TEN howsoever arising under this Article 12, and all guarantees, representations or warranties, whether expressed or implied, in relation to the Products and/or Services shall expire upon expiration of the relevant warranty period.



- E. ***EXCLUSIVE REMEDIES:*** CUSTOMER AGREES THAT THE WARRANTIES AND REMEDIES FOR SAID WARRANTIES SET FORTH IN THIS ARTICLE 12 ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL, STATUTORY, EXPRESS, OR IMPLIED (INCLUDING BUT NOT LIMITED TO ALL REMEDIES FOR THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE), AND THAT THE REMEDIES CONSTITUTE THE SOLE OBLIGATION OF TEN AND THE SOLE REMEDY OF CUSTOMER WITH RESPECT TO ANY BREACH OF TEN'S REPRESENTATIONS AND WARRANTIES, INCLUDING BUT NOT LIMITED TO THOSE ARISING FROM LATENT DEFECTS.

### **13. Proprietary information. Confidentiality.**

- 13.1. The furnishing of Products and Services by TEN may involve the use or furnishing of drawings, design, software, know-how, procedures, plans, equipment, information, or the like ("Information") which the Parties will consider to be proprietary and confidential.
- 13.2. Such Information furnished by TEN, and any and all of the trademarks, trade names, patents, copyrights, or other intellectual property rights used in connection with or embodied in the Products/Services are and shall remain the sole and exclusive property of TEN and/or its affiliated companies ("Hanwha Group") and shall be returned to TEN at its first request. At the time of furnishing of such Information, whether in written, graphic, electronic form, magnetic media or verbally, the Parties shall expressly designate by label, stamp, or by other written communication that the Information furnished is proprietary to TEN and/or Hanwha Group and confidential.
- 13.3. All Information shall be kept confidential by the Customer, its employees, agents or subcontractors, shall not be copied, altered, modified, manipulated or disclosed by any of them and shall not be used by them to compete against TEN. The Information may only be used for the purposes of the operation and maintenance of the Customer's equipment for which the Products and Services are provided.
- 13.4. For each item of the Information, the foregoing confidentiality restrictions shall expire in ten (10) years from the date of the disclosure of the Information to the other Party.
- 13.5. The restrictions shall not apply to any of the Information which appears in issued patents or publications or is known or becomes generally known to the public through no fault of the other Party or was already lawfully in possession of a Party.
- 13.6. TEN grants the Customer a non-exclusive and non-transferable royalty free right to use the technical Information provided by TEN under any Contract solely for (i) the purpose of a Product operation and maintenance during the life of the supplied Product or (ii) the purpose for which the Services were provided. This right does not extend to the right to modify, adapt, reverse engineer, disassemble, or decompile any piece of the Information, software or any portion of it or otherwise attempt to discover the source code of such software.
- 13.7. Customer grants to TEN a non-exclusive royalty free right to use any information provided by Customer under or in connection with the Contract for the purposes of performing its obligations under the Contract. Notwithstanding the foregoing, nothing herein shall prohibit TEN from aggregating and using such information with similar information from other clients and facilities; provided that TEN shall in no event disclose to any third party the name of the Customer.

### **14. Insurance**

Customer shall ensure that TEN and its subcontractors carrying out the Services are covered under the all-risk insurance policy applicable to the scope of Services and facilities of the Customer. Such cover shall be primary and name TEN and its subcontractors as an additional insured. TEN shall be entitled upon request to a copy of the policy in question. The deductible, if any, shall be at the Customer's cost.

### **15. Limitation of liability**

- 15.1. Except as otherwise stated in these GTC, TEN liability is limited only to direct damages which are result of TEN's shortcomings attributable directly to TEN in performance of its obligations.
- 15.2. Direct damages shall be considered reasonable costs which the Customer has made in order to:
- prevent or mitigate damages which could be expected as a result of the event giving rise to liability
  - assess the nature and extent of a damage and liability
  - obtain an out-of-court settlement
- 15.3. TEN liability under any Contract whether for one claim or series of related claims is limited to fifty (50%) percent of the amount already paid by the Customer under the relevant Contract (excluding any VAT and taxes) prior to an event giving rise to a claim.
- 15.4. Any other liability of TEN for damages and losses other than direct damages and losses is excluded.
- 15.5. In particular, liability of TEN for consequential, immaterial or indirect damages and losses is excluded.
- Consequential, immaterial or indirect damages and losses shall be damages and losses due to:
- delay (except as specifically indicated in these GTC)
  - business interruption or stagnation
  - loss of profits (whether direct or indirect)
  - loss of use
  - loss of revenue
  - loss of a contract or a deal
  - facilities or plant shut-down
  - reduced production
  - power blackout
  - loss of electronic data
  - discredited market reputation, whether or not foreseeable
- 15.6. Limitations and exclusions of liability set forth in these GTC shall not apply in case of (i) gross negligence or wilful misconduct of TEN's executive management or (ii) mandatory requirements of applicable statutory law
- 15.7. TEN is not responsible for any damage which is discovered after a date of expiration of its commercial warranty. Without prejudice to the statements in the previous sentence, any claim for compensation (other than claim brought under warranty obligations of TEN) expires if no written claim for compensation has been made by the Customer within three (3) months from the moment when the damage is first revealed.
- 15.8. The Customer shall defend, indemnify and hold TEN harmless against all third-party claims, irrespective of the grounds on which they are based, related to Products and Services supplied to the Customer by TEN, unless and insofar the Customer demonstrates that there is no connection between the third-party claim and any occurrence for which the Customer bears the risk.
- 15.9. Should the Customer issue a claim to TEN - on the basis of a claim taken over from a third party - for compensation of damages, in the causation of which TEN is directly or indirectly involved, TEN shall rely on the above-mentioned stipulations in this Article 15.
- 15.10. The above-mentioned stipulations also apply to the persons, who are in any way whatsoever involved in the fulfilment of TEN's obligations towards the Customer.

## **16. Use of trademark and publicity**

Customer and its subcontractors shall not, without the prior written consent of TEN :

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- a) use the name or any trade name, trademark or logo of TEN or any affiliate in any advertising or communications to the public in any format except as necessary to perform under any Contract;
- b) make publicity releases or announcements regarding any Contract, any order, offer or any related activities; or
- c) take any photographs, video or other recordings of TEN or any of its affiliates' property except when required by a Contract.

Customer shall cause its subcontractors to comply with these requirements.

## 17. Compliance

### 17.1. General provisions:

Customer shall conduct its business consistent with all applicable laws and regulations, which may in any way relate to the Products' import, sale or Services. At all times, the Customer shall maintain in effect the necessary registrations with any and all governmental agencies, commercial registries, chambers of commerce and other offices which may be required under local laws or regulations in order to conduct commercial activities. The Customer shall be responsible for all expenses incurred in connection with the operation of its business and its activities hereunder and for all acts, omissions and expenses of its officers, agents, employees and representatives.

### 17.2. Export Control Regulations:

Customer's obligations under the GTC and any Contract shall be at all times subject to the Export Control Regulations any amendments thereto. Customer shall fully comply with and keep itself informed on any relevant Export Control Regulations, and any amendments to such laws and regulations and shall not sell the Products in any manner or to any country or person contrary to Export Control Regulations. In addition, Customer shall comply with all of TEN's instructions in regard to Export Control Regulations, which may include for example to obtain appropriate end-user declaration.

Customer represents and warrants that it shall not use any Products, (including software and/or technology relating thereto) and deliverables related to the Services provided by TEN for the purposes of disturbing international peace and security, including (i) the design, development, production, stockpiling or any use of weapons of mass destruction such as nuclear, chemical or biological weapons or missiles, (ii) other military activities, or (iii) any use supporting these activities.

Customer also represents and warrants that it shall not sell, export, dispose of, license, rent, transfer, disclose or otherwise provide the Products (including software and/or technology relating thereto) and deliverables related to the Services to any third party whether directly or indirectly with knowledge or reason to know that the third party or any other party will engage in the activities described above. The Customer shall obtain the same representations and warranties from any third party to whom it sells, exports, disposes of, licenses, rents, transfers, discloses or otherwise provides the Products (including software and/or technology relating thereto).

### 17.3. Data Processing:

Customer agrees that TEN will collect, process and use personal data and other data disclosed by Customer in the course of the business relation with TEN for the purpose of (i) performing the Contract with Customer (ii) advertising and/or offering further Products and/or Services to the Customer and/or (iii) managing the business relationship with Customer.

Such data may include the following data categories of persons being employed or retained by Customer inter alia name, title, company, function within the company, business contact details (phone number, e-mail address, social media profile, etc.).

Within the limitation of the above described purpose, TEN can collect, process and use the above described personal data (i) by itself and/or through the use of affiliates or other external subcontractors and (ii) from countries within and/or outside the European Union or European

Economic Area. Customer shall ensure (e. g., if necessary, through consent declaration of the data subjects or other appropriate means available under the law) that TEN can use the above-described data for the above described purposes.

- 17.4. The Customer represent and warrants that neither Customer nor any of its affiliates has taken and neither will take any actions in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any government official (including any officer or employee of a government or government-controlled entity or instrumentality, or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or official thereof, or candidate for political office, all of the foregoing being referred to as "Government Officials") or to any other person while knowing that all or some portion of the money or value was or will be offered, given or promised to a Government Official for the purposes of obtaining or retaining business or securing any improper advantage or influencing official action.

No part of the payments received by Customer from TEN will be used for any purpose which would cause a violation of law, including, without limitation, anti-bribery laws of any country or jurisdiction, by the Customer.

- 17.5. The Customer shall indemnify, defend and hold TEN harmless against any and all loss, costs, expenses and liabilities (including reasonable attorney's fees) that result from the Customer's failure to comply with the provisions of this clause 17.

## **18. Force Majeure**

- 18.1. TEN shall not be liable for delay or non-performance of its obligations in Force Majeure events.
- 18.2. "Force Majeure" means the occurrence of an event or circumstance that prevents or impedes a Party from performing one or more of its contractual obligations under any Contract, if and to the extent that that Party proves: (a) that such impediment is beyond its reasonable control; and (b) that it could not reasonably have been foreseen at the time of the conclusion of the Contract; and (c) that the effects of the impediment could not reasonably have been avoided or overcome by the affected Party.
- 18.3. In the absence of proof to the contrary, the following events affecting a Party shall be presumed to fulfil conditions (a) and (b) under paragraph 1 of this clause: (i) war (whether declared or not), hostilities, invasion, act of foreign enemies, extensive military mobilisation; (ii) civil war, riot, rebellion and revolution, military or usurped power, insurrection, act of terrorism, sabotage or piracy; (iii) currency and trade restriction, embargo, sanction; (iv) act of authority whether lawful or unlawful, compliance with any law or governmental order, expropriation, seizure of works, requisition, nationalisation; (v) plague, epidemic, natural disaster or extreme natural event; (vi) explosion, fire, flood, hurricane, typhoons, earthquake, storm, destruction of equipment, prolonged break-down of transport, telecommunication, information system, energy or failure of other utility services; (vii) general labour disturbance such as boycott, strike and lock-out, go-slow, occupation of factories and premises; (viii) failure by TEN or its sub-contractors to obtain visa or work permit through no fault of TEN or its sub-contractors.
- 18.4. A party successfully invoking this clause is relieved from its duty to perform its obligations under the Contract and from any liability in damages or from any other contractual remedy for breach of Contract, from the time at which the impediment causes inability to perform, provided that the notice thereof is given without delay. If notice thereof is not given without delay, the relief is effective from the time at which notice thereof reaches the other Party. Where the effect of the impediment or event invoked is temporary, the above consequences shall apply only as long as the impediment invoked impedes performance by the affected Party.
- 18.5. Where the duration of the impediment invoked has the effect of substantially depriving the Parties of what they were reasonably entitled to expect under the Contract, either Party has the right to terminate the Contract by notification within a reasonable period to the other Party. Unless otherwise agreed, the Parties expressly agree that the Contract may be terminated by either Party

if the duration of the impediment exceeds 120 days. In case of such termination, TEN shall be entitled to all payments then due but unpaid on the date of termination.

## 19. Termination

19.1. Either Party shall be entitled to terminate any Contract in the event that the other Party:

- a) is in breach of any material obligation of the Contract and does not take reasonable steps to remedy its breach within 30 calendar days following receipt of a written notice, clearly describing the breach, from the non-defaulting Party.
- b) becomes the subject of liquidation, bankruptcy, suspension of payments or other insolvency proceedings, has a (silent) receiver appointed over any of its assets or undertakings, makes any arrangement or composition with its creditors, (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction) or is the subject of any similar arrangement, event or proceedings.

19.2. Termination by the Customer:

- a) Where the Customer has a right to terminate (in Dutch: ontbinden) the Contract pursuant to clause 19.1a) and the Customer has terminated the Contract by giving in time a written notice thereof, the maximum liability of TEN upon such termination shall be limited to the price of the relevant Contract giving rise to the termination. To the maximum extent permitted by applicable law, such rights of the Customer upon termination shall be to the exclusion of any other remedies that may be available to the Customer in case of termination or rescission.
- b) Unless otherwise agreed in any Contract, Customer may be entitled to terminate a Contract for convenience upon 30 (thirty) calendar days written notice to TEN. In this case Customer shall pay to TEN a full price agreed for the relevant Contract plus damages suffered by TEN due to lost profit, costs of any planned activities under the relevant Contract, cancellation of any related procurement contract and any related sub-contract.

19.3. Termination by TEN

Where TEN has a right to terminate (in Dutch: ontbinden) the Contract pursuant to clause 19.1a) and TEN has terminated the Contract by giving in time a written notice thereof, TEN shall be entitled to compensation described in clause 19.2b) plus additional costs and expenses (including but not limited to legal and advisory costs and expenses) incurred by TEN and arising out of such termination.

19.4. Upon termination of any Contract, Customer shall, within 30 (thirty) calendar days and at least within a period to be determined by mutual agreement, return at its own expense all TEN documents, tools and materials in its possession to TEN or to third parties to be designated by TEN.

## 20. Miscellaneous

20.1. No course of prior dealings between the Parties and no usage of the trade shall be relevant to supplement or explain any of the terms or conditions.

20.2. Except as otherwise stated in these GTC, the Parties are not authorised to transfer their rights and/or obligations resulting from a Contract to a third party or third parties. TEN can nevertheless use third parties (sub-contractors) for the execution of any Contract.

20.3. If one or more provisions in these GTC or in any Contract prove to be null and void, or are terminated by a court, then the other provisions in these GTC and in the Contract continue to have legal effect. The Parties will deliberate on the null and void or terminated provisions to come to a replacement provision. The replacing provision will not affect the goal and purpose of these GTC.

20.4. Provisions that in their nature are intended to continue to apply after the end of any Contract, will remain in effect after the end of the Contract. These provisions are in any case Commercial Warranty, Proprietary Information and Confidentiality, Limitation of TEN liability, indemnification provisions, Use of Trademark and publicity, Applicable law and competent court.

## 21. Applicable law and disputes resolution

21.1. These GTC, any TEN's offer, Contract or any other legal relationship between the Parties are governed by Dutch law.

21.2. Any dispute between the Parties will be resolved first by means of negotiations. If the Parties do not reach a solution, then the Parties are entitled to submit the dispute to the competent court in Arnhem, the Netherlands.

21.3. However, TEN shall have the right to submit any claim or dispute to a court that would have jurisdiction pursuant to the applicable rules of international law in the absence of the foregoing stipulation.

21.4. As an exception to above said, if Customer is domiciled outside the European Union, or in Iceland, Switzerland or Norway, all claims and disputes between the Parties arising out of or relating to these GTC, any offer, Contract or any other legal relationship between the Parties shall be finally settled in accordance with the Arbitration Rules of The Netherlands Arbitration Institute (Netherlands Arbitrage Institute). The arbitral tribunal shall be composed of one arbitrator. The place of arbitration shall be Amsterdam, The Netherlands. The arbitral procedure shall be conducted in the English language. The arbitral tribunal shall decide in accordance with the rules of Dutch law. Consolidation of the arbitral proceedings with other arbitral proceedings pending in The Netherlands, as provided for in Section 1046 of the Dutch Code of Civil Procedure, shall be excluded.

21.5. The applicability of the Vienna Sales Convention 1980 (CISG, or amendments or additions thereto) is excluded.

## 22. Final provisions

These GTC shall be effective as of 1 September 2023

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