GENERAL CONDITIONS FOR THE SUPPLY AND INSTALLATION OF MECHANICAL, ELECTRICAL AND ELECTRONIC PRODUCTS

Brussels, April 2024

PREAMBLE

1. These General Conditions shall apply when the parties agree thereto. Any modifications of or deviations from them must be agreed In Writing.

DEFINITIONS

2. In these General Conditions the following terms shall have the meanings hereunder assigned to them:

   - **"Contract":** the agreement In Writing between the parties concerning delivery of the Product and performance of the Works and all appendices, including agreed amendments and additions In Writing to the said documents;

   - **"Contract Price":** the agreed price for the Works, which shall be either a fixed price or, in case the parties have specifically agreed on a price revision clause, the revised price. If installation is to be carried out on a time basis and has not been completed, the Contract Price for the purposes of Clauses 22, 42 and 43 shall be the price for the Product with the addition of 10 per cent or of any other percentage that may have been agreed by the parties;

   - **"Gross Negligence":** a deliberate or reckless failure to take such care as is obviously required in the circumstances to avoid serious consequences for the other party;

   - **"In Writing":** communication by document signed by both parties or by letter, electronic mail, fax and by such other means as are agreed by the parties;

   - **"Product":** the object(s) to be supplied under the Contract, including software and documentation;

   - **"Site":** the place where the Product is to be installed, including as much of the surrounding area as is necessary for unloading, storage and internal transport of the Product and installation equipment;

   - **"Works":** the Product, installation of the Product and any other work to be carried out by the Contractor under the Contract. If the Works shall according to the Contract be taken over by separate sections intended to be used independently from each other, these Conditions shall apply to each section separately. The term "Works" shall then refer to the section in question.

PRODUCT INFORMATION/INSTRUCTIONS

3. All information and data contained in general product documentation and price lists, regardless of form, shall be binding only to the extent that they are by reference In Writing expressly included in the Contract.

4. The Contractor shall, not later than at the date of taking-over, provide free of charge information, drawings and instructions which are necessary to permit the Purchaser to commission, operate and maintain the Works. Such information, drawings and instructions shall be supplied as one paper copy of each and also electronically. The Contractor shall not be obliged to provide manufacturing drawings for the Product or for spare parts.

INTELLECTUAL PROPERTY AND CONFIDENTIALITY

5. All intellectual property rights in the Works, including in any embedded software, and in any technical information relating to the Works, shall rest with the Contractor or, in the appropriate case, with a third party which has licensed the Contractor to sublicense these rights. Subject to any limitations that may have been agreed between the third party and the Contractor, the Purchaser shall acquire a non-exclusive, perpetual and transferable right to use these intellectual property rights, but limited to the extent required by the purpose of the Contract. The Contractor shall not be obliged to provide the Purchaser with the source code or with updates for any embedded software, unless specifically agreed In Writing or required by law.

   This clause shall also apply when the Works and/or software has been specifically developed for the Purchaser, unless otherwise agreed In Writing.

6. Technical, commercial and financial information and information, which has been declared as confidential or which must by its very nature be deemed to be confidential, disclosed In Writing or orally by one party to the other, shall be treated confidentially. The information shall therefore not without the consent of the disclosing party In Writing be used for any other purpose than that for which it was provided. It may not, without the consent of the disclosing party In Writing, be transmitted, communicated or otherwise disclosed to a third party.

FACTORY ACCEPTANCE TESTS

7. Factory acceptance tests provided for in the Contract shall, unless otherwise agreed, be carried out at the place of manufacture during normal working hours.

   If the Contract does not specify the technical requirements, the tests shall be carried out in accordance with general practice in the appropriate branch of industry concerned in the country of manufacture.

8. The Contractor shall notify the Purchaser In Writing of these tests in sufficient time to permit the Purchaser to be represented at the tests. If the Purchaser is not represented, the test report shall be sent to the Purchaser and shall be accepted as accurate.

9. If the tests show the Product not to be in accordance with the Contract, the Contractor shall without delay remedy any deficiencies in order to ensure that the Product complies with the Contract. New tests shall then be carried out at the Purchaser's request, unless the deficiency was insignificant.

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10. The Contractor shall bear all costs for tests before shipment of the Product. The Purchaser shall however bear all travelling and living expenses for his representatives in connection with such tests.

PREPARATORY WORK AND WORKING CONDITIONS

11. The Contractor shall in good time provide drawings showing the manner in which the Product is to be installed, together with all information required for preparing suitable foundations, for providing access for the Product and any necessary equipment to the Site and for making all necessary connections to the Works.

12. The Purchaser shall in good time undertake preparatory work to ensure that the conditions necessary for installation of the Product and for the correct operation of the Works are fulfilled. This shall not apply to preparatory work which according to the Contract shall be performed by the Contractor.

13. The preparatory work referred to in Clause 12 shall be carried out by the Purchaser in accordance with the drawings and information provided by the Contractor under Clause 11. In any case the Purchaser shall ensure that the foundations are structurally sound. If the Purchaser is responsible for transporting the Product to the Site, he shall ensure that the Product is on the Site before the agreed date for starting the installation work.

14. The Purchaser shall ensure that the following conditions are satisfied:

a) The Contractor's personnel are able to start work in accordance with the agreed time schedule and to work during normal working hours. The Contractor shall be allowed to perform work outside normal working hours to the extent deemed necessary by him, but based on prior agreement In Writing between the Parties as regards the exact date and time;

b) he has, in good time before installation is started, informed the Contractor In Writing of all relevant safety regulations in force at the Site to be observed by the Contractor's personnel. Installation shall not be carried out in unhealthy or dangerous surroundings. All the necessary safety and precautionary measures shall have been taken before installation is started and shall be maintained during the time of installation;

c) the Contractor's personnel are able to obtain appropriate board and lodging near the Site and have access to internationally acceptable hygiene facilities and medical services;

d) he has made available to the Contractor free of charge at the proper time on the Site all necessary cranes, lifting equipment and equipment for transport on the Site, auxiliary tools, machinery, materials and supplies (including fuel, oils, grease, gas, water, electricity, steam, compressed air, heating and lighting), as well as the measuring and testing instruments of the Purchaser available on the Site. The Contractor shall specify In Writing his requirements in this respect at the latest one month before the agreed date for starting the installation work;

e) he has made available to the Contractor free of charge sufficient offices on the Site and if required, equipped with a proper and adequately secured digital infrastructure and internet facilities;

f) he has made available to the Contractor free of charge necessary storage facilities, providing protection against theft, loss, damage and deterioration of the Product, the tools and equipment required for installation and the personal effects of the Contractor's personnel;

g) the access routes to the Site are suitable for the required transport of the Product and the Contractor's equipment;

h) all necessary permits and other official authorisations for carrying out the installation work shall be available, insofar as these can only be obtained by the Purchaser. The Contractor shall assist by providing information and documentation that the Purchaser may reasonably request for obtaining such permits and authorisations.

15. Upon the Contractor's request in good time, the Purchaser shall make available to the Contractor, free of charge, such labour and operators as may be specified in the Contract or as may reasonably be required for the purpose of the Contract. The persons made available by the Purchaser under this clause shall provide their own tools. The Contractor shall not be liable for such labour provided by the Purchaser or for any acts or omissions of the persons concerned.

16. If the Contractor so requires, the Purchaser shall free of charge give all necessary assistance required for the import and re-export of the Contractor's equipment and tools, including assistance with customs formalities.

17. The Purchaser shall free of charge give all necessary assistance to ensure that the Contractor's personnel obtain, in good time, visas and any official entry, exit or work permits and (if necessary) tax certificates required in the Purchaser's country, as well as access to the Site.

18. The parties shall, no later than when the Contractor gives notice that the Product is ready for dispatch from the place of manufacture, each appoint a representative In Writing to act on their behalf during the work on the Site.

    The representatives shall be present on or near the Site during working hours. Unless otherwise specified in the Contract, the representatives shall be authorised to act on behalf of their respective party in all matters concerning the installation work. Wherever these General Conditions stipulate that a notice shall be given In Writing, the representative shall always be authorised to receive such notice on behalf of the party he represents.

19. The Contractor shall keep a site register in which he shall note any problems encountered, including any breach of safety regulations. He shall also note in this register any waiting time due to the Purchaser's failure to fulfil any of his obligations or due to other circumstances. This site register shall be updated daily and be available to the Purchaser.

PURCHASER'S DEFAULT

20. If the Purchaser anticipates that he will be unable to accept delivery of the Product at the agreed time for delivery or to fulfil in time his obligations necessary for carrying out installation, including complying with the conditions specified in Clauses 12-17, he shall forthwith notify the Contractor In Writing, stating the reason and, if possible, the time when he will be able to carry out his obligations.

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21. Without prejudice to the Contractor's rights under Clause 22, if the Purchaser fails to accept delivery of the Product at the agreed time for delivery or to fulfil, correctly and in time, his obligations necessary for carrying out installation, including to comply with the conditions specified in Clauses 12-17, the following shall apply:

a) The Contractor may at his own discretion choose to carry out or employ a third party to carry out the Purchaser's obligations or otherwise take such measures as are appropriate under the circumstances in order to avoid or alleviate the effects of the Purchaser's default.

b) The Contractor may suspend in whole or in part his performance of the Contract. He shall forthwith notify the Purchaser In Writing of such suspension.

c) If the Product has not yet been delivered to the Site, the Contractor shall arrange for storage of the Product at the Purchaser's risk. The Contractor shall also, if the Purchaser so requires, insure the Product.

d) The Purchaser shall pay any part of the Contract Price which, but for the default, would have become due.

e) The Purchaser shall reimburse the Contractor for any costs resulting from items a) and c) and for any other costs not covered by Clause 46 or 47, which are reasonably incurred by the Contractor as a result of the Purchaser's default.

22. If taking-over is prevented by the Purchaser's default as referred to in Clause 21 and this is not due to any of the circumstances as mentioned in Clause 76, the Contractor may also by notice In Writing require the Purchaser to remedy his default within a final reasonable period.

    If, for any reason which is not attributable to the Contractor and not the result of any of the circumstances mentioned in Clause 76, the Purchaser fails to remedy his default within such period, the Contractor may by notice In Writing terminate the Contract in whole or in part. The Contractor shall then be entitled to compensation for the loss he suffers by reason of the Purchaser's default, including any consequential and indirect loss. The compensation shall not exceed that part of the Contract Price which is attributable to that part of the Works in respect of which the Contract is terminated.

LAWS, REGULATIONS AND RULES

23. The Contractor shall ensure that the Works are carried out and are in accordance with any laws, regulations and rules which are applicable to the Works. If required by the Contractor, the Purchaser shall provide the relevant information on these laws, regulations and rules In Writing.

24. The Contractor shall carry out any variation work necessary to comply with changes in laws, regulations and rules, referred to in Clause 23, or in their generally accepted interpretation, occurring between the date of submission of the tender and taking-over. The Purchaser shall bear the extra costs and other consequences resulting from such changes, including variation work.

25. The Contractor shall be compensated for any time spent and costs made for any variation work at the rates and prices as normally charged by the Contractor. Before implementing the variations, the Contractor shall send the Purchaser an estimate of the impact on time and costs.

VARIATIONS

26. The Purchaser is entitled to request variations to the scope, design and construction of the Works until the Works have been taken over. The Contractor may suggest such variations In Writing.

27. Requests for variations shall be submitted to the Contractor In Writing and shall contain an exact description of the variation.

28. As soon as possible after receipt of a request for a variation, the Contractor shall inform the Purchaser In Writing on whether the variation can be carried out and if so, send the Purchaser a quotation for the resulting alteration to the Contract Price, the time for taking-over and other terms of the Contract. The quotation shall state a final date for acceptance thereof.

    If the quotation of the Contractor is not accepted at the final date for acceptance, the execution of the Contract shall continue without implementing the requested variation.

PASSING OF RISK

29. The risk of loss of or damage to the Product shall pass to the Purchaser in accordance with any agreed trade term, which shall be construed in accordance with the INCOTERMS® in force at the date of formation of the Contract. If no trade term has been specifically agreed, delivery of the Product shall be Free Carrier (FCA) at the place of manufacture of the Product. If, in case of delivery Free Carrier, the Contractor, at the request of the Purchaser, undertakes to send the Product to the Site, the risk will nevertheless pass to the Purchaser as soon as the Product is handed over to the first carrier.

    Any risk of loss of or damage to other parts of the Works shall rest with the Purchaser.

    Any loss of or damage to the Works shall however be at the risk of the Contractor, if and insofar as such loss or damage results from the Contractor's negligence.

    Partial delivery shall not be permitted, unless otherwise agreed In Writing.

SITE ACCEPTANCE TESTS

30. When installation has been completed site acceptance tests shall, unless otherwise agreed, be carried out to determine whether the Works are as required for taking-over according to the Contract.

    The Contractor shall notify the Purchaser In Writing that the Works are ready for taking-over. He shall in this notice give a date for site acceptance tests, giving the Purchaser sufficient time to prepare for and be represented at these tests.

    The Purchaser shall bear all costs of site acceptance tests. The Contractor shall however bear all costs relating to his personnel and his other representatives.

31. The Purchaser shall provide free of charge any power, lubricants, water, fuel, raw materials and other materials required for the site acceptance tests and for final adjustments in preparing for these tests. He shall also install free of charge any equipment and

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provide any labour or other assistance necessary for carrying out the site acceptance tests.

32. If, after having been notified in accordance with Clause 30, the Purchaser fails to fulfil his obligations under Clause 31 or otherwise prevents the site acceptance tests from being carried out, the tests shall be regarded as having been satisfactorily completed at the starting date for site acceptance tests stated in the Contractor's notice.

33. The site acceptance tests shall be carried out during normal working hours. If the Contract does not specify the technical requirements, the tests shall be carried out in accordance with general practice in the appropriate branch of industry concerned in the Purchaser's country.

34. The Contractor shall prepare a report of the site acceptance tests. This report shall be sent to the Purchaser. If the Purchaser has not been represented at the site acceptance tests after having been notified in accordance with Clause 30, the test report shall be accepted as accurate.

35. If the site acceptance tests show the Works not to be in accordance with the Contract, the Contractor shall without delay remedy the deficiencies. If the Purchaser so requires In Writing without delay, new tests shall be carried out in accordance with Clauses 30-34. This shall not apply when the deficiency does not affect the efficiency of the Works.

TAKING-OVER

36. Taking-over of the Works shall be considered to take place:

a) when the site acceptance tests have been satisfactorily completed or are regarded under Clause 32 as having been satisfactorily completed, or

b) where the parties have agreed not to carry out site acceptance tests, when the Purchaser has received a Contractor's notice In Writing that the Works have been completed, unless the Purchaser within seven days after this notice substantiates that the Works are not as required for taking-over according to the Contract.

Minor deficiencies which do not affect the efficiency of the Works shall not prevent taking-over.

The Contractor's obligation to install the Product at the Site is fulfilled when the Works are taken over pursuant to this Clause 36, notwithstanding his obligation to remedy any remaining minor deficiencies.

37. The Purchaser is not entitled to use the Works or any part thereof before taking-over. If the Purchaser does so without the Contractor's consent In Writing, the Works shall be deemed to have been taken over. The Contractor is then relieved of his duty to carry out site acceptance tests.

38. As soon as the Works have been taken over in accordance with Clause 36 or 37, the period referred to in Clause 58 shall start to run. The Purchaser shall, at the Contractor's request In Writing, issue a certificate stating when the Works have been taken over. The Purchaser's failure to issue a certificate shall not affect taking-over according to Clauses 36 and 37.

CONTRACTOR'S DELAY

39. If the parties, instead of specifying the date for taking-over, have specified a period of time within which taking-over shall take place, such period shall start to run as soon as the Contract is entered into and all agreed preconditions to be met by the Purchaser have been fulfilled, such as official formalities, payments due at the formation of the Contract and securities.

40. If the Contractor anticipates that he will not be able to fulfil his obligations for taking-over before or at the time for taking-over, he shall forthwith notify the Purchaser thereof In Writing, stating the reason and, if possible, the time when taking-over can be expected.

If the Contractor fails to give such notice, the Purchaser shall be entitled to compensation for any additional costs which he incurs and which he could have avoided had he received such notice.

41. The Contractor shall be entitled to an extension of the time for taking-over if delay occurs:

a) due to any of the circumstances referred to in Clause 76, or

b) as a result of variation work under Clause 24, or Clauses 26-28, or

c) as a result of suspension under Clauses 21, 50 or 79, or

d) by an act or omission on the part of the Purchaser or any other circumstances attributable to the Purchaser.

The extension shall be as necessary having regard to all the relevant circumstances. This provision applies regardless of whether the reason for the delay occurs before or after the agreed time for taking-over.

42. If the Works are not completed at the agreed time for taking-over, the Purchaser shall be entitled to liquidated damages from the date on which taking-over should have taken place.

The liquidated damages shall be payable at a rate of 0.5 per cent of the Contract Price for each commenced week of delay. The liquidated damages shall not exceed 7.5 per cent of the Contract Price.

If only part of the Works is delayed, the liquidated damages shall be calculated on that part of the Contract Price which is attributable to such part of the Works as cannot in consequence of the delay be used as intended by the parties.

The liquidated damages become due at the Purchaser's demand In Writing, but not before taking-over has taken place or the Contract is terminated under Clause 43.

The Purchaser shall forfeit his right to liquidated damages if he has not lodged a claim In Writing for such damages within six months after the time when taking-over should have taken place.

43. If the delay is such that the Purchaser is entitled to maximum liquidated damages under Clause 42 and if the Works are still not ready for taking-over, the Purchaser may In Writing demand completion of the Works within a final reasonable period which shall not be less than one week.

If the Contractor does not complete the Works within such final period and this is not due to any circumstance which is attributable to the Purchaser, then the Purchaser may by notice

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In Writing to the Contractor terminate the Contract in respect of such part of the Works as cannot in consequence of the Contractor's failure be used as intended by the parties.

If the Purchaser terminates the Contract he shall be entitled to compensation for the loss he suffers as a result of the Contractor's delay, including any consequential and indirect loss. The total compensation, including the liquidated damages which are payable under Clause 42, shall not exceed 15 per cent of that part of the Contract Price which is attributable to the part of the Works in respect of which the Contract is terminated.

The Purchaser shall also have the right to terminate the Contract by notice In Writing to the Contractor if it is clear from the circumstances that there will occur a delay in taking-over of the Works which under Clause 42 would entitle the Purchaser to maximum liquidated damages. In case of termination for this reason, the Purchaser shall be entitled to maximum liquidated damages and compensation under the third paragraph of this Clause 43.

44. Liquidated damages under Clause 42 and termination of the Contract with limited compensation under Clause 43 shall be the only remedies available to the Purchaser in case of delay on the part of the Contractor. All other claims against the Contractor based on such delay shall be excluded, except where the Contractor has been guilty of Gross Negligence.

PAYMENT

45. Payment shall be made within thirty days after the date of the invoice. Unless otherwise agreed, the Contract Price shall be invoiced as follows:

a) when installation is to be carried out on a time basis:

- one third of the agreed price for the Product at the formation of the Contract,
- the remaining part on delivery of the Product in accordance with Clause 29.

Payment for installation shall be made against monthly invoices.

b) when installation is included in a lump sum Contract Price:

- 30 per cent of the Contract Price at the formation of the Contract,
- 60 per cent of the Contract Price on delivery of the Product in accordance with Clause 29,
- the remaining part of the Contract Price on taking-over.

46. When installation is to be carried out on a time basis the following items shall be separately charged:

a) all reasonable travelling expenses incurred by the Contractor in respect of his personnel and the transport of their equipment and personal effects in accordance with the specified method and class of travel where these are specified in the Contract;

b) cost of board and lodging and other living expenses, including any appropriate allowances of the Contractor's personnel for each day's absence from their homes, including non-working days and holidays. The daily allowances shall be payable even during incapacity caused by sickness or accident;

c) the time worked, which shall be calculated by reference to the number of hours certified as worked in the time-sheets signed by the Purchaser. Overtime and work on Sundays, holidays and at night shall be charged at special rates. The rates shall be as agreed in the Contract or, failing agreement, as normally charged by the Contractor. Save as otherwise provided, the hourly rates cover the normal wear and tear of the Contractor's tools and light equipment;

d) time necessarily spent on:

- preparation and formalities incidental to the outward and homeward journeys of the Contractor's personnel,
- the outward and homeward journeys and other journeys to which the personnel are entitled in accordance with current law, regulations or collective agreements in the Contractor's country,
- daily travel of the Contractor's personnel between lodgings and the Site, if and as far as it exceeds half an hour each way and there are no suitable lodgings available closer to the Site;

e) any expenses incurred by the Contractor in accordance with the Contract in connection with the provision of equipment by him, including where appropriate a charge for the use of the Contractor's own heavy equipment;

f) any taxes or dues levied on the invoice and payable by the Contractor in the country where installation takes place;

g) any costs which could not reasonably be foreseen by the Contractor and which are caused by a circumstance which is not attributable to the Contractor;

h) any extra costs resulting from the applicability of mandatory rules of the Purchaser's country in the social field;

i) any costs, expenses and time spent resulting from extra work which is not attributable to the Contractor.

If these costs are time-related, they shall be charged at the rates referred to in this Clause 46 under c).

47. When installation is to be carried out for a lump sum, the Contract Price shall be deemed to include all the items mentioned in Clause 46, a) through e). Any items mentioned in Clause 46, f) through i), shall be deemed to be excluded from the Contract Price and shall therefore be charged separately. If these costs are time-related, they shall be charged at the rates referred to in Clause 46 under c).

48. If, both in case of installation on a time basis and when installation is included in a lump sum, installation is delayed due to a cause which is not attributable to the Contractor and not due to any of the circumstances referred to in Clause 76, the Purchaser shall compensate the Contractor for any resulting additional costs, including but not limited to:

a) waiting time and time spent on extra journeys;

b) costs and extra work resulting from the delay, including removing, securing and setting up installation equipment;

c) additional costs, including costs as a result of the Contractor having to keep his equipment at the Site for a longer time than expected;

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d) additional costs for journeys and board and lodging for the Contractor's personnel;

e) additional financing costs and costs of insurance;

f) other documented costs incurred by the Contractor as a result of such delays.

If these costs are time-related, they shall be charged at the rates referred to in Clause 46 under c).

49. Whatever the means of payment used, payment shall not be deemed to have been effected before the Contractor's account has been irrevocably credited for the amount due.

50. If the Purchaser fails to pay by a stipulated date, the Contractor shall be entitled to interest from the day on which payment was due and to compensation for recovery costs. The rate of interest shall be as agreed between the parties or otherwise 8 percentage points above the interest rate of the European Central Bank for the main refinancing operations (MRO). The compensation for recovery costs shall be 1 per cent of the amount for which interest for late payment becomes due.

In case of late payment or in case the Purchaser fails to give an agreed security by the stipulated date the Contractor may, after having notified the Purchaser In Writing, suspend his performance of the Contract until he receives payment or, where appropriate, until the Purchaser gives the agreed security.

If the Purchaser has not paid the amount due within three months, the Contractor shall be entitled to terminate the Contract by notice In Writing to the Purchaser and, in addition to the interest and compensation of recovery costs according to this clause, to claim compensation for the costs and loss he incurs, including indirect and consequential damages.

RETENTION OF TITLE

51. The Product shall remain the property of the Contractor until paid for in full, including payment for installation of the Product, to the extent that such retention of title is valid under the relevant law.

The Purchaser shall at the request of the Contractor assist him in taking any measures necessary to protect the Contractor's title to the Product.

The retention of title shall not affect the passing of risk under Clause 29.

LIABILITY FOR DAMAGE BEFORE TAKING-OVER

52. The Contractor shall be liable for damage to the Purchaser's property occurring before taking-over of the Works only if it is proved that such damage was caused by negligence on the part of the Contractor or anyone for whom he is responsible in connection with the performance of the Contract. The Contractor shall however under no circumstances be liable for loss of production, loss of profit or any other consequential or indirect loss.

53. In case the Contractor is not liable for damage to the Works, the Purchaser may still require the Contractor to remedy the damage, be it at the Purchaser's cost.

LIABILITY FOR DEFECTS

54. The Works shall be in conformity with the Contract. Pursuant to the provisions of this clause and Clauses 55-69, the Contractor shall remedy any defect in or nonconformity of the Works (hereinafter termed defect) resulting from faulty design, materials or workmanship.

55. The Contractor shall not be liable for defects arising out of a design, materials or production methods provided, stipulated or specified by the Purchaser.

56. The Contractor shall only be liable for defects which appear under the conditions of operation provided for in the Contract and under proper use of the Works.

57. The Contractor shall not be liable for defects caused by circumstances which arise after the risk has passed to the Purchaser, e.g. defects due to faulty or incorrect maintenance or repair by the Purchaser or to any alteration carried out by the Purchaser or by a third party on behalf of the Purchaser. The Contractor shall neither be liable for normal wear and tear nor for deterioration.

58. The Contractor's liability shall be limited to defects in the Works which appear within a period of one year from taking-over. If the use of the Works exceeds that which is agreed, this period shall be reduced proportionately. If taking-over has been delayed for reasons which are attributable to the Purchaser, the Contractor's liability for defects shall not, except as stated in Clause 59, be extended beyond 18 months after delivery of the Product.

59. When a defect in a part of the Works has been remedied, the Contractor shall be liable for defects in the repaired part or in the part in replacement under the same terms and conditions as those applicable to the original Works for a period of one year. For the remaining parts of the Works the period mentioned in Clause 58 shall be extended only by a period equal to the period during which and to the extent that the Works could not be used as a result of the defect.

The Contractor shall not be liable for defects in any part of the Works for more than one year from the end of the liability period referred to in Clause 58 or from the end of any other liability period agreed upon by the parties.

60. The Purchaser shall without undue delay notify the Contractor In Writing of any defect which appears. The notice shall contain a description of the defect. Such notice shall under no circumstances be given later than two weeks after the expiry of the period given in Clause 58 or the extended period(s) under Clause 59, where applicable.

If the Purchaser fails to notify the Contractor In Writing of a defect within the time limits set forth in the first paragraph of this clause, he shall lose his right to have the defect remedied and any other rights in respect of the defect.

Where the defect is such that it may cause damage, the Purchaser shall immediately notify the Contractor In Writing. The Purchaser shall bear the risk of damage to the Works resulting from his failure so to notify. The Purchaser shall take reasonable measures to minimise damage and shall in that respect comply with instructions of the Contractor.

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61. On receipt of the notice under Clause 60 the Contractor shall at his own cost remedy the defect without undue delay, as stipulated in Clauses 54-69. The time for remedial work shall be chosen in order not to interfere unnecessarily with the Purchaser's activities.

    Remedial work shall be carried out at the Site, unless the Contractor deems it more appropriate, having regard to the interests of both parties, that the defective part or the Product is sent to him or a destination specified by him.

    Where remedial work is carried out at the Site, Clauses 14-17 and 52 shall apply correspondingly.

    If the defect can be remedied by replacement or repair of a defective part and if dismantling and re-installation of the part do not require special knowledge, the Contractor may demand that the defective part is sent to him or a destination specified by him. In such case the Contractor shall have fulfilled his obligations in respect of the defect when he delivers a duly repaired part or a part in replacement to the Purchaser.

62. The Purchaser shall at his own expense provide safe access to the Works and arrange for any intervention in equipment other than the Works, to the extent that this is necessary to remedy the defect.

63. Unless otherwise agreed, necessary transport of the Product or parts thereof to and from the Contractor in connection with the remedying of defects for which the Contractor is liable shall be at the risk and expense of the Contractor. The Purchaser shall follow the Contractor's instructions regarding such transport.

64. Unless otherwise agreed, the Purchaser shall bear any additional costs which the Contractor incurs for remedying the defect caused by the Works being located in a place other than the Site.

65. Defective parts which have been replaced shall be made available to the Contractor and shall be his property.

66. If the Purchaser has given such notice as mentioned in Clause 60 and no defect is found for which the Contractor is liable, the Contractor shall be entitled to compensation for the costs he incurs as a result of the notice.

67. If the Contractor does not fulfil his obligations under Clause 61, the Purchaser may by notice In Writing fix a final reasonable period for fulfilment of the Contractor's obligations, which shall not be less than one week.

    If the Contractor fails to fulfil his obligations within such final period, the Purchaser may himself undertake or employ a third party to undertake necessary remedial work at the risk and expense of the Contractor, provided the Purchaser or third party does so in a professional manner.

    Where successful remedial work has been undertaken by the Purchaser or a third party, reimbursement by the Contractor of reasonable costs incurred by the Purchaser shall be in full settlement of the Contractor's liabilities for the said defect.

68. Where the defect has not been successfully remedied, as stipulated under Clause 67:

a) the Purchaser shall be entitled to a reduction of the Contract Price in proportion to the reduced value of the Works, provided that under no circumstances shall such reduction exceed 15 per cent of the Contract Price, or

b) where the defect is so substantial as to significantly deprive the Purchaser of the benefit of the Contract as regards the Works or a substantial part of it, the Purchaser may terminate the Contract by notice In Writing to the Contractor in respect of such part of the Works as cannot in consequence of the defect be used as intended by the parties. The Purchaser shall then be entitled to compensation for any loss, including any consequential and indirect loss, up to a maximum of 15 per cent of that part of the Contract Price which is attributable to the part of the Works in respect of which the Contract is terminated.

69. Save as stipulated in Clauses 54-68, the Contractor shall not be liable for defects. In consequence, the Contractor shall not be liable for any other loss the defect may cause, including loss of production, loss of profit and other indirect loss. This limitation of the Contractor's liability shall not apply if he has been guilty of Gross Negligence.

LIABILITY FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS

70. Unless otherwise agreed, the Contractor shall, in accordance with this clause and Clauses 71–74, be liable towards the Purchaser for the Works infringing patents, copyrights or any other intellectual property rights of a third party in the country where the Site is located. The Contractor shall in such case indemnify the Purchaser and hold the Purchaser harmless against claims of third parties, provided that such claims are confirmed as valid by a final award or a settlement approved by the Contractor. The Contractor shall however not be liable for the Purchaser's loss of production, loss of profit, loss of use and loss of contracts, unless the Contractor has been guilty of Gross Negligence.

71. The Contractor shall have no liability for infringement of intellectual property rights arising out of:

    - the Works being used elsewhere than in the country where the Site is located;
    - the Works being used otherwise than agreed or in a way the Contractor could not have foreseen;
    - the Works being used together with equipment or software not supplied by the Contractor, or
    - a design or construction stipulated or specified by the Purchaser.

72. The Contractor shall only be liable if the Purchaser notifies the Contractor In Writing without delay of any claim as referred to in Clause 70 which he receives and allows the Contractor to decide how the claim shall be dealt with.

    Defense against claims referred to in Clause 70 shall be for the Contractor's account. The Contractor shall compensate the Purchaser for any amounts the latter is obliged to pay under a final award or a settlement approved by the Contractor.

73. Infringement of intellectual property rights shall, at the Contractor's discretion, be remedied by:

    - providing the right for the Purchaser to use the Works,
    - adjusting the Works so that the infringement ceases, or

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- by replacing the Product with another product, which can be used without infringing applicable intellectual property rights.

74. If the Contractor fails to remedy the infringement in accordance with Clause 73 without undue delay, Clauses 67-69 shall apply.

ALLOCATION OF LIABILITY FOR DAMAGE CAUSED BY THE WORKS

75. The Contractor shall not be liable for any damage to property caused by the Works after taking-over and whilst the Works are in the possession of the Purchaser. Nor shall the Contractor be liable for any damage to products manufactured by the Purchaser or to products of which the Purchaser's products form a part.

    If the Contractor incurs liability towards any third party for such damage to property as described in the preceding paragraph, the Purchaser shall indemnify, defend and hold the Contractor harmless.

    If a claim for damage as described in this clause is lodged by a third party against one of the parties, the latter party shall forthwith inform the other party thereof In Writing.

    The Contractor and the Purchaser shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal examining claims for damages lodged against one of them on the basis of damage allegedly caused by the Works. The liability between the Contractor and the Purchaser shall however be settled in accordance with Clause 81.

    The limitation of the Contractor's liability in the first paragraph of this clause shall not apply where the Contractor has been guilty of Gross Negligence.

FORCE MAJEURE

76. Either party shall be entitled to suspend performance of his obligations under the Contract to the extent that such performance is impeded or made unreasonably onerous by force majeure, meaning any of the following circumstances: industrial disputes and any circumstance beyond the control of the parties, such as fire, war, extensive military mobilization, insurrection, requisition, seizure, embargo, restrictions in the use of power, currency and import or export restrictions, epidemics, natural disasters, extreme natural events, terrorist acts and defects or delays in deliveries by sub-contractors caused by any such circumstance referred to in this clause.

    A circumstance referred to in this clause, whether occurring prior to or after the formation of the Contract, shall give a right to suspension only if its effect on the performance of the Contract could not be foreseen at the time of the formation of the Contract.

77. The party claiming to be affected by force majeure shall notify the other party In Writing without delay on the intervention and on the cessation of such circumstance. If a party fails to give such notice, the other party shall be entitled to compensation for any additional costs which he incurs and which he could have avoided had he received such notice.

    If force majeure prevents the Purchaser from fulfilling his obligations, he shall compensate the Contractor for costs which the Contractor incurs in storing, securing and protecting the Works and avoiding unreasonable interference with his other activities.

78. Regardless of what might otherwise follow from these General Conditions, either party shall be entitled to terminate the Contract by notice In Writing to the other party if performance of the Contract is suspended under Clause 76 for more than six months.

ANTICIPATED NON-PERFORMANCE

79. Each party shall be entitled to suspend the performance of his obligations under the Contract where it is clear from the circumstances that the other party is not going to perform his obligations. A party suspending his performance of the Contract shall forthwith notify the other party thereof In Writing.

CONSEQUENTIAL LOSSES

80. Save as otherwise stated in these General Conditions or in case of Gross Negligence, there shall be no liability for either party towards the other party for loss of production, loss of profit, loss of use, loss of contracts or for any other consequential or indirect loss whatsoever, whether the loss was foreseeable or not.

DISPUTES AND APPLICABLE LAW

81. All disputes arising out of or in connection with the Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

82. The Contract shall be governed by the substantive law of the Contractor's country.

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