

# GENERAL CONDITIONS for the purchase of plants, plant components and services

(GCC/LTG 06/05)

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### 1. DEFINITIONS

#### 1.1 The following definitions shall apply in this General commercial Conditions:

LTG	= legal entity concluding the Contract (placing the Order; company name and address as per purchasing order) with the Contractor.
Contractor	= legal entity under obligation to perform the Supplies and Services according to the Contract.
Final Customer	= LTG's customer to whom the LTG has to supply the Plant.
Plant	= the technical or contractual complex to be supplied to the Final Customer into which the Supplies and Services of the Contractor are to be integrated.
Final Customer Contract	= the contract between the Final Customer and LTG for the supply of the Plant.
Order	= Contract = the contract between LTG and the Contractor for the Supplies and Services to be performed by the Contractor.
Supplies/Services	= all supplies and services to be performed by the Contractor according to the Contract. The terms Service and/or Services on their own are also to be understood to have the same meaning.

#### 1.2 With reference to step-by-step take over of a plant or parts thereof, the following definitions shall apply:

Completion of Erection	= the satisfactory conclusion of cold tests which are only considered to be complete when the individual units as well as the fully interconnected Plant have been tested without load, and all equipment and parts thereof, including controls and safety installations have been checked and appropriately adjusted for nominal rating, and all regulatory systems have been checked and preadjusted.
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Start of Trial Run	= Start Up = Start of Hot Tests = putting into operation of the fully interconnected Plant under normal operating conditions.
Performance Test	= the operating of the Plant under continuous full load during a time period specified in the Final Customer Contract.
Successful Performance Test	= a performance test that has demonstrated the achievement of all specified performance parameters of the Plant and confirms that the Plant can be operated according to the Final Customer Contract provided the Supplies/Services comply with the requirements of the Contract and are free from defects.
Acceptance	= Take over = the Final Customer's written confirmation that the whole Plant which comprises the Contractor's Supplies and Services has been completed in accordance with the Final Customer Contract and is free from defects. The proof that all performance data (e.g. capacity, quality of the product, consumption, emissions) have been achieved in a Performance Test, shall form an integral part of the Acceptance procedure.

## 2. GENERAL

### 2.1 Significance of Contractor's Supplies and Services:

The Supplies and Services of the Contractor will become part of a complex Plant to be erected. Difficulties with individual Supplies/Services could cause disturbance to the organization of the whole project which normally results in additional cost, e.g. in connection with delays affecting the project schedule, claims of third parties, disturbance of logistics, delayed Acceptance of the Plant by the Final Customer, idle time, etc. The financial consequences would be particularly serious with Plants to be erected overseas. The Contractor shall therefore exert its utmost care in the fulfillment of its Contract. This includes but is not limited to the responsibility for collecting all the information required to ensure due completion of the Order, in particular with regard to transport and conditions at site and to the integration of its Supplies and Services into the Plant.

### 2.2 Quality Assurance (QA):

The Contractor undertakes to apply the principles of quality assurance as per ISO-standards 9001 Revision 2000 for the execution of its scope of Supplies and Services and to impose the same obligation on its subcontractors. LTG and the Final Customer shall be entitled to audit the Contractor's and its subcontractors QA-systems, the QA-regulations and the QA-plans at any time.

2.3 **Validity of the General Commercial Conditions:**  
These General Commercial Conditions shall govern the relationship between the Contractor and LTG unless a deviation from these conditions is specifically stated in the individual Order. In case of agreement on these conditions, any other purchasing conditions (e.g. printed on the back of the purchase-order form) shall be null and void.

The Contractor's conditions (offers, sales conditions) shall only apply if explicitly accepted by LTG and confirmed in writing. In any Order placed by LTG, references to quotations shall under no circumstances imply LTG's acceptance of the Contractor's conditions.

These General Commercial Conditions shall be considered accepted with the commencement of the execution of the Order by the Contractor.

### 2.4 Validity of statements:

Any statement on behalf of LTG regarding Orders or amendments or additions thereto shall only be legally binding on LTG if they have been issued in writing or by telefax by the purchasing department in charge. Statements of other persons are valid only if the purchasing department in charge has been advised immediately and has confirmed the matter in writing. Verbal agreements shall be confirmed in writing by the responsible purchasing department of LTG before they can be considered to be legally binding. This obligation to confirm and have confirmed verbal agreements in writing can only be over-turned by a written agreement between the Contractor and LTG.

The only exceptions are:

- The taking up of options concerning packing and transport by issuing definite shipping instructions.
- Specific calls on general orders (including electronically conveyed calls).

### 2.5 Clarification of inconsistencies:

In the event of any inconsistency in the terms of the Contract between the Contractor and LTG, the following order of precedence shall apply:

- the written order (in form of a letter, telefax or electronically conveyed);
- the annexes mentioned in the written order, particularly the Minutes of Meetings including the annexes contained in them;
- these General Commercial Conditions including the Annexes thereto.

If this order of precedence does not give clarification, best suitability of the Contractor's Supplies and Services for the particular purpose intended shall be decisive as far as the scope of Supplies and Services is concerned.

Should the Contractor not be clear about the scope of its commitments, the Contractor shall immediately contact LTG for clarification. The Contractor undertakes to immediately inform LTG of any inconsistencies in the specification.

Headings serve for guidance only and shall have no bearing on the interpretation of the respective clause.

### 2.6 Rights and remedies under law:

Nothing contained in these GCC shall diminish LTG's

rights and remedies under law.

### 3. PRICES

#### 3.1 Definition of prices:

Prices given in the Order are fixed prices which cover all the Contractor's expenditure related to its Supplies and Services. This includes particularly all cost for packing, taxes (excluding VALUE ADDED TAX), customs fees and other dues in connection with the fulfillment of the Supplies and Services in the countries where these are actually carried out. Prices are exclusive of VALUE ADDED TAX. LTG shall only be held liable for such cost arising from the execution of an Order which is clearly specified in the Order as being LTG's liability. For possible amendments, additions to Orders and Orders for spare and wear parts the conditions of the main Order shall apply.

#### 3.2 Basic of prices:

Unless stipulated otherwise in the Order, the prices shall be quoted Free Carrier (FCA) delivery address of the Contractor according to INCOTERMS 2000. Such price shall be inclusive of all costs for related documentation, technical inspection, painting, corrosion protection, marking, etc. For supplies to foreign countries, export customs clearance (with Contractor's own documentation) shall also be the Contractor's responsibility and at its own expense.

### 4. TERMS OF PAYMENT

#### 4.1 Accounting:

Invoices shall be submitted to LTG together with all necessary information for identification, such as Order No., etc. in 3 copies.

Contractors from a member state of the European Union shall indicate in the invoices all information asked by law concerning tax relief and the movement of the goods.

#### 4.2 Payment:

Payment of instalments agreed upon shall be made according to the agreed payment terms after receipt of an auditable invoice and after all requirements set out in the Order, including but not limited to due delivery of documentation, have been met.

Payment shall not be deemed to imply any acceptance of Contractor's Supplies and Services, nor shall it be construed as a waiver by LTG of any right to claim for the proper fulfillment of the Contract and/or warranties, nor of any right to guarantees, claim damages, penalties, etc.

#### 4.3 Retention:

LTG shall be entitled to retain agreed retention monies in the sum of 10% of the total Contract value (if not otherwise agreed upon in the Order) as a non-interest bearing security to cover any claims for the proper fulfillment of the Contract, guarantee or warranty claims, or claims for damages, up to 45 days after the termination of the guarantee period. The same such deduction can be substituted by the Contractor by an acceptable, free of charge, abstract and irrevocable bank guarantee of a first class bank.

#### 4.4 Final invoice:

The last payment shall not be effected prior to the Contractor's presentation of a final invoice concerning all the Supplies and Services performed by the Contractor and all claims connected therewith. By presenting the final invoice the Contractor declares that any and all claims in connection with the

respective Contract have been put forward thereby and that no further claims will be raised.

#### 4.5 Offset:

LTG shall be entitled to set off from any payment to the Contractor any claims which Lenzing Technik or any company directly or indirectly controlled by Lenzing Technik might have against the Contractor.

### 5. SUBCONTRACTS

#### 5.1 Approval:

The Contractor shall give timely information to LTG of any planned subcontracting and seek its prior written approval thereto. On request, the Contractor shall supply LTG with a copy of the respective subcontract order.

In case of failure to do so, the Contractor shall fully indemnify the LTG for all consequences which may arise there from. Such consequences may in particular arise from the following criteria:

- quality
- time schedule
- compensation requirements
- technical cross-standardization
- subcontracting requirements set by the Final Customer
- customs regulations concerning temporary admission, transit, import and transportation

Where a subcontract has not been approved by LTG, LTG shall, irrespective of any other rights, be entitled to terminate the Contract in whole or in part.

Approval by LTG of any subcontracting shall not limit the Contractor's obligations. Also in the case of subcontracting the Contractor shall remain fully liable towards LTG for the fulfillment of the entire Contract. The Contractor shall be liable for the acts and omissions of its subcontractors as if they were the acts or omissions of the Contractor.

#### 5.2 Origin of Supplies/Services:

The minimum value of Supplies/Services from a certain country and the relevant regulations pertaining to certificates of origin required under the regulations of the Österreichische Kontrollbank (ÖKB) or other financing or insurance institutions, as stated in the Order, is to be strictly adhered to and to be proven to LTG.

LTG, ÖKB or the respective financing or insurance institution shall be entitled to request verification, which shall be provided free of charge.

Besides the transfer of the exporter's liability to the Contractor by way of a back-guarantee to LTG (if agreed), the latter shall in case of a breach of above obligation be fully indemnified by the Contractor with respect to

- additional cost caused by loss of a government backed export credit for the whole financing period and
- the consequences arising in connection with the withdrawal of the insurance cover for the commercial or political non-payment risk.

## 6. DOKUMENTATION

### 6.1 Definition:

Documentation is the total of written, drawn or other documents related to the Contractor's Supplies and Services and serving to assist the Contractor and LTG in fulfilling their obligations vis-a-vis their contracting partners, and the authorities involved in due time and in the most economical way. Such documentation may be related to manufacture, quality control, potential risks, safety instructions, dispatch, transport, export, transit, import, customs clearance, excise, identification of parts, logistics, storing, erection, commissioning, training, accounting, invoicing, operation, repair, maintenance, procurement of spare parts, etc.

The documentation shall form an essential part of the Contractor's Supplies and Services.

LTG shall be granted the right to use the documentation and, inter alia, shall be entitled to pass on any documentation received from the Contractor or its subcontractors to other contracting partners of LTG and/or to the Final Customer.

### 6.2 Scope:

The documentation is to be submitted to LTG as specified in the Order. If not specified in detail, the documentation shall be adequate for the respective case regarding volume, standard and due availability. All documentation is to be in the German language and shall be conveyed electronically, unless specified otherwise by LTG. All documentation shall be "delivered duty paid" (DDP) to the address of LTG according to INCOTERMS 2000, unless agreed otherwise.

All assembly drawings and construction drawings are to be presented to LTG within a reasonable period prior to the commencement of the shop fabrication in order that LTG can either approve the drawings or request changes and/or amendments without endangering the time schedule.

After executing the Supplies/Services, the Contractor must send or present LTG with the relevant drawings, calculations and other Supplies/Services related documents detailing the actual work done in the required number of copies and in the required format by the date specified in the Order, or at least prior to Acceptance. These documents shall be updated by the Contractor as soon as the Contractor makes any changes. The Contractor shall transfer the ownership of such documentation to LTG free of charge.

### 6.3 Shipping documents:

Shipping documents are to be in accordance with LTG's shipping and packing instructions. The documents must clearly state the correct and complete Order number, identification number, position and item No. as well as the designation of the goods for clear identification of the applicable tariff. The designation of an item is to be maintained throughout all documents. In particular, the designations used in the drawings, part lists, packing lists and shipping documents shall be exactly the same.

### 6.4 Documentation of origin:

The Contractor shall enclose, free of charge, a valid evidence of entitlement to preferential tariff treatment (movement certificate, preferential certificate of origin, certificate of origin, confirmation of origin, declaration of origin, etc.) with the goods supplied across frontiers,

as necessary for preferential clearance for import in the country of destination of the goods.

That certificate shall include in particular also the Order number and project number of LTG. The value of the goods must not be indicated!

Unless agreed otherwise, the country of the Contractor shall be deemed the country of origin.

Certificate of origin:

At LTG's request the Contractor shall provide at its cost a certificate of origin certified by the competent chamber of commerce and the competent consulate or embassy respectively.

Confirmation of origin:

In case the certificate of origin will be made out by LTG, the Contractor shall provide at the request of LTG a confirmation of origin for each single part of its Supplies, specifying the manufacturer (including exact address) and/or the country of origin.

All fees, duties and extra charges resulting from failure to submit such documents or from incorrect statements shall be borne by the Contractor.

### 6.5 Inspection documents:

As far as required in each individual case the inspection documents to be provided by the Contractor shall consist of reports on quality control, test certificates, etc. as well as of time schedules and progress reports.

### 6.6 Erection documents:

To ensure orderly and economical erection the required documents are to be provided in accordance with the time schedule and the actual progress of the erection work.

### 6.7 CE – sign:

For Supplies and Services required to be marked with the CE-sign and/or for which a Declaration of Conformity is required or permitted the Contractor is obliged to conform to all of the legal terms concerning this matter and shall affix the CE-sign to a ready-to-use machine/facility and submit to LTG all necessary Declarations of Conformity in the language prescribed for the Documentation.

## 7. INSPECTION, TESTS, EXPEDITING

### 7.1 General:

The Contractor shall allow personnel authorized by LTG or by the Final Customer to carry out inspections on items/activities connected with the Order at any time. This includes inspection of planning, production insofar as quality and time schedule are concerned, taking of samples, packing regarding its quality and conformity of the packing list with the contents of the various packages, loading, etc. For this purpose the Contractor shall admit representatives of LTG or of the Final Customer to offices and workshops of the Contractor and its subcontractors, make available all records in connection with the Contract and keep LTG informed about the progress of the work. Possible changes in the time schedule are to be advised immediately.

The Contractor shall carry out a complete inspection programme on its own and make available a detailed list of test results (test certificates, dimensional check

reports, etc.) before final inspection by LTG's inspection team. On LTG's request the Contractor shall be present at that final inspection. The Contractor shall provide free of charge services, material, labour, interpreters, energy, suitable test equipment, testing media, skilled and unskilled workers for moving packages, opening and closing of cases/crates, etc. to ensure an orderly and efficient inspection.

Should LTG detect defects and/or delays, LTG has the right to conduct continuous supervision of the Contractor's operation, at the cost of the Contractor, until the defect is eliminated or the delay is made up for. LTG shall notify the Contractor in time of its intention to do this.

The Contractor shall ensure that all equipment/components thereof are easily accessible, and shall take adequate safety precautions. Equipment/components thereof presented for inspection shall be unpainted and preassembled, unless specifically requested otherwise.

An inspection, whether carried out or waived by LTG, shall not limit the Contractor's obligations and shall in no event be construed as a waiver of any of LTG's rights, including but not limited to penalties, damages, guarantees/warranties, etc. even if a respective reservation has not been raised. In the event an inspection or test indicates that Supplies or Services are defective or fail to meet the requirements of the Contract the Contractor shall immediately rectify the failure at its own cost.

## **7.2 Documentation:**

For inspection the required inspection documents and for inspection of packing the relevant packing lists shall be provided by the Contractor. Incomplete or incorrect documents may necessitate a second inspection. All inspection documents are to be handed over to LTG's inspector or sent within an agreed period in the number of copies requested. When an inspection is waived, all documents are to be sent to LTG immediately or within the agreed time limit or at the latest before dispatch of the equipment/components thereof.

The inspection documents shall be split up in accordance with position numbers by using a clear and logical order, it shall contain an index and be bound in a file.

## **7.3 Costs:**

The Contractor and LTG/Final Customer shall each bear the respective cost for their own personnel and inspection teams.

Should an inspection or an inspection with a positive result not be satisfactorily completed for reasons within the Contractor's responsibility, the Contractor shall bear all cost resulting from a repeated inspection.

## **8. DISPATCH**

### **8.1 Shipping instructions:**

The Contractor shall adhere to LTG's shipping and packing instructions. LTG shall be free to revise the shipping instructions if found necessary during implementation of the project. All cost arising from non-observance of LTG's instructions or from delays, e.g. cost for special transport, airfreight, extra packing, etc. shall be entirely borne by the Contractor, however, a minimum of EUR 1.000,- for each individual case.

## **8.2 Export Clearance:**

Export Clearance shall be carried out by the Contractor with its own documents. The costs and duties resulting therefrom shall be borne by the Contractor.

## **9. TIME SCHEDULE**

### **9.1 Date of Delivery:**

For documentation the Date of Delivery shall be the date shown by the "received" stamp of LTG or the date of an individual receipt if all documents have been completely and correctly presented in accordance with the Contract.

For Supplies and Services the Date of Delivery shall be the date when all of the Contractor's respective obligations under the Contract (including those regarding documentation) have been fulfilled completely and free of defects.

### **9.2 Delays:**

The Contractor shall immediately advise LTG as soon as it realizes that the agreed dates or periods may not or cannot be met. A full report of the reasons and extent of such delays must be immediately sent to LTG in writing.

Where a Contract requires LTG to take a form of action by a certain date to enable a delivery date to be achieved, the Contractor shall notify LTG in due time. If the Contractor fails to do so, it may not refer to a default of LTG or delayed co-operation activities when its own Supplies/Services are delayed. Should the Contractor be hindered in duly fulfilling its commitments under the Contract because of LTG's late delivery or co-operation activities despite due notification, the agreed dates and periods shall be extended by not more than the number of days of delay caused by LTG. LTG shall not be liable for any additional cost. The original contractual dates/periods extended by such delays shall be the new due dates e.g. for calculation of penalties, etc.

In the event of possible or actual delays the Contractor is required to minimize such delays by taking all constructive measures, regardless of the causes of such delays.

### **9.3 Storage:**

Should the delivery dates set out in the Contract be changed for reasons outside the Contractor's responsibility, it shall arrange for adequate storage of the goods at its own risk and at no cost to LTG, for a period of up to 3 months.

Due payments affected by such storage may be released against warehouse certificate or certificate of transfer of property and/or bank guarantee, etc.

In case of storage, shipments in whole or in part shall only be carried out if the release has been confirmed by LTG.

### **9.4 Premature fulfilment:**

Supplies/Services before the due date shall only be accepted if agreed in writing by LTG and shall not advance agreed payment dates.

## **10. CONTRACTOR'S LIABILITY**

### **10.1 Penalties for delay:**

Should the Contractor not adhere to the periods set out in the Contract, the following penalties not subject to a judicial reduction, in each case to be calculated from the total Contract value, shall be payable irrespective

of the occurrence of actual damages. LTG may nevertheless assert higher claims. Should the acceptance (take-over procedure) - due to reasons the Contractor is responsible for - be delayed, than the regulations as put down below will also come into effect (this will apply also in the cases, when the date for acceptance could not be defined in the contract yet).

Such penalties may also be deducted from the Contractor's accounts receivable or open invoice if any.

- For Supplies and Services:  
1 % for each week or part-week of delay, up to a maximum of 10 % of the total Contract value.
- For documentation:  
0.5 % for each week or part-week of delay, up to a maximum of 5% of the total Contract value.

Penalties to LTG shall become due with the occurrence of the delay. In case of defects in Supplies/Services the period between taking over and giving notice of the defect by LTG is not subject to penalties. Acceptance by LTG of a delayed delivery without immediate notification to the Contractor of a penalty claim shall not prejudice LTG's right to claim a penalty at a later date in respect of that delivery.

Payment of penalties does not release the Contractor from its obligation to fulfill the Contract nor from any related liabilities.

#### **10.2 Breach of guaranteed characteristics or of guarantees:**

Even if the Order stipulates penalties for breach of guarantees such as performance penalties, etc., the Contractor shall not be released from its obligations to fulfill its Supplies and Services suitable for the intended purpose, in such a way that the Acceptance is not affected or even prevented by the Final Customer.

The payment of any penalties shall not release the Contractor from the liabilities resulting from a breach of guaranteed characteristics or from a failure to achieve contractual guarantees.

#### **10.3 Liability for documentation:**

The Contractor hereby declares to be fully aware of the importance attached to the timely submission and correctness of documentation, and confirms its liability for any damages resulting from any delays or errors.

#### **10.4 Liability for engineering:**

The Contractor guarantees that all engineering, consultancy services and documentation are correct and complete.

#### **10.5 Product Liability:**

In case of any claim against LTG in connection with the violation of safety regulations or on the basis of product liability laws/regulations the Contractor shall indemnify and save LTG harmless and shall be fully liable for all losses and damages incurred by LTG as a result of such claim provided such claim is based on or ascribable to defects or failures in the Supplies and Services of the Contractor, or unsafe products of the Contractor as per the applicable product liability laws/regulations.

The Contractor shall be responsible to obtain sufficient insurance – including, but not limited to the provisions

of Article 17.4 – to cover all risks in connection with product liability and upon request of LTG shall submit such policy to LTG. Such insurance – even if reviewed by LTG – shall in no event limit the responsibilities and liabilities of the Contractor under this Article.

#### **10.6 Limitation of Liability:**

LTG and the Contractor shall not be liable for loss of profit and loss of production.

#### **11. GARANTIE**

##### **11.1 General:**

The Contractor guarantees not only for the conditions and qualities expressly specified or promised in any other way or usually presumed characteristics to be reasonably expected but also for completeness of his Supplies and Services and their best suitability for the specific purpose intended. This guarantee particularly covers the qualities and suitability of the Contractor's Supplies/Services for continuous operation in the Plant under the operating conditions prevailing at site, conformity with all standards and regulations applicable at site (e.g. safety, environmental protection, including noise), uninterrupted availability with adequate performance and consumption data, easy erection, maintenance and repair, design and manufacture to represent the latest state of the art.

##### **11.2 Guarantee period, removal of defects:**

Any deviations of Contractor's Supplies and Services from the contract specifications or guarantees as under § 11.1 shall be considered to be defects.

Unless otherwise agreed, the Contractor guarantees for a period of 24 months from date of acceptance of the complete Plant and that its Supplies and/or Services will be free from defects. The guarantee period for mechanical defects shall expire 36 months from the date of final delivery according to the Contract in case LTG is responsible for any delay. For steel construction work and corrosion protection the guarantee expires 60 months from take over. In case of any defects arising within said period, the Contractor shall carry out, within the shortest possible time, the necessary repair at site or shall replace the defective item at site as per LTG's instruction. All related services and any additional expenses e.g. for transport, customs, dismantling and erection shall be carried out and borne by the Contractor or at the Contractor's expense. The guarantee period shall be extended by any period of standstill caused by defects. In case of replacement or repair of a part a new guarantee period equal to the one for the original supply, shall start. Sections 377 and the following of the Austrian Commercial Code shall not apply, LTG is under no obligation to inspect or to make complaints regarding a defect.

For smaller defects (up to EUR 10.000,- per single case) or if immediate repair is imperative, e.g. in critical stages such as trial runs, LTG shall be entitled to remedy or have remedied any such defects immediately and without prior notification to the Contractor. Such work shall be carried out at the expense of the Contractor and shall not affect LTG's rights or other claims. The same shall apply if the Contractor fails to remedy defects in time, despite having been requested to do so.

In addition, the Contractor is obliged to immediately remedy all defects reported by LTG at its own costs according to the above provisions, even when, with regards to the claim, no agreement on the defect is made between the Contractor and LTG. Should, after

the remedy of the defect, the Contractor be able to prove that no defect on the part of Contractor occurred, LTG will refund the Contractor with the actual costs that were incurred during the remedying of the defect.

The guarantee does not cover normal wear and tear, consumables, improper handling, storage and/or operation carried out by the Final Customer contrary to the Contractor's written instructions.

### **11.3 Spare parts:**

The Contractor guarantees that the quantity of spare-, wear- and exchange parts quoted as "necessary" and which have been jointly selected are fully sufficient for the period from Start up and - unless specifically agreed otherwise - for 2 years of continuous operation.

In case of any shortage during this period the Contractor shall supply additional parts „Delivered Duty Paid“ (DDP), place of destination to be specified by LTG (in most cases the site) according to INCOTERMS 2000 free of charge, including packing.

The guarantee period shall expire 24 months after installation and start of operation of the respective part, at latest 48 months after arrival at the construction site, as long as there is no other guarantee period specified in the Order.

The Contractor guarantees the availability of spare-, wear- and exchange parts for Contractor's Supplies for a period of 10 years from the end of the guarantee period.

## **12. ACCEPTANCE**

### **12.1 Performance Test:**

Generally the Supplies/Services shall be tested as to their conformity with the Contract in the Performance Test of the Plant. However, LTG shall be entitled to additional specific tests in order to examine the Supplies/Services.

### **12.2 Delay of acceptance caused by the Contractor:**

If a Performance Test fails or if Acceptance is prevented by other defects, LTG shall grant the Contractor adequate time (under due consideration of the consequences for the complete Plant) to carry out the necessary repairs/improvements. All cost for labour, material, media, etc. incurred by LTG due to the Contractor's unsuccessful Performance Test shall be borne by the Contractor.

If Acceptance does not take place within a reasonable time due to causes within Contractor's responsibility, the LTG in his sole discretion shall be entitled to the penalties stipulated in the Order and/or to a price reduction or to terminate the Contract with the right to claim damages.

## **13. EXPORT LICENCE**

The Contractor shall obtain at its own expense all export licences required for the export of the Supplies and Services, in particular for the export to the Final Customer's country. The Contractor is obliged to obtain all possibly required export licences related to his Supplies/Services (among others also according to US-Re-export regulations), in particular for export in the country of the Final Customer at its own costs.

The Contractor guarantees that, at the time the Order is placed, the complete performance of all Supplies and Services is ensured and not inhibited by any

administrative or other restrictions. The Contractor shall indemnify LTG and/or the Final Customer against any damage or loss resulting from any such inhibition or restriction. After the Order is placed, the Contractor shall inform LTG as soon as possible of any new export restrictions which may arise and submit details of alternative solutions free of charge. For any export permit applied for by LTG the Contractor shall provide all information required.

## **14. INDUSTRIAL PROPERTY RIGHTS**

### **14.1 Third parties' rights:**

The Contractor shall ensure that the use of its Supplies and Services is not affected in any way by claims of third parties regarding trademarks, copyrights, patents, protected territories, etc. and that no boycott clauses, black lists, etc. are violated.

The Contractor shall immediately inform LTG of any infringement of third parties' rights or any violation of boycott clauses or black lists, etc. In case of any such infringement or violation, the Contractor shall fully indemnify and hold LTG and the Final Customer harmless against any claims of third parties, and guarantee LTG and the Final Customer the unlimited use of the Supplies and Services, or shall provide other acceptable alternatives free of charge to LTG/Final Customer.

### **14.2 Secrecy:**

The Contractor shall not disclose to the public nor use for advertising or any other purposes any information related to the Contract or to the project or any other information obtained directly or indirectly from LTG or the Final Customer including all information developed by the Contractor on the basis thereof without LTG's written consent. In particular, engineering documents provided by LTG and the Documentation shall be treated in strict confidence and shall not be used for any purpose other than for executing the respective Contract. This secrecy obligation shall also be imposed by the Contractor on any person receiving such information. In the event of a breach of this secrecy obligation, the Contractor shall indemnify LTG also against third parties' claims.

### **14.3 Copyright:**

The property and the exclusive right of use of all drawings, information and know-how made available by LTG to the Contractor remains with LTG. The Contractor acknowledges LTG's exclusive copyright thereof.

### **14.4 Inventions and improvements:**

The Contractor is obliged to inform LTG about inventions and improvements made by the Contractor or the Contractor's staff in connection with the implementation of an Order on the basis of information and documentation provided by LTG and upon LTG's request according to the applicable provisions of the relevant patent law to make use of the inventions. The Contractor will transfer without reservation the invention (patent) with all rights and obligations to LTG against reimbursement of inventor's compensation and of the cost incurred by the Contractor resulting from the patent application.

The utilization of the invention, the application for a patent and the determination of reimbursement to which the inventor is entitled by law will be agreed upon mutually by the Contractor and LTG. The Contractor will take all measures to enable the Contractor to comply with the obligations.

The Contractor shall ensure that its subcontractors will take over a similar obligation in favour of LTG.

#### 14.5 Follow-up orders:

In order to specifically protect the know-how obtained by the Contractor from LTG in connection with the Contract and to ensure an optimum operation of the whole Plant also after expiration of the guarantee period, the Contractor shall not conduct any direct business with the Final Customer or its representatives regarding any follow-up orders in connection with the Plant. The Contractor shall not submit direct nor indirect offers to the Final Customer concerning spare and wear parts, without consent of LTG as marketing partner.

This obligation shall cover a period of 10 years from the date of final delivery.

#### 15. FORCE MAJEURE

The Contractor shall be wholly or partly discharged from the due performance of the Contract if prevented by events of force majeure.

Events of force majeure are limited to fire, floods, Acts of God, war and riot.

If the Contractor considers it is impeded by an event of force majeure, it shall only be entitled to claim force majeure if it submits to LTG immediately, however within 5 days at the latest, by registered mail a certificate issued by the authorities or the chamber of commerce of the Contractor's country, confirming the reasons, the commencement date and the expected duration and consequences of that event.

If an event of force majeure occurs the Contractor shall make every effort to minimize the effects and damages resulting therefrom and shall keep LTG fully informed of its activities in this respect.

Dates and terms which cannot be kept due to a force majeure event shall be postponed/extended by the duration of the effects of force majeure.

If an event of force majeure exceeds 4 weeks, LTG shall have the right to terminate the Contract in whole or in part.

LTG shall not be liable towards the Contractor for the consequences arising from any unpreventable hindrance to the implementation of the Contract.

#### 16. TERMINATION

##### 16.1 Breach of contract:

In the event of a breach of contract, which is not remedied by the Contractor, and after having been granted a reasonable grace period (usually 14 days), LTG shall have the right to terminate the Contract in whole or in part.

LTG shall be entitled to terminate the Contract in whole or in part without granting a grace period when for example:

- the Contractor after having received a reminder calling for the proper fulfillment of its contractual obligations had in fact a reasonable grace period, even if that reminder did not expressly set a grace period or threaten with termination; or
- LTG already before the respective due date has reason to assume that the Contractor is not or will

not be willing or able to fulfill essential contractual obligations on time; or

- one or more post performance trials have failed.

A breach of contract in the above mentioned sense, with respect to final or other contractual dates or defects which would jeopardize the fulfillment of LTG's obligations vis-à-vis its contracting partners shall be considered as serious breaches of contract, even if covered by a penalty.

LTG shall be entitled to carry out by itself (Self Execution), or have carried out by third parties (Substitute Execution) the defective and/or insufficient Supplies and Services of the Contractor at the Contractor's expense irrespective of any termination.

The cost resulting therefrom and/or expenses shall be either directly invoiced by LTG under a payment term of 45 days from the invoice date, or be deducted from payments due to be made to the Contractor by LTG. In the case of termination, the Contractor shall reimburse the amounts already paid by LTG for Supplies and/or Services not yet performed according to the Contract including all related financing costs incurred by LTG.

In the event that Self Execution or Substitute Execution require access to equipment or material etc. that can be found at the Contractor or its subcontractors, the Contractor shall be obligated to provide this equipment or material to LTG.

In the event that Self Execution or Substitute Execution require access to trademark rights, documents (such as work shop drawings and calculations) or other information, the Contractor shall be obliged to provide these trademark rights, documents and information to LTG.

Right of use:

In case of termination or cancellation of the Contract LTG has the right to use the Supplies and Services of the Contractor free of charge until acceptance of an alternative solution.

##### 16.2 Insolvency:

In the case of bankruptcy or other insolvency proceedings imminent or instituted against the Contractor or its subcontractors, or in the event of changes to the status of ownership of the Contractor, LTG shall be fully informed without delay.

LTG shall be entitled to immediately take over the Supplies and/or Services and in particular to recover all documents concerning the same which are in the possession of the Contractor or its subcontractors, and/or to terminate the Contract in whole or in part.

##### 16.3 Cancellation:

LTG shall have the right at any time to partly or wholly cancel the Contract even though the Contractor is not in default of its obligations. In this case LTG shall pay the Contractor that portion of the Contract value which corresponds to the Supplies and Services already performed according to the Contract, plus verified direct cost related to work in progress and related to compensation payable to its subcontractors. After the Contractor has been notified of a cancellation, it shall make every effort to minimize all cost and compensation arising there from.

#### **16.4 Suspension:**

LTG shall have the right to call for a suspension of the work at any time. In such case the Contractor shall specify in detail to LTG all the consequences resulting therefrom and suggest the best possible and most economical alternatives available for the further implementation of the project. For suspensions not exceeding 3 months LTG shall not be liable for any compensation to the Contractor. At the end of LTG's suspension the Contractor is to commence with the execution of its Supplies/Services under the Order immediately.

#### **17. OTHER TERMS AND CONDITIONS**

##### **17.1 Transfer of risk:**

For the transfer of risk the regulations of INCOTERMS 2000 stated in the Order shall apply.

However, in the event the erection of the Supplies is included in the scope of work of the Contractor the risk shall transfer to LTG upon Acceptance.

##### **17.2 Transfer of property:**

The transfer of property shall take place together with the transfer of risk.

##### **17.3 Erection equipment:**

Equipment for erection and commissioning, etc. which is required for temporary use at site, shall remain the property of the Contractor and under its full responsibility. The Contractor shall indemnify LTG against any claim which may arise in connection with such equipment, including any cost to LTG arising from the export and import of such equipment. For activities performed at site LTG's conditions for execution of erection work shall apply additionally.

##### **17.4 Insurance:**

Unless otherwise agreed, the Contractor shall be responsible for obtaining all the necessary Insurance cover.

In any case, the Contractor is obliged to take out a public liability insurance including product liability – in the case of pure planning Services also a planning liability insurance – with the following minimum cover:

- a) Insurance amount for injury to persons and damage to property, as well as pure property damage in the amount of the double total Contract value, at least, however, 1 million Euro per case, or an agreed upon amount in isolated cases;
- b) Worldwide validity, i.e. all countries (except USA and Canada);
- c) Validity also in the USA and Canada, when the Contractor is aware of, or is informed by LTG, that a recipient of the Supplies and/or Services of the Contractor is located in the USA or Canada and/or they fall under US-American or Canadian law;
- d) Coverage from the Order date until the end of the Contractor's liability period according to the Order, at least 36 months after Acceptance by the Final Customer.

The conclusion of this or other insurances in no way limits the duties and liabilities of the Contractor, even when LTG raises no objection against the submitted insurance policies by the Contractor that have been stipulated by LTG.

Such insurances obtained by the Contractor shall contain a waiver of subrogation in favour of LTG and the Final Customer.

If the Contractor is co-insured or otherwise covered by an insurance taken out by LTG, the Contractor accepts the respective insurance conditions as binding for himself. LTG will therefore also adhere to all respective obligations, such as giving all required information, complying with instructions etc.

##### **17.5 Authority:**

Persons giving statements vis-a-vis LTG on behalf of the Contractor shall be deemed fully empowered to do so.

##### **17.6 Liability towards Contractor:**

LTG shall not be liable for losses or damages caused by the Final Customer or any third party.

##### **17.7 Assertion of claims by the Contractor:**

Possible claims of the Contractor for payments made over and above the total Contract value, no matter on which legal grounds, are to be presented in writing with detailed verification and specifications to the exact amount of the claim within 30 days from the onset of the event, which according to the Contractor entitles him to make these claims. The Contractor shall not be entitled to make such claims in the event that this 30 days period has expired.

##### **17.8 Third parties' claims:**

The Contractor shall fully indemnify LTG for all claims of third parties caused by defects in, or improper execution of, the Contractor's Supplies and Services.

##### **17.9 Assignment/Pledging:**

Any assignment, pledging or other propagation of rights and duties by the Contractor shall be valid only upon LTG's written consent.

##### **17.10 Changes:**

The Contractor shall notify LTG of any possible improvement to the Supplies and Services and offer such improvements to LTG. However, any changes/amendments to the Supplies and/or Services under the Contract shall require an additional Order.

##### **17.11 Liens:**

Contractor shall not create or do anything which would result in the creation of any lien, encumbrance, right of retention or any other kind of security on the free issue parts provided by LTG or on the Supplies/Services or any part thereof.

Contractor shall ensure that a similar provision is included in each of its subcontracts.

##### **17.12 Partial invalidity:**

In the event that any provision in this General Commercial Conditions shall prove to be invalid, illegal, void or unenforceable, such provision(s) shall be deemed to be separable from the other provisions which shall remain binding. The Contractor and LTG shall replace the invalid, illegal, void or unenforceable provision(s) by new but valid, legally permitted and enforceable provision(s) which come as close as possible to the economic purpose of the replaced provision(s).

**18. APPLICABLE LAW AND JURISDICTION**

**18.1** All disputes arising out of or in connection with the present Contract which cannot be settled by mutual agreement, shall be settled under the rules of Arbitration and Conciliation of the International Chamber of Commerce in Vienna (Vienna Rules), by one or more arbitrators appointed in accordance with these rules. Arbitration proceedings shall be held in English language. Austrian substantive law under exclusion of its conflict of laws rules and the UN Convention on Contracts for the International Sale of Goods 1980 shall apply. The place of arbitration shall be Vienna.

**18.2** Notwithstanding of its above rights, LTG is entitled to assert its claims before a civil court instead of an arbitration court. Also in this case Austrian substantive law under exclusion of its conflict of laws rules and of the UN-Convention on Contracts for the International Sale of Goods 1980 shall apply. The venue shall be the competent court for the seat of LTG.

LTG

Contractor

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