



GENERAL PURCHASE CONDITIONS

of ANDRITZ HYDRO GmbH, Ravensburg

**for the procurement of
plants, plant components and services**

January 2017
(GPC 01/2017)

ENGINEERED SUCCESS





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1. DEFINITIONS

1.1. In these "General Purchase Conditions" the following definitions are valid:

Employer	= ANDRITZ HYDRO GmbH, Escher-Wyss-Weg 1, 88212 Ravensburg, Germany
Contractor	= the legal person obliged to fulfill the supply and the services as per the Order/Contract
Final Customer	= Final recipient of the Total Plant (the party which placed an order/formed a contract with the Employer)
GPC	= These General Purchase Conditions
Total Plant	= plant to be established for the Final Customer, to be considered technically or contractually as a whole, of which the products and/or services from the Contractor form a part.
Total Order value	= value of all deliveries of the Contractor for the Total Plant.
Force Majeure	= an unforeseeable event, not within the sphere of either Party, which cannot be controlled or avoided even with the highest degree of skill and care.
Customer Contract	= Contract between the Employer and the Final Customer about the supply of the Total Plant.
Order/Contract	= Contract between the Employer and the Contractor about the supply and services to be provided by the Contractor.
Parties	= shall mean the Employer and the Contractor
Scope of Supply and Services	= All the products, supplies and/or services to be provided by the Contractor as per the Order/Contract.

1.2. For the phases of handover of equipment or parts thereof, the following definitions shall apply:

End of Installation	= Conclusion of the installation of the Total Plant including dry testing (no load testing). The dry testing is considered to be completed, when the total installation is tested without operating media in individual operation as well as in total locking operation and so forth, when all equipment, parts thereof as well as activating and protecting devices and so forth are functionally controlled or adjusted at the nominal values. Further, all the control circuits shall have been checked and pre-set.
Beginning of Commissioning	= Beginning of water testing = Starting of the Total Plant under operating conditions.
Performance Test	= Performance test of the Total Plant under operating conditions over a period determined in the Customer Contract
Successful Performance Test	
Test	= Achievement of all the performance data of the Total Plant ensuring an operation corresponding to the requirements of the Customer Contract, provided that the supply and/or services are executed as per the Contract and without defects.
Taking Over	= Protocolled confirmation by the Final Customer that the End of Installation of the Total Plant has been achieved and that the Scope of Supply and Services by the Contractor have been carried out according to the Contract without any defects. The latter shall include the proof of achievement of the performance values (for instance, capacity, product quality, consumption, emissions) in a Performance Test.



2. GENERAL

2.1. Scope of Supply and Services:

The Scope of Supply and Services specified in the Order shall be binding for both Parties.

The Contractor shall complete the specified Scope of Supply and Services. Therefore, all products and services or parts thereof, which are not explicitly mentioned in the Order, but which are necessary for the regular performance of the supplied products or services and of other products and units interacting with them, shall also be deemed to be part of the Scope of Supply and Services for the purpose of the Customer Contract, as far as the Contractor is aware of the Customer Contract.

The Contractor shall perform the Scope of Supply and Services as per the current state of the art and professional conduct valid in Germany at the time of its performance.

The Contractor shall ensure that its products have the necessary quality (e.g. solidity) at any given date. This means, the products by themselves, with respect to time-related details regarding dates, periods and intervals (called time details in the following) and also in interaction with other products, shall work, function and shall be used in such a manner that the purpose of the Customer Contract can be achieved without any problem. In particular:

- time details of the products shall not cause any malfunctions, operating disturbances, interruptions of operation, or cause the same to other products,
- time details or the processing of the time details shall not lead to any incorrect results,
- leap years shall be correctly calculated and processed.

2.2. Importance of the due fulfilment of Contractor's obligations:

The Scope of Supply and Services of the Contractor will become a part of a complex Total Plant to be installed. Therefore, any shortfall of the Contractor's performance of his obligations will most likely cause problems within the total project organisation, leading to additional costs, for instance in connection with postponement of deadlines in the network plan, third party claims, impairment of logistics, delay in the acceptance by the Final Customer, idle time etc. The impact on costs will be particularly severe in case the Contractor's Scope of Supply is part of a Total Plant installed outside Germany. Therefore, the Contractor shall take special precautions for the diligent and timely performance of his obligations considering the aforementioned circumstances. Contractor shall especially acquire all the information, which is to be taken into consideration for the proper performance of his obligations under the specific prevailing conditions of the route of transport and of the destination of its Scope of Supply and Services and for the integration of them into the Total Plant.

2.3. Modifications of the Scope of Supply and Services:

The Employer shall be entitled to modify or supplement the Scope of Supply and Services at any time.

The Contractor shall carry out the modifications or the amendments to the Scope of Supply that become necessary during the execution or due to the request for modifications under the conditions stipulated in the

Order. Within reasonable time, however latest within 14 days, the Contractor shall evaluate the modifications or the amendments for their possible impact, in particular for the effect on the technical execution and on the costs and shall inform the Employer about the result in writing, in so far as the modifications are not already part of the agreed Scope of Supply and Services. The Contractor shall inform the Employer without delay about any changes in the delivery or service time. If the Employer decides for execution of modifications not included in the agreed Scope of Supply and Services, the Parties shall adjust the Order/Contract accordingly. Modifications of prices and deadlines shall always require Employer's written approval.

2.4. Partial performance:

The Contractor shall only have the right to partial performance of its Scope of Supply and Services upon Employer's prior written approval.

2.5. Safety regulations:

In case it is obligatory or permissible by law to affix the CE-marking and/or proof of conformity on the products, the Contractor shall be obliged to affix the CE-marking and to submit to the Employer the required proofs of conformity in the language stipulated for the documentation. If it is not possible to label the products with a test symbol, the Contractor shall prove compliance with above mentioned specifications upon Employer's demand.

In case EV-VO 1907/2006 REACH is applicable, the Contractor shall provide a safety data sheet (Article 31) and/or information on substances in articles (Article 33) in German and English language at no cost.

2.6. Quality Assurance:

The Contractor shall be obliged during the performance of its obligations to apply the principles of quality assurance according to the relevant standards ISO 9000 through ISO 9004 and also to oblige every person whom the Contractor employs for performing his obligations, e.g. subcontractors, to comply with such standards.

The Employer and the Final Customer shall have the right to audit the quality assurance system, the quality assurance regulations and the quality assurance plan of the Contractor at any time. The Contractor shall oblige every person whom the Contractor engages for performing his obligations to grant the same right to the Employer and the Final Customer.

2.7. ANDRITZ Supplier Code of Conduct and Ethics and German Act Regulating a General Minimum Wage

The Contractor herewith confirms that:

- he has received and read a copy of the ANDRITZ Supplier Code of Conduct and Ethics ("Supplier Code") which is published on the home page of ANDRITZ under www.andritz.com;
- he undertakes to comply with the Supplier Code and agrees that it shall form the basis of present and future business with the Employer, ANDRITZ AG and its affiliates;
- this Supplier Code shall form part of any agreement entered into between the Contractor and the Employer, regardless of whether it is expressly incorporated into the contract by reference or not;



- he can be held responsible for ensuring compliance with the Supplier Code by his employees, company representatives, as well as subcontractors and business partners that the supplier is using to supply products and/or services when doing business with the Employer;
- he undertakes to comply with the German Act Regulating a General Minimum Wage and will ensure that all of his sub-contractors and contract workers will comply with said Act;
- he undertakes to procure and disclose all necessary documentation and information proving compliance with above-mentioned Act, as requested by the Employer.

Irrespective of Employer's rights under Sub-Clause 16.1 ["Breach of Contract, Withdrawal"] the Contractor will hold harmless and indemnify the Employer from any damages arising out of a breach of the Supplier Code or the German Act Regulating a General Minimum Wage.

2.8. Applicable General Conditions:

These "General Purchase Conditions" shall exclusively regulate any relationship among the Contractor and the Employer unless otherwise agreed in the particular Order/Contract.

The Employer explicitly rejects any terms and conditions of the Contractor (for instance Contractor's general terms and conditions of sale are herewith explicitly rejected), unless explicitly agreed upon in writing. In case Employer's Order makes reference to Contractor's offer documents, it shall not be deemed as acknowledgement of the terms and conditions of the Contractor. These General Purchase Conditions shall also be applicable, if the Employer unconditionally accepts deliveries and/or services from the Contractor, despite Employer's knowledge about the contradicting or deviating Contractor's conditions.

These General Purchase Conditions are deemed to be acknowledged by the Contractor from the start of the performance of the Order/Contract at the latest.

These General Purchase Conditions shall be binding to commercial entrepreneurs as per Clause 310 para 1 German Civil Code (BGB).

2.9. Binding Statements:

Statements of the Employer regarding the conclusion of, or changes, or amendments to the Orders shall only be legally binding for the Employer, if they are issued by the relevant Purchase Department in writing. The Contractor may only rely on statements by other persons, if the Contractor has promptly informed the relevant Purchase Department accordingly and if he received the latter's confirmation. Oral agreements shall be legally binding only if they are confirmed by the Employer in writing.

Exceptions to above are:

- use of options regarding packing and transport in form of notification of definitive dispatch conditions
- call-off orders upon a general frame Contract

The Contractor shall confirm written Orders of the Employer within 10 days upon its receipt on the respective Order form through signature. The

Contractor shall confirm oral Orders of the within the same period.

The Contractor shall further confirm the receipt and the application of the General Purchase Conditions on the relevant Order form

2.10. Priority of Documents:

The following documents shall be applicable in descending order of priority for interpretation of mutual obligations as well as in case of contradictions between different parts of the Contract:

- the Order (in form of letter, telefax or e-mail)
- the annexes mentioned in the Order, in particular the protocol of negotiations.
- these General Purchase Conditions including its annexes
- the Customer contract between the Employer and the Final Customer (as far as the Contractor is aware of such contract).

In case the priority of documents does not lead to clarity on the agreement between the parties, all open issues with respect to the Scope of Supply and Services shall be decided upon what would best suit the purpose of the Contract.

The Contractor shall inform the Employer in every case of lack of clarity with respect to the Scope of Supply and Services and he shall initiate a mutual agreement about the same. The Contractor shall promptly inform the Employer about any known discrepancies or irregularities in the specifications.

Headings are introduced for orientation purposes only and shall not be considered for the interpretation of the contents of the Contract.

2.11. Legal Rights:

Notwithstanding the regulations in these General Purchase Conditions, further rights of the Employer provided by law shall remain unaffected.

3. PRICES

3.1. Type of the Price:

The prices mentioned in the Order shall be binding. The prices of the Order shall be understood as fixed prices without VAT (value added tax) and shall include all Contractor's expenses in connection with the performance of the Scope of Supply and Services. In particular this includes all the costs for transport, insurance, packing, taxes, customs duties and tariffs applicable at the place of performance. The Employer shall bear only costs that are expressly mentioned in the Order as obligations of the Employer. The conditions of the initial Order shall be applicable for every modification and amendment of the Order as well as for Orders of spare parts and wear and tear parts.

Unless otherwise agreed in the Order or in an applicable frame Contract, the price shall be understood as „delivery duty paid“(DDP) at the mentioned destination as per Incoterms 2010. The price includes the costs of documentation, technical testing, painting, corrosion protection, marking, signing etc. In case of export, Contractor shall be responsible for all customs declaration and handling (customs handling with own papers including payment of all related costs and tariffs).



3.2. Currency:

Unless otherwise agreed in the Order, invoicing and payment shall be made in EURO.

4. PAYMENT CONDITIONS

4.1. Invoicing:

The Contractor shall submit all invoices to the Employer in triplicate in accordance with Annex 1 to this General Purchase Conditions. The Invoices shall include all the references and documents required for identification, like order number, number of items etc. The Contractor shall be liable for all consequences occurring due to non-compliance with the obligations stated before unless such consequences are not attributable to the Contractor.

Contractors domiciled in an EU country shall also state in the invoices the place of delivery of the goods in addition to the legally mandatory information for tax exemption.

4.2. Payment:

The Employer shall make the agreed (instalments) payments on the agreed date of payment after receipt of invoice and after fulfillment of all conditions mentioned in the Order, in particular after the delivery of complete documentation.

Unless otherwise agreed in writing, the Employer shall pay the Contract price upon complete delivery of the goods and upon fulfillment of services, within 14 days after receipt of invoice with 2%, discount or within 30 days net after receipt of invoice.

Employer's payment shall not be deemed as acknowledgement of the supplies and services with the terms of the Order and therefore the payment shall not be deemed as a waiver of any rights of the Employer for fulfilment, remedy of defects, compensation for damages, contractual penalties etc.

4.3. Securities:

The Employer shall be entitled to retain an agreed security for performance, defects liability, guarantee or for damages free of interest for a period exceeding the defects liability period by 45 days. The same shall be applicable in case of insolvency of the Contractor.

According to the agreed payment conditions and to ensure the fulfilment of performance and guarantee obligations, the Contractor shall arrange and hand over to the Employer only bonds or guarantees by a first class European bank rated AAA.

4.4. Final Invoice:

The Employer shall release the final payment only upon presentation of a final invoice covering all the supplies and services as per the Order and all claims related thereto.

Submission of the final invoice shall be deemed as the Contractor's declaration to have asserted all the claims arising from or in connection with the respective business transaction and that the Contractor has no further claims against the Employer.

4.5. Assignment, Set-Off:

Without prejudice to § 354a HGB the Contractor shall not be entitled to assign to a third party any right he

may have against the Employer or to have such rights enforced by a third party without prior written approval of the Employer.

The Contractor shall only have the right to setoff counterclaims against the Employer if and so far as such claims are undisputed and affirmed as final and absolute (res judicata) by a court of competent jurisdiction.

5. SUBCONTRACTING

5.1. Approval:

The Contractor shall inform the Employer about intended subcontracting in due time. The Contractor shall obtain written approval from the Employer prior to awarding the subcontract in case the Contractor intends to subcontract to companies not domiciled in member states of the EU, in Switzerland or in North America.

The Contractor shall indemnify the Employer against any loss or damages which may occur due to non-compliance with the foregoing in particular but not limited to the following criteria:

- Quality
- Delay risk
- Compensation interests
- Generally applicable standards and contractual technical standards
- Sub-supplier specifications of the Final Customer
- Customs statement, customs transit, import and transport

Without prejudice to other rights, the Employer shall be entitled to rescind from the Contract totally or partially in case of subcontracting without Employer's approval.

Approval of a subcontract by the Employer shall have no effect on the contractual obligations of the Contractor. The Contractor shall remain fully responsible to the Employer for the fulfilment of the Order/Contract. The Contractor shall be fully liable for any act and omission of its subcontractors as it would be his own.

The Contractor shall bind the subcontractor by the same terms and conditions as stipulated in the Order and shall ensure the compliance with it.

The Contractor shall present to the Employer the corresponding data and facts under Sub-Clause 13.4. [Workers] prior to commencing with the works, in case the Contractor or its subcontractor deploys workers who are not originate from EU countries.

5.2. Value Add:

The Contractor shall be obliged to comply with the obligations stipulated in the Order regarding the conditions of the governmental export promoting institutions or financing institutions as Hermes, Kreditanstalt für Wiederaufbau (KfW), European Central Bank (EZB), Österreichische Kontrollbank (ÖKB) or other financing and/or insurance institutions requiring a minimum value add originating from a particular country or relevant certificates of origin and to prove that to the Employer.

The Employer and the involved financing/insurance institutions in Germany or abroad shall have the right to



conduct relevant audits of the Contractor's compliance with the minimum original value add or may be provided with certificates of origin free of charge and at any given time.

In case Contractor's non-compliance with the aforementioned obligations lead to an exporter liability of the Employer, the Contractor shall indemnify the Employer for any damages and loss due to this violation, such as but not limited to I

- o additional costs due to discontinuation of a publicly supported export credit for the entire financing period and
- o consequences due to the loss of coverage of the economic and political payment default risk.

5.3. Inquiries:

The Contractor shall make inquiries regarding any subcontracting within the supply and service program of the group companies of the ANDRITZ AG with the respective affiliates.

However, the fulfilment of time plans and other conditions stipulated in the Order shall remain unaffected.

5.4. Non-Permissible Exclusivity Agreements:

The Contractor shall not prevent its subcontractors from entering into contracts with the Employer regarding other supply and services. In particular, exclusivity agreements with third parties preventing the Employer from obtaining supply and/or services shall not be permissible.

6. DOCUMENTATION

6.1. Significance of the Documentation:

Documentation shall mean all written documents, drawings or other types of documents related to the supply and/or services of the Contractor which are of importance to that the Contractor and the Employer to fulfil in a timely and economic manner their obligations with respect to their contractual partners and to governmental institutions related to the respective business transaction. The documents shall relate, but shall not be limited to, manufacturing, quality control, hazardous potentials, safety specifications, shipment, transport, export, transit, import, custom duties, taxation, identification of parts, logistics, storage, installation, commissioning, training, accounting, invoicing, factory management, repairs, maintenance, procurement of spare parts etc.

The documentation shall be considered as an essential part of the Scope of Supply and Services of the Contractor.

The Contractor hereby grants to the Employer a non-exclusive, perpetual and cost free right to use the documentation and to transfer the documentation to its subcontractors and to the Final Customer for the fulfilment of the respective Order/Contract.

6.2. Scope of Documentation:

Documentation shall be provided according to the scope stipulated in the Order. The Contractor shall be responsible for the completeness and accuracy of the documentation to be delivered by him as well as its unlimited suitability for the purpose of the Contract. Unless otherwise agreed, the documentation shall

correspond in its scope, quality and timing with the needs of the particular business transaction and shall be issued in German and English language. Unless otherwise agreed, delivery shall be made "Delivered Duty Paid" (DDP) according to the Incoterms 2010 to the Employer's place of business.

The Contractor shall ensure that all documents to be created in the performance of his obligations are marked in accordance with the specifications of the Employer.

All technical documents, particularly drawings, planning, layout, testing and fabrication documents shall be delivered in DIN-formats and DIN-standards. The Employer shall be entitled to reject drawings/documents that do not correspond with the given requirements without further examination. Prior to the execution of their content binding compilation plans shall be submitted to the Employer for his approval. Upon demand of the Employer, the Contractor shall submit as-built drawings prior to workshop fabrication.

All the documents shall be submitted to the Employer free of cost in the particularly required number and in German and English language.

Employer's review of the documents shall not affect the Contractor's sole responsibility for the Scope of Supply and Services.

The Contractor shall be obliged to timely submit the required documents to the Employer. Costs incurred by the Employer due to delayed, incorrect or incomplete documents submitted by the Contractor shall be borne by the Contractor even if the related modifications do not refer to the Contractor's own scope of supply and services. The Contractor shall inform the Employer in writing about modifications of the documents. Submittal of documents merely carrying modification remarks shall not be sufficient for that purpose. All costs arising from the Contractor's non-compliance with such obligation shall be borne by the Contractor.

The Contractor shall submit documents for meetings to the Employer at least 24 hours prior to the meeting. The Contractor shall prepare minutes of every meeting within 14 days and submit them to the Employer.

After Taking Over the Contractor shall prepare for the Employer all drawings with respect to its Scope of Supply and Services as final as-built drawings. The final as-built drawings shall include all changes being made and represent the as-built design. For the purpose of subsequent service and rehab works, the Contractor shall deliver to the Employer the necessary documents and details enabling a proper de-installation and re-installation them. Upon his demand all drawings/documents and part lists required for the procurement of spare parts shall be submitted to the Employer.

All the documents shall be submitted without particularly request of the Employer, at the agreed deadlines or in such time that manufacturing and other works for the Final Plant are not delayed. In case documents require comments, decisions, approvals or evaluation by the Employer, documents shall be provided within due time considering an appropriate period for Employer's evaluation and necessary modifications.



6.3. Documentation of Dispatch:

Documentation of dispatch shall comply with Employer's dispatch requirements and packing guidelines. The documentation shall clearly indicate the complete and correct Order identification number, contract position number and item/component number as well as the product identification number for classification in the applicable customs duty tariff. The description of the parts/components shall be identical in all documentations as well as in the drawings, part lists, packing lists and dispatch papers.

6.4. Documentation of Origin:

The Contractor shall provide free of cost a valid preference certificate (proof of origin, good transport certificate, preference certificate of origin, certificate of origin, confirmation of origin, declaration of origin etc.), for the equipment to be delivered in the cross-border dealings necessary in the country of destination of the goods to realize low rate import customs clearance.

The preference certificate shall in particular include the Employer's Order or Contract number. Values of the goods shall not be detectable.

Unless agreed otherwise, the country of the Contractor shall be the country of origin of the goods to be delivered under the Order/Contract.

Certificate of origin:

Upon Employer's demand, the Contractor shall have the certificate of origin certified by the relevant Chamber of Commerce and by the relevant consulate or the relevant embassy at his cost.

Confirmation of origin:

In case the certificates of origin are prepared by the Employer, the Contractor shall provide upon Employer's demand a confirmation of origin for any single part/component with the details of the manufacturing company (with exact address) and/or of the country of origin.

All expenses, fees and additional costs, arising from Contractor's failure to provide such documents or due to incorrect statements, shall be borne by the Contractor.

6.5. Test Documentation:

If necessary in connection with the particular business transaction, test documentation shall include, but shall not be limited to, quality reports, test documentation, time schedules and progress reports.

The Contractor shall deliver to the Employer by e-mail and two hardcopies of the quality documentation as defined in the Order/Contract specification.

The Contractor shall inform the Employer immediately about necessary modifications of layout, testing and fabrication documents as well as about deviations from the established fabrication and test procedures and quality characteristics.

6.6. Documentation of Installation:

Unless otherwise agreed or unless otherwise more suitable to meet certain requirements in the particular case, the Contractor shall provide documentation of installation required for the correct and cost-effective installation in accordance with the time-schedule and

the actual progress by e-mail and in triplicate in German and English language.

6.7. Operating and Maintenance Manuals:

Unless otherwise agreed or unless otherwise more suitable to meet certain requirements in the particular case, the Contractor shall provide the operating and maintenance manuals for its Scope of Supply and services in German and English language by e-mail and in 10 copies at no cost at the latest four weeks prior to Beginning of Commissioning. The Contractor shall revise the operating and maintenance manuals prior to Taking Over by the results of Commissioning and trial run.

7. ACCOMPANYING CONTROL

7.1. Tests:

The Employer and the Final Customer as well as their delegates shall at any time be entitled to check any work of the Contractor related to the fulfilment of the Order. This shall include the monitoring of planning, manufacturing with respect to quality and time schedule, sample taking, packing with respect to quality and conformity of the packing lists with the actual contents of the packing units, loading control etc.. Therefore, the Employer and the Final Customer as well as their delegates shall be entitled to access the Contractor's as well as the Contractor's subcontractors' premises and to review respective documents at any time. The Contractor shall keep the Employer continuously updated about the actual progress and any foreseeable delays.

The Contractor shall carry out a complete technical test according to the current general German industrial standards prior to the technical test by the test team and he shall submit the detailed test results (test report, measurement records etc.) to the Employer free of cost. Upon request by the Employer the Contractor shall attend a final test. For the proper and effective execution of the tests, the Contractor shall make available to the Employer at his cost support, materials, specialist personnel, interpreters, energy, suitable test equipment, test material and assisting personnel for instance for re-stacking, opening/closing of the boxes etc.. Such tests shall not be deemed as Taking Over.

The Contractor shall present the equipment or parts thereof for testing on all sides easily accessible, accident safe and, unless required otherwise, without painting and pre-assembled.

Neither the execution nor the waiver of a test by the Employer shall limit the obligations of the Contractor and in particular shall not be deemed as a waiver of the Employer's rights as for e.g. contractual penalties, damage compensation, rights from defects liability/guarantee, even in case the Employer has not made a reservation in this regard. The Contractor shall immediately remedy at its own cost the defects discovered during testing.

7.2. Documentation for Testing:

For testing the Contractor shall submit the required test documentation, in case of packing test the packing lists. Incomplete or incorrect test documentation may lead to repetition of testing.

At the beginning of the test, the Contractor shall provide the test documentation to the Employer's inspector in



the defined number of copies or the documents shall be sent to the Employer within an agreed period. In case the Employer expressly waives the test, the Contractor shall submit the test documentation to the Employer immediately or as agreed, however prior to the delivery.

The test documentation shall be prepared according to separate part/item numbers, and shall be presented clear and properly -arranged and meaningful with a list of contents etc. in dockets/files.

7.3. Costs:

The Contractor and the Employer/Final Customer shall bear the costs for their respective personnel or test team. In case a (positive) test does not take place or cannot be concluded due to reasons attributable to the Contractor, all the costs resulting from a repeated test shall be borne by the Contractor.

8. DISPATCH

8.1. Dispatch Conditions:

The Contractor shall be obliged to comply with the dispatch conditions and packing guidelines according to the Customer Contract. The Contractor herewith confirms to be aware of the content of such conditions and guidelines.

Unless otherwise agreed, the Contractor shall provide the transport mode most suitable for the Employer. In addition to the dispatch address, the transport papers shall include Order details (date, Order number, place of delivery, name of the consignee, material number etc.).

The Employer shall have the right to adjust the dispatch arrangements to the current requirements arising during the installation of the Total Plant. Additional costs incurred by the Employer due to Contractor's non-compliance with the dispatch conditions such as but not limited to special transports (air freight) with corresponding packing requirements, shall be borne by the Contractor including additional expenses of the Employer incurred, but however at a minimum of EUR 1.000,00 per case.

8.2. Export Processing:

Provided the Parties agree on condition "export processed" for pricing, the Contractor shall conduct customs handling utilizing his own documents and he shall bear all the costs and expenses connected therewith.

9. DEADLINES

9.1. Delivery Date

The Parties agree that for the fulfilment of their mutual Order obligations, time is of the essence. The start date of performance of the Scope of Supply and Services, of submission of documentation and as-built drawings owed by the Contractor to the Employer as well as the beginning and end of installation, of commissioning and trial run, shall be agreed in the Order. The Contractor shall procure all material early enough that Contractor can remedy any defects of the Scope of Supply and Services in due time. .

For documentation, the date of the Employer's receipt stamp or the date of the Employer's other confirmation of receipt shall be deemed as delivery date provided

that the Contractor submitted complete and correct documentation according to the Order.

For the Scope of Supply and Services, the earlier of the following events shall be deemed as the delivery date: the date of Contractor's entire fulfilment of his respective obligations free of defects according to the Order including the complete and correct documentation or the Employer's formal Taking Over of the supply and services without reservations.

9.2. Delay:

The deadlines and periods stated in the Order/Contract shall be legally binding. The Contractor shall inform the Employer directly as soon as he knows that he will not be able to meet any agreed deadlines about the details of the delay by stating the reasons and the estimated duration in writing.

In case obligations of the Employer have an effect upon the agreed deadlines, the Contractor shall conduct all necessary actions in a verifiable way and in due time to enable compliance with such the deadlines. Otherwise the Contractor may not invoke Employer's delay with his obligations in case Contractor's Scope of Supply and Services is delayed. In particular, the Contractor may only invoke Employer's failure to provide documents in case Employer fails to provide such documents within a reasonable time despite Contractor's notification of default.

In such a case the deadlines shall be postponed by the duration of Employer's delay and free of costs for the Employer. The new deadlines extended by the time of Employer's delay shall be deemed as the new deadlines subject to contractual penalties if any.

In any case of delay or risk of delay the Contractor shall carry out its Scope of Supply and Services in a such flexible manner as to minimize the delay.

In case of Contractor's default the Employer shall be entitled to all statutory rights. In particular, the Employer shall have the right to claim damages in place of performance and to rescind the Order/Contract after expiry of a reasonable grace period. In case Employer claims for damages, the Contractor shall have the right to prove that the breach of contract is not attributable to him.

9.3. Storage:

In case the agreed delivery dates change due to reasons not attributable to the Contractor, the Contractor shall properly store the supply for the Employer up to a duration of 3 months at the cost and risk of the Contractor.

Due payments affected by such storage may be paid against storage confirmation, confirmation of transfer of title, and/or bank guarantee etc.

In case of storage the Contractor shall only have the right to total or partial delivery of the supply after written dispatch approval by the Employer.

9.4. Premature Fulfilment:

Supply delivered and/or services rendered prior due date shall only be permissible after written approval of the Employer. Premature delivery shall not create a right for earlier payment.



10. LIABILITY OF THE CONTRACTOR

10.1. General:

The Contractor shall be liable for any non-performance or violation of his obligations and for the damages that arise therefrom. He shall further hold harmless and indemnify the Employer from all claims of any third party based on any act or omission of the Contractor or of any of its agents, employees or sub-contractors.

10.2. Contractual Penalty for Delay:

In case the Contractor fails to meet the deadlines, interim or final dates stipulated in the Order or in the contractual time schedule, the Contractor, unless otherwise agreed, shall pay for the time of the actual delay the following contractual penalty always referring to the total Order value, until the Employer proves that he incurred exceeding damages. The Employer may set off such amounts against current invoices or rights for payment of Contractor.

- Delayed supplies and services:

0.25% per each day of delay, however not more than 5% of the total Order value/total Contract price;

- Delayed documentation:

0.1% per each day of delay, however not more than 3% of the total Order value/total Contract price.

Contractor's obligation to pay contractual penalties for delay shall be established on the day he comes in default. In case Contractor's supply or services are defective, the time period between Contractor's receipt of Employer's notice of defect and Contractor's rectification of the defect shall be penalized. It shall be not necessary for the Employer to make a reservation at the time of delivery/Taking Over to claim contractual penalties, as long as the Employer claims or set off the amounts with Contractor's receipt of the final payment.

Payment of contractual penalties shall neither relieve the Contractor from his obligations to perform the Order/Contract nor from his respective liabilities.

10.3. Non-Achievement of specifically agreed Performance Parameters:

Even if the Order includes the Contractor's obligation to pay contractual penalties for defects, for non-achievement of specifically agreed performance parameters or of guarantees (e.g. performance guarantees), the Contractor shall not be released from his obligations that his Scope of Supply and Services shall meet the intended purpose of use.

10.4. Liability for Documentation:

The Contractor declares that he is aware of the importance for the Employer that the Contractor complies with his obligations with respect to the documentation of his Scope of Supply and Services and thus shall be liable in case of delay of handing over the documentation and for the documentation being incorrect or incomplete.

10.5. Liability for Engineering:

The Contractor shall be responsible that the services he renders with respect to engineering, to consulting, or to documentation are, correct and complete. The Contractor acknowledges that he is aware of all relevant parameters and requirements.

10.6. Product Liability:

As far as the Contractor is responsible for damages resulting from a defective product, he shall hold harmless and indemnify the Employer upon its first demand from any third party claims.

Additionally, the Contractor shall be responsible to reimburse the Employer for any expenditure according to §§ 683, 670 BGB (German Civil Code) as well as according to §§ 830, 840, 426 BGB (German Civil Code) that arise from or in connection with a product recall. As far as reasonably possible, the Employer shall inform the Contractor about subject and scope of such a recall and he shall give him an opportunity to make a statement in that respect. Any further rights and obligations provided by law shall remain unaffected.

The Contractor shall get sufficient insurance coverage against any risk arising from product liability and upon demand he shall present to the Employer written proof of the respective insurance.

The extend of the insurance coverage shall in no way reduce or diminish the Contractor's obligations or his liability even if the Employer does not communicate any reservations against the presented proof of the existing insurance.

10.7. Industrial Property Rights:

The Contractor shall be liable that his Scope of Delivery and Services including the part of the supply and services performed by Contractor's sub-contractors does not infringe any third party rights. In case a third party files a subject claim against the Employer, the Contractor shall hold harmless and indemnify the Employer upon its first demand from and against any such claims or damages. The Contractor shall not be entitled - without obtaining the Employer's prior written consent - to make any agreements with such third party, particularly not to settle any claim. The Contractor's indemnity obligation includes reimbursing all and any expenditure that the Employer reasonably incurs in connection with the claims filed by a third party. The Contractor's indemnity obligation shall not prescribe in any case before the end of 10 years from execution of this deal/Contract.

10.8. Limitation of Liability

Any limitation of Contractor's liability shall only be applicable and enforceable if particularly confirmed in writing by the Employer.

11. DEFECTS LIABILITY

11.1. General:

Despite the characteristics explicitly specified or agreed in a different manner or generally to be expected, the Contractor shall be liable for the completeness of his Scope of Supply and Services and for their suitability for the particular use, in particular for the suitability of its supplies and services for the circumstances prevalent at the site in permanent operation mode and in interaction with all the different components of the Total Plant. He shall further be liable for complying with all legal and administrative rules, orders (especially with regards to safety and environmental protection) and with applicable IEC- and DIN-norms, for enduring availability of its supplies and services continuously achieving all performance and consumption values, being easily installed, maintained and repaired, for employing latest



state of the art and of science design and workmanship, for correctly choosing the materials to be employed in a professional manner for the flawless functioning of the Total Plant or any part thereof and for achieving the agreed performance data and characteristics. Even if specific devices, parts, equipment or services are not explicitly specified in the Order/Contract, they still form part of the agreed Scope of Deliveries and Services if they are necessary for the Total Plant to be complete and operable without any flaw. Moreover, the Contractor shall adapt his supplies and services to the supplies and services of the Employer, of Employer's or the Final Customer's sub-contractors and to the existing circumstances

The Employer shall have the right, at his sole discretion, to demand from the Contractor to remedy a defect or to deliver a new good or to render the services again as a substitute for the flawed one. The Employer explicitly reserves the right to claim damages, particularly in place of performance of the Contract.

The Employer shall have the right to remedy the defect or the flaw by himself or to have a third party remedy the defect or the flaw at the Contractor's cost in case the Employer cannot reasonably anticipate the Contractor's timely rectification and in case the Employer reasonably assumes that he or the Final Customer will incur higher damages by reason of the Contractor's late rectification than by reason of Employer's remedying the defect or having it remedied by third party. Moreover, the Employer shall be entitled to remedy the defect or the flaw at the Contractor's cost if the Contractor does not rectify the defect or the flaw within a reasonably specified time as in Employer's according notice.

11.2. Defects Liability Period, Remedy of Defects:

The defects liability period shall expire after 36 months from Employer's Taking Over or expressed acceptance of the supplies and services. Unless specified otherwise the defects liability period for supplies to be integrated into the Total Plant, e.g. the steel structure or the corrosion protection shall expire after 36 months counted from Taking Over.

The defects liability period shall get extended among others by the time the supplies cannot be used for reason of a defect as well as by the time the Parties discuss the nature or the extent of a defect.

The Employer may notify the Contractor about a defect until 6 months after the expiration of the defects liability period. The Employer's rights and remedies with respect to any defect shall not become time-barred prior to such date.

If the equipment is defective and in case Taking Over or expressed acceptance is not a condition of the Contract, the Employer may notify the Contractor in deviation to §§ 377, 378 HGB (German Civil Code) of apparent defects within 12 working days after receipt of the supplies at the place of delivery. He may notify the Contractor of any other defect within 12 working days after discovery of the same.

With respect to the Contractor's Scope of Deliveries and Services the Employer shall not have a duty to examine them before he performs the contractually agreed performance or functional tests of the Total Plant despite examining dimensions, number, and/or physical integrity.

At the Employer's sole discretion the Contractor shall remedy any defect by repair or replacement that emerge prior to or during the defects liability period at the place of operation of the defective supply, including any serial defect even if the defect has not become apparent at all parts of the supply. All necessary activities, costs and expenses to fully remedy the defect, like e.g. transportation, customs, duties, de-installation and reinstallation, etc. shall be performed and/or borne by the Contractor.

In case creating, compiling and or delivery of software is part of Contractor's Scope of Supplies and Services, the Contractor shall be responsible for the whole system of the Total Plant and its components having the most recent status of release (i.e. the system is in conformity with the latest update and debugged) or upgrade (i.e. a technical or functional amplification of the software system) at the time of Taking Over and if in case Taking Over is not the purpose t of the Contract, at the time of delivery.

11.3. Spare Parts:

Unless agreed differently, the Contractor shall be responsible for all spare parts, consumables and wear and tear parts offered as necessary and commonly chosen being sufficient for a continuing operation of 5 years after Taking Over. If such parts are not sufficient, the Contractor shall deliver the necessary parts to the place designated by the Employer (e.g. the Total Plant site) DDP according to the Incoterms 2010, packed and free of charge.

The defects liability period for spare parts shall expire after 24 months from their installation and commissioning. Moreover, sub-clause 11.2 of these GPC shall apply accordingly.

The Contractor shall ensure the availability of all spare parts, consumables and wear and tear parts for the supply for 15 years after expiration of the defects liability period.

The Contractor shall clearly mark any of the spare or reserve parts he has to deliver with descriptive characteristics like e.g.:

- manufacturer
- type
- dimensions/measures
- material composition
- applicable norms (z.B. DIN, IEC, ISO, etc.)
- number of item, order and/or article/identification number

In case the Contractor modifies parts of the supplies in rectifying a defect or if he substitutes them with parts that are not identical, the Contractor shall be obliged to modify or substitute the respective spare or reserve parts accordingly at his own costs.

12. COMMISSIONING, TRIAL RUN, TAKING OVER

12.1. Commissioning:

12.1.1 If commissioning is within Contractor's Scope of Supply and Services, the Contractor shall seek the Employer's approval for the start of commissioning. In case several interacting parts of a unit or plant need to be



commissioned, the Employer or the Employer's representative will co-ordinate the joint commissioning.

- 12.1.2 The Contractor shall be solely responsible for and shall conduct commissioning of its Scope of Supplies and Services. The Employer will provide the necessary operating materials and personal for commissioning without extra charge.
- 12.1.3 The Contractor shall follow the Employer's instructions. The Contractor shall consider a sufficient time span for the co-ordination of a joint commissioning of the several interacting parts of a unit or plant.
- 12.1.4 Commissioning shall be only complete if no defects have become apparent during an uninterrupted operation for 24 hours reaching all agreed parameters, e.g. efficiency, with all relevant inspections and if during that time the Contractor has proven the flawless operation of the unit/plant including all sub-systems, security devices and auxiliaries.

12.2 Trial Run

- 12.2.1 The trial run shall start after completion of commissioning.
- 12.2.2 The Contractor shall conduct the trial run in its own responsibility and at its own risk with its qualified personnel. The purpose of the trial run is that the Contractor proves the overall operating ability of its Scope of Supplies and Services.
- 12.2.3 The Employer will provide the necessary operating materials for the trial run without extra charge. During the trial run the Contractor shall instruct the Employer's operating personnel so that they will be familiar with all details of the unit/plant when the trial run will be completed.
- 12.2.4 It shall be within the Employer's sole discretion to determine the daily trial run operating time. The Contractor may only assign its trial run personnel with a different task upon attaining the Employer's prior approval. In case the Employer determines the trial run operating time in the way that it exceeds the time span of one shift, the Contractor shall provide the personnel for rotating shifts.
- 12.2.5 The Contractor shall eliminate any disruption or disturbance during the trial run immediately at its own cost.
- 12.2.6 The Contractor shall provide a protocol about the course and the results of the trial run that needs to be signed by both Parties. The protocol shall particularly address all the defects occurred, the current state of efficiency and the date of completion of all contractual obligations by the Contractor.
- 12.2.7 The Order/Contract shall define starting date and duration of the trial run.

- 12.2.8 The duration of remedying defects and of corrective work during the trial run shall be deemed as disruptions of the trial run. The Contractor shall promptly notify the Employer once a disruption occurs. The trial run shall get extended by the time of the disruptions provided they do not amount to an interruption of the trial run as defined below.
- 12.2.9 The trial run shall be deemed as interrupted, in case
 - 12.2.9.1 the trial run has been disrupted more than three times in aggregate, or
 - 12.2.9.2 the trial run has been disrupted for more than 24 hours in aggregate, or
 - 12.2.9.3 Contractor has not promptly informed the Employer about the disruption, or
 - 12.2.9.4 such disruptions are caused by a defect of a general/fundamental nature, which can only be cured by modifying the unit/plant, the Scope of Supplies and Services or parts thereof.
- 12.2.10 In case of an interruption of the trial run, the trial run shall re-start for its original duration after the Contractor has successfully remedied any defects.
- 12.2.11 The Employer reserves the right to extend the trial run up to 4 weeks. In this case, the Employer will bear the costs that accrue due to such extension. In such case, the defects liability period shall begin on the date of the start of the extended trial run.
- 12.2.12 In case, completion of the trial run gets delayed for reasons attributable to the Employer, the Parties shall adapt their Contract accordingly.

12.3 Taking Over

- 12.3.1 In the case commissioning and trial run are part of the Contractor's obligations, Taking over of the Scope of Supplies and Services shall take place after successful completion of commissioning and of the trial run, but, however, in any case Taking over/acceptance of the Scope of Supplies and Services shall not be achieved before Contractor has fulfilled all of its obligations under this Contract, including handing over of complete documentation, the supplies and services are state of the art and particularly the Contractor has proven in a Successful Performance Test that its supplies and services comply with the guaranteed figures/values.
- 12.3.2 Partial Taking Over may be provided upon Contractor's demand if those supplies and services are considered a separate unit.
- 12.3.3 The Employer may deny Taking Over by reasons of substantial defects until they are fully remedied by the Contractor.
- 12.3.4 Taking Over is to be performed formally. An informal Taking Over may not take place. The



Employer shall take minutes of the Taking Over in writing. Each Party may ask for the participation of an external expert at its own cost. The Parties shall mutually lay down their findings in the minutes which shall also contain reservations with respect to noted defects as well as Contractor's objections. Each Party shall receive a copy of the minutes.

- 12.3.5 Formal Taking Over may take place in the absence of the Contractor, if the Parties agreed on the date and time of Taking Over or if the Employer invited the Contractor to Taking Over with a reasonable notice period and the Contractor does participate. Despite Contractor's absence, the Employer shall inform the Contractor about the outcome of the formal Taking Over procedure and provide him a copy of subject minutes.
- 12.3.6 The Employer shall notify the Contractor of reservations for known defects at the latest when performing the formal Taking Over.
- 12.3.7 Quality tests, testing of materials, final test and inspections performed by the Employer or by persons contracted by the Employer shall not be deemed as Taking Over.

12.4 Performance Tests

Generally, the Contractor is obliged to prove that its Scope of Supplies and Services complies with the Contract during the Performance Test of the Total Plant. However, the Employer is entitled to request the Contractor to perform additional tests for the examination of distinct supplies and services, particularly to prove achievement of the contractually agreed technical performance values of the Scope of Supplies and Services and/or of the technical guarantees.

12.5 Contractor Caused Delay of Taking Over

In case a Performance Test does not show the agreed performance values/guarantees or in case other defects in the Scope of Supplies and Services hinder the Taking Over, the Employer shall leave the Contractor a reasonable time, taking into account the concerns of the operator of the Total Plant, to cure such defects or to achieve the agreed performance values/guarantees. The Contractor shall reimburse the Employer upon its invoice for all costs and expenses for personnel, material, operational supplements, etc. incurred in the course of the failed performance tests

If a Successful Performance Test cannot be achieved within a reasonable period of time due to reasons attributable to Contractor, the Employer shall have the right to demand the payment of penalties and damages whether liquidated or actual, to set off his claims against the contractual payment and to rescind the Contract.

The relevant professional standards, regulations as well as working standards of the Final Customer shall apply, unless stipulated otherwise in the following conditions and/or Order-specification with its annexes.

The Contractor shall comply with the laws and regulations as well as with the requirements of any competent public authority applicable to the Contract/Order and to the Customer Contract, obey court decisions and shall comply with the technical regulations, standards and directives in force at the time of the Contract/Order conclusion. That includes in particular relevant regulations applicable in the country of deployment/the site of the Total Plant. In particular the Contractor shall obey the rules and regulations of the professional workers associations and the generally valid safety and health standards. Machines and technical tools and equipment shall be delivered according to the Machinery Directive with an instruction manual and an EU conformity declaration. Furthermore, they shall comply with the safety and professional associations' related standards and specifications stated in the lists A and B of the "General Administrative Directive on the Law of Technical Working Tools and Equipment".

The Contractor shall inform the Employer about any drafts or petitions for new laws or regulations or such to be modified. In the event there are material changes in law or regulations, respective court decisions or public authority decisions or changes in the state of the art with material impact on the Scope of Supply and Services between the conclusion of the Order/Contract and Taking Over, the Contractor shall inform the Employer immediately about the changes and its consequences according to No. 2.2. However, the Contractor shall promptly inform the Employer when he has good reasons to doubt the recent developments or other opposing information. Unless necessary, the Contract/Order shall be adjusted accordingly.

In the event the Contractor delivers dangerous or hazardous substances, the Contractor shall make available product information, especially EU safety data sheets, prior to the delivery without request. The same shall apply for information regarding special sales restrictions. The Contractor shall be prohibited from making use of carcinogenic materials.

13.2. Knowledge of the Project and of its Circumstances:

The Contractor hereby expressly covenants to inform himself about the subject matter of the Order/Contract exactly and to be familiar with the local conditions, customs, material and application conditions in the country of deployment and at the construction site of the Total Plant and to take care of all external circumstances during the execution.

The Contractor shall familiarize himself with the construction site and its surroundings, with the local soil conditions and working conditions, traffic conditions and all other circumstances, which may be important for the execution of its Scope of Supplies and Services as also with the details and documents given by the Employer.

Damages, delays or other disadvantages, which occur due to non-compliance with those obligations, are to Contractor's accounts.

13.3. Export Licences:

The Contractor shall procure at its cost all the export licenses necessary in connection with its Scope of

13. STANDARDS, REGULATIONS, KNOWLEDGE OF THE PROJECT AND OF THE SURROUNDINGS, WORKERS FROM NON-EU COUNTRIES

13.1. Standards:



Supplies and Services, in particular for the export into the country of the Final Customer.

The Contractor ensures herewith that at the time of the acceptance of the Order/Contract its total Scope of Supplies and Services is assured to be deliverable/executable and that no public authority restrictions or other restrictions are in oppose to the complete delivery/execution. The Contractor shall be liable for all damages incurred to the Employer and/or the Final Customer due to non-compliance. After acceptance of the Order/Contract the Contractor shall inform the Employer in time about any possible relevant new export prohibitions/restrictions and shall propose to the Employer in due time alternatives without additional costs.

13.4. Workers:

The Contractor and its approved subcontractors shall deploy only qualified personnel in the performance of the Scope of Supplies and Services. Upon request of the Employer, the corresponding proof of qualification shall be presented.

During activity at the site of the Employer or at the construction site of the Final Customer the Contractor shall adjust its performance to the local regular working hours. The Contractor shall inform himself about the prevailing local regulations and conditions prior to starting the performance.

The Employer shall have the right to demand for good grounds the replacement of Contractor's or subcontractor's personnel partially or in full. That shall in particular apply in case of doubts concerning the necessary experience or qualification of the personnel or in case regulations regarding work safety or environmental protection are not observed. In that case the Contractor shall procure qualified substitution of its personnel. However, the application of the agreed deadlines shall remain unaffected. The Contractor shall bear the costs connected with the replacement of its or subcontractor's personnel.

In the event the Contractor or its subcontractor deploy workers who originate from non EU countries, then, the necessary work permits shall be presented to the Employer prior to the beginning of the works. . The Employer shall be entitled to withdraw from the Contract without prejudice to all further rights in case of breach of the obligations stated before.

14. RIGHTS ON OBJECT OF CONTRACT

14.1. Rights of Third Parties:

The Contractor shall ensure that performance and usage of its Scope of Supplies and Services does not anyhow infringe rights of third parties (brands, design, patents, territory protection etc.) and shall not be in violation of, without being limited to, existing boycott clauses, sanctions, embargos, blacklists etc.

The Contractor shall inform the Employer promptly about any known or suspected infringement of third party rights or of the boycotts, sanctions, embargos, blacklists etc...

The Contractor shall indemnify and hold the Employer and/or the Final Customer harmless from any damages or claims of third parties due to its impairments or infringements of rights mentioned under this section. The Contractor shall ensure the unlimited and free

usage of the Scope of Supplies and Services free of any encumbrances or titles to the Employer and/or the Final Customer or alternatively shall provide other substitutes without costs acceptable to the Employer and to the Final Customer.

14.2. Confidentiality:

The Contractor shall keep confidential the content of the Order/Contract, information about the business transaction itself and all information that the Contractor receives from the Employer or from the Final Customer, whether directly or indirectly, and any work product or development that is based on such information (hereinafter commonly the „ Confidential Information“); and he shall not disclose the Confidential Information to any third party not being involved in the performance of the Order/Contract or of the Customer Contract without Employer's prior explicit and written approval. The Contractor may particularly not use the Confidential Information for advertising or for any other purposes then for the performance of the Order/Contract and shall not take any photographs or other visual copies from the Employer's sites and from the Total Plant or parts of it. The Contractor shall further keep confidential all documentation and as-built documents he receives from the Employer and he may only use them for the performance of the Order/Contract. The Contractor may only pass Confidential Information on to such employees, sub-contractors, or specialists on a need to know basis for performing their obligations with respect to the Order/Contract. Such employees, sub-contractors, or experts shall agree on keeping Confidential Information confidential and use them only for the intended purpose according to the rules laid down in this clause, whereas Employer shall have the right to enforce the rights out of such agreement on behalf of the Contractor. The Contractor shall confirm such confidentiality agreements with third parties in writing, if requested by the Employer. In case of violation or breach of the confidentiality obligations the Contractor shall hold harmless from any damages and fully indemnify the Employer, in particular but not limited against any claim raised by a third party (including the Final Customer).

The Contractor may disclose information as far as

- (i) such disclosure is specifically authorised by the Employer in writing;
- (ii) such information or data of the Employer has been made public by the Employer;
- (iii) the Contractor, without violating its obligations hereunder, obtains knowledge of such information from other sources, such as from third parties without reservation as to confidentiality, or through its own independent efforts without any violation of any confidentiality obligation;
- (iv) the information in question was already and lawfully known to or independently developed by the Contractor at the time of receipt;
- (v) such information is part of the public domain or generally known.

In the light of the shares of the Employer's ultimate holding company, ANDRITZ AG, being publicly traded at the stock exchange, the Employer gives hereby notice to the Contractor that any misuse of insider information about ANDRITZ AG and of ANDRITZ AG's group companies is prohibited by law and would constitute a criminal act.



14.3. Data Protection:

The Contractor shall comply with the legal requirements of the data protection including to procure the written commitment of the employees in the sense of § 5 BDSG (German Federal Data Protection Act). He shall also impose the obligations for data protection on all the persons entrusted by him with the execution of the Contract.

14.4. Intellectual Property:

In the case the Employer provides software, drawings, documentation, know-how, or any other information (hereinafter „Information“) to the Contractor, the Contractor will be granted a free and non-exclusive limited right to use the Information for the performance of the Order/Contract only. The Contractor acknowledges that the Information is protected for the Employer and that title and right of transfer remains exclusively with the Employer.

The Contractor only may copy, modify, or translate Information, or transform the software from the object code into the source code within the legal limits (§§ 69 et seq. German Copyright Act, UrhG) as far as such is necessary for the due performance of its contractual duties. The Contractor shall neither remove any Information of the manufacturer, particularly not any copyright information, nor modify such Information without the prior written consent of the Employer. All further rights concerning the Information and the documentation including any copies shall remain with the Employer. Contractor shall not be entitled to grant any sub-licence.

The Contractor shall grant to the Employer the free and non-exclusive right to use and transfer all rights including any patent or intellectual property rights related to its Scope of Supplies and Services delivered/performed without limitation within the group companies of the Employer. In particular, the Employer shall have the right to modify or reverse-engineer any good supplied, any work performed, any service provided and/or development made by the Contractor in connection with the Contract, e.g. pictures, drawings, calculations, methods of analysis, and recipes. The Employer shall be entitled to hand over any Information to third parties that may help with manufacturing spare or reserve parts.

In case supply or creation of software is part of the Scope of Supplies and Services, the Employer shall acquire upon complete payment of all invoices due until (and including) Taking Over the non-exclusive unlimited right to use, employ and forward such software in its object and source code within its group companies. Additionally, the provisions of §§ 69 a et. seq. German Copyright Act (UrhG) shall apply in the sense of the Employer's acquisition of a perpetual single licence. The Employer shall be entitled to already use such software prior to Taking Over for testing purposes. The Contractor shall be held liable that the transfer of all such rights as mentioned before is sufficient and that such software can be used for the performance of the purpose intended with the Contract and that its use shall not be anyhow impaired, now and in the future.

14.5. Inventions and Improvements:

The Contractor shall inform the Employer about inventions and improvements developed by him or by its employees in connection with the execution of the Contract based on information of the Employer and file

upon request of the Employer patent applications for inventions according to the relevant conditions of the relevant patent law. The registered patent shall be transferred without reservation by the Contractor to the Employer with all the rights but with obligations for compensation to the inventor and reimbursement of patent registration costs.

The Contractor shall carry out the claim on the invention, the patent registration and the determination of the inventor compensation in accordance with the applicable law in after mutual agreement with the Employer, whereby the Contractor has to create the pre-requisites necessary for the same.

The Contractor shall ensure that its subcontractors accept standards of obligations with similar effect to the benefit of the Employer.

14.6. Follow-up Orders:

For protection of the Employer's know-how obtained by the Contractor in the execution of the Order and to ensure an optimum operation of the Total Plant even after expiry of the defects liability period, the Contractor grants for follow-up orders customer protection for a period of 10 years from the date of final delivery. The Contractor shall not make any direct or indirect offers to the Final Customer, for instance for spare parts and wear and tear parts without cooperating with the Employer as sales partner.

15. FORCE MAJEURE

The Contractor shall be excused in full or partial from the timely fulfilment of the Contract, in case of Force Majeure.

The Contractor shall only be entitled to raise an excuse based on a Force Majeure event if Contractor provides a registered notice to the Employer stating details e.g. about the beginning and the expected ending of the event, the cause of it and that being proofed and officially certified by the respective government authority or chamber of commerce of the country where the Deliveries or Services are to be performed.

In the event of Force Majeure the Contractor shall be obliged to make all efforts to remedy and to mitigate the delays and expected damages and to keep the Employer continuously informed in this regards.

Deadlines and schedules, which cannot be adhered due to the Force Majeure, are extended by the duration of the effects of the event.

The Employer shall have the right to withdraw totally or partially from the Contract in case the Force Majeure event lasts longer than 4 weeks.

The Employer shall not be liable to the Contractor for damages based on defaults in the fulfilment of Employer's contractual obligations attributable to a Force Majeure event.

16. WITHDRAWAL AND TERMINATION

16.1. Breach of Contract, Withdrawal:

The Employer shall have the right to withdraw totally or partially from the Contract in the event of a major breach of Contract after setting a appropriate grace period (in general 14 days).

A major breach of Contract shall be constituted in without being limited to cases of delays or threatening



delays of intermediate or final deadlines or defects, where after the proper contractual fulfilment by the Employer or its contractual partners would be put at risk, notwithstanding any contractual penalties provided for those. In case Contractor refuses to make the confirmation required under Sub-Clause 2.7 ["ANDRITZ Supplier Code of Conduct and Ethics"], to comply with the Supplier Code or if he, his officers, agents, employees, assigns, consultants or every other person whom the Contractor employs for performing his obligations, such act will also be deemed a major breach of Contract. For the avoidance of doubt, a breach of the German Act Regulating a General Minimum shall constitute a major breach of Contract as well.

In those cases the Employer shall be entitled to execute out the failed or flawed Deliveries and Services by himself or through a third party at the cost of the Contractor (substitution). The costs incurred due to that substitution shall either be invoiced directly to the Contractor, in that case a payment period of 45 days after the date of invoice shall be deemed as agreed, or shall be deducted from the next due payments by the Employer to the Contractor.

The Employer shall have the right to withdraw from the Contract even without a grace period,

- If after a reminder by the Employer to the Contractor, even without expressly setting an extension of time or threat of withdrawal, a reasonable grace period has practically been given, or
- If the Employer has reason to believe prior to the respective contractual milestone, that the Contractor will not be ready to or is not able to or will not be in a position to fulfill the major contractual obligations in time. That shall be particularly assumed, when the Contractor expressly and finally refuses to fulfill the major contractual obligations or when there is or would be a threat of insolvency of the Contractor. The insolvency is considered to be threatening e.g. if a cheque drawn on a business account has bounced due to insufficient funds.

The Contractor shall pay back to the Employer the amounts already paid to him for not fulfilled Deliveries and Services in addition to the financing costs incurred to the Employer.

If the execution of substitution of work requires access to the equipment or materials etc. located at the place of the Contractor or its subcontractor, the Contractor shall be obliged to directly provide that to the Employer.

If the execution of substitution work requires access and usage of intellectual property rights, to documentations (like for instance workshop drawings, calculations) or on related other information, the Contractor shall be obliged to obtain the required rights, documentations, information and provide them to Employer.

Right of usage:

In the event of a withdrawal from the Contract, the Employer and/or Final Customer shall have the right to use the Scope of Supplies and Services already performed free of costs unless their taking over of substitute works or solutions.

16.2. Solvency of the Contractor:

The Contractor shall give information to the Employer immediately and completely in the event of clearing or insolvency proceedings are filed against the Contractor or its suppliers or in case of changes in the ownership or structure of shareholders of the Contractor.

If a clearing or insolvency procedure is filed against the Contractor or in the event of a change in the ownership of the Contractor, the Employer shall have the right to promptly dispose of the Deliveries and Services stored with the Contractor and/or its sub-contractor and/or shall have the right to withdraw promptly from the Contract totally or partially.

16.3. Suspension:

The Employer shall have the right to suspend totally or partially the Contract at any time. In that event, the Contractor shall be obliged to hand over a detailed notice about the resulting consequences and to offer to the Employer a new time schedule with adjusted dates under best economic considerations for the Total Plant. The Employer shall have the right to suspend up to 3 months free of any claim for the Contractor.

16.4. Termination:

At any time the Employer shall have the right to terminate the Contract as per § 649 BGB (German Civil Code). However in deviation to the statutory law, the following shall be applicable:

- In case the Employer terminates the Contract due to a reason attributable to the Contractor, the Employer shall compensate the individual and part of the Scope of Supplies and Services rendered by the Contractor until the receipt of the termination notice, in so far as those can be utilized by the Employer. The Employer's right to claim damages shall remain unaffected. The Contractor shall in particular reimburse the additional costs and expenses caused by the termination and its consequences.
- In case the Employer terminates the Contract due to a reason not attributable to the Contractor, the Employer shall pay to the Contractor the charges agreed upon for the individual and part of the Scope of Supplies and Services provided until the receipt of the termination notice. Costs and expenses going beyond shall be refunded by the Employer to the Contractor only so far as the Contractor has made them reasonably in anticipation to the Contract or with respect to the Employer contract. Saved expenses are to be deducted from Contractor's accounts as per § 649 BGB (German Civil Code). With the payment of the respective charges, the Employer shall get the ownership on the individual and part Scope of Supplies and Services, unless the transfer of title was not earlier according to sub-clause 17.

17. OTHER CONDITIONS

17.1. Transfer of Risk:

In case, Employer's acceptance of the Scope of Supplies and Services is expressly agreed, the transfer of risk for accidental loss or damage shall take place



accordingly. In all other cases transfer of risk shall take place according to the agreed ICC INCOTERM 2010.

17.2. Transfer of Ownership:

The transfer of ownership to the Employer shall take place at the earliest possible time but with delivery according to the ICC INCOTERM 2010 at the latest, unless otherwise agreed in the Contract/Order.

17.3. Installation Devices:

The ownership and risk of installation devices, commissioning components etc., which have been provided at site for a temporary use only, shall remain with the Contractor. The Contractor shall ensure, that no expenses incur for the Employer due to their import and export. Notwithstanding to the foregoing the terms and conditions for on-site services of the Employer shall apply.

17.4. Insurance:

Unless otherwise agreed, the Contractor shall take out insurance policies considered to be necessary. In particular, the Contractor shall have third party insurance coverage with conditions considered as usual standard for plant constructions for the duration of the Contract including all guarantee and warranty periods. The Contractor shall provide a proof of insurance upon request by the Employer. The insurance policies taken out by the Contractor shall be without recourse to the Employer and the Final Customer.

In case the Contractor is co-insured within Employer's insurance policy, the Contractor acknowledges the respective insurance conditions as binding to him. Therefore, the Contractor shall be obliged to fulfil all the obligations related to that insurance, as for instance to provide all the requested information, to follow and obey instructions and to comply with the conditions etc. If the insurance coverage is claimed for a (simultaneous) damage to Contractor's property, then the Contractor shall take over or shall reimburse to the Employer the deductible payable to the insurer to that excess, in which the damage caused to the Contractor and included in the insurance claim stands to the actual damage to the Employer.

17.5. Power of Attorney:

Person who give statements to the Employer on behalf of the Contractor, shall be deemed to have unlimited power of attorney to do so.

17.6. Liability towards the Contractor:

The Employer shall not be liable for damages, which are caused by the Final Customer or by third parties.

17.7. Claims of Third Parties:

The Contractor shall indemnify and hold the Employer harmless from any damages and claims of third parties regarding his omissions or failures in the execution of its Scope of Supplies and Services

17.8. Performance Modifications:

The Contractor shall be obliged to inform the Employer of possibilities of improvement on the ordered Scope of Supplies and Services and offer the same to him. However, modifications shall be undertaken only upon an agreed change order.

17.9. Liens/Withholding Rights:

The acquisition of liens, withholding rights or any other pledge or securities on the parts made available by the Employer as also on the Scope of Supplies and Services or parts thereof shall be excluded.

The Contractor shall ensure to include a corresponding clause in all the contracts with its subcontractors.

17.10. Retention of Title – Provision of Materials – Tools – Security Interests:

In case the Employer makes available to the Contractor goods or materials for manufacturing and/or further processing, the Employer reserves the property rights on those parts or materials. Manufacturing or processing on those goods or materials by the Contractor shall be carried out on behalf of the Employer. In case the reserved goods or materials of the Employer are manufactured, processed, combined or mixed with other objects not belonging to the Employer, then the Employer shall obtain a joint property on the new object in proportion to the value of the goods and materials of the Employer (purchase price plus VAT) to the other goods and materials used at the time of manufacturing. If the processing of properties takes place in such a way that the goods and materials of the Employer are to be considered as the main parts of the newly manufactured goods, then it shall be agreed upon that the Contractor transfers to the Employer the sole property on the newly manufactured goods,; in any case the Contractor shall keep possession of the property or joint property for and on behalf of the Employer. . Unless the Employer's security interests stated before exceed 10 % of the Contractor's unpaid materials, the Employer shall be obliged to release those rights upon demand of the Contractor upon the Employer's discretion.

The Employer reserves himself the ownership on the tools; the Contractor shall be obliged to use the tools exclusively for the performance of the Scope of Supplies and Services. The Contractor shall be obliged to insure the tools belonging to the Employer at its own cost against damage from fire, water and theft at the value of new tools. The Contractor assigns to the Employer all compensation rights from that insurance; the Employer herewith accepts such assignment of rights. The Employer is obliged to carry out timely at its own cost any required services and inspections as well as all the maintenances and repairs on the tools. The Contractor shall promptly give notice to the Employer about any incidents or disturbances with the tools; in case of failure to do so Employer's claims for damages shall remain unaffected.

The Contractor shall transfer the title of the Deliveries and/or of the goods to be manufactured by him and/or of the necessary material for manufacturing such goods to the Employer upon and in the amount of the Employer effecting advance or partial payment. The Contractor guarantees that the Deliveries, goods and materials are free of any rights of any third party or of any lien to the benefit of a third party and that he has the full right and authority to transfer title of such Deliveries, goods and materials to the Employer. The Parties agree that the Contractor shall be deemed as manufacturer of all the parts and materials that are located at its premises. The Contractor shall possess all goods and base materials and all parts thereof provided by the Employer for and on behalf of the Employer. The Contractor shall safely and separately store and control the goods and materials for and on behalf of and free of charge for the Employer. The Contractor shall clearly



label them as Employer's property and he shall hand them over to the Employer at any time upon the Employer effecting advance or partial payment. The Parties further agree that transfer of title shall be affected accordingly.

In case the Deliveries and/or the goods to be manufactured by the Contractor and/or the base material for manufacturing them are located at the premises of any of Contractor's sub-contractors, the Contractor shall assign its related rights of recovery of the property to the Employer upon and in the amount of the Employer effecting advance or partial payment. The Contractor herewith accepts such assignment of rights.

Unless the Customer Contract stipulates an earlier time for the transfer of risk and ownership than stipulated in this GPC the conditions of the Customer Contract shall prevail between the Employer and the Contractor.

In case the Contractor shall process and/or manufacture the objects or materials made available to him by the Employer § 377 HGB (German Commercial Code) shall apply. Without prejudice to that, the Contractor shall be obliged to inspect the suitability of the given materials or parts at its own risk and to promptly inform the Employer about objections. In case of unsuitability of the material/part due to a failure of or incomplete specification of the Contractor, the Contractor shall be liable for the costs and damages occurring thereof. After the Taking Over, the Contractor shall not be entitled to rely on the defectiveness or unsuitability of the materials or parts provided by the Employer, unless such defect was not discoverable even after inspection. The Employer shall be obliged to assign all the claims for defects against its suppliers/manufacturers to the Contractor.

17.11. Reservation of Combined (group) Settlement and Set Off rights:

With signing of the Contract the Contractor agrees that all claims, which the Employer and the ANDRITZ companies (affiliated companies as per § 15 et. seq. AktG as also domestic and foreign companies, with whom the ANDRITZ AG has a shareholding of at least 50%) have made or will be making towards the Contractor are collectable by all ANDRITZ companies as total creditors and can be set off against debts of every ANDRITZ company. All material and procedural rights, which the Contractor possesses with respect to a claim against one of the total creditors, shall also apply to the other total creditors.

If the Contractor has claims towards the Employer or against an ANDRITZ company, both the Employer as well as the ANDRITZ company shall have the right to set off its or their claims against the claims of the Contractor. That shall apply even if cash payment and issuing of securities, especially of drafts, are against each other, or when the claims are due at different dates, in which case settlement shall be done at the date of validation. In case of continuous payment transactions that set off shall be based on the balance.

In case of a majority of claims on the side of the Employer/the ANDRITZ company, the Contractor refrains from objecting to the determination of the claims to be set off by the Employer/the ANDRITZ companies.

Upon request, the Employer makes a list available to the Contractor of the ANDRITZ companies authorized for group settlement.

Employer

17.12. Final Provision:

In case any stipulation of this Contract is held to be invalid or unenforceable, all other stipulations of this Contract shall remain unaffected.

18. APPLICABLE LAW AND JURISDICTION

18.1. Location of the Contractor outside of Germany:

This Contract and all rights and obligations arising therefrom shall be construed and interpreted according to the substantive laws of Germany excluding its provisions that refer to the law of a different country and excluding the UN-Treaty of the International Sale of Goods (CISG).

Ravensburg District Court shall have sole and exclusive jurisdiction for all disputes, controversies or claims arising from Contract and/or from this business relation up to a value of the matter in dispute of € 100,000.00 which cannot be settled in an amicable way.

Any dispute, controversy or claim arising out of or in relation to this contract, including the validity, invalidity, breach or termination thereof and that cannot be settled amicably and of which the value of the matter of the dispute is higher than € 100,000.00, shall be settled by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers of Commerce (Swiss Rules) in force on the date when the Notice of Arbitration is submitted in accordance with these Rules. The Swiss courts shall have the sole supervisory jurisdiction over the arbitration.

In case the value of the matter in dispute is below or up to € 500,000.00, the number of arbitrators shall be one. In case the value of the matter in dispute is beyond € 500,000.00, the number of arbitrators shall be three. The arbitrators shall be elected according to the Swiss Rules in force on the date when the Notice of Arbitration is submitted in accordance with these Rules

The seat of the arbitration shall be in Zurich, Switzerland

The arbitral proceedings shall be conducted in the German language. Correspondence and pleading shall be submitted according the language agreed in the Order. Documents shall also be submitted in the English language.

18.2. Location of the Contractor in Germany:

This Contract shall be governed by and construed in accordance with the laws of Germany excluding its conflict of law provisions... The application of the United Nations Convention on Contracts for the International Sales of Goods (1980) shall be expressly excluded.

Ravensburg District Court shall have sole and exclusive jurisdiction for all disputes, controversies or claims arising from Contract and/or from this business relation which cannot be settled in an amicable way.



ANNEXURE 1

19. COMPANY AND PROJECT SPECIFIC DATA

Re. point zu Pkt. 1.1

AG = ANDRITZ HYDRO GmbH
Escher-Wyss-Weg 1
88212 Ravensburg

Re. point 4.1 Invoicing:

Invoices are to be submitted in triplicate (3x) to
ANDRITZ HYDRO GmbH, FA 321
Escher-Wyss-Weg 1, 88212 Ravensburg.

The invoices shall include:

1. The proper name of the invoicing party with full address
2. The tax number of the invoicing party
3. The Ust-ident. No. Of the invoicing party .
4. The bank details of the invoicing party with account no., BLZ, IBAN no. ,and in case of overseas invoicing parties the S.W.I.F.T. – Code.
5. A date in agreement with the payment conditions
6. The proper name of the project
7. The correct Order or Contract number of ANDRITZ HYDRO; in case of absence of an Order in text form, the name of the requesting party with name of the department.
8. The exact description of the Deliveries and Services put in the invoice.
9. The net amount put in the invoice.
10. The certificate of the turnover tax on the same.
11. The gross total amount.
12. The already received advance payments or partial payments.
13. Specials in the payment conditions.