

# **GENERAL TERMS AND CONDITIONS OF PURCHASE**

## **FOR GOODS, WORKS AND/OR SERVICES**

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Ref.: GTC\_EXT\_SEPTEMBER 2020

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## **1 Scope of Application**

The present General Terms and Conditions shall apply to all agreements for the purchase of Goods, Works and/or Services, as well as to all deliveries made to the Company or purchase orders issued by the Company, to the extent said agreements do not expressly derogate thereof.

## **2 Definitions**

All terms with capital letters used in the present General Terms and Conditions or in any other constituent document of the Agreement shall have the following meanings:

- **Agreement:** refers to the agreement between the Company and the Contractor, consisting of the documents set forth in Article 3.1 of the present General Terms and Conditions, whereby the latter commits himself to supply the Goods, Works and/or Services in the manner and to the extent determined in said agreement, to the Company;
- **Bank Guarantee:** an irrevocable, first demand and unconditional bank guarantee, by which a first class bank, acceptable to and in favour of the Company, stands surety for the Contractor for and throughout the performance of (a specified part of) the Agreement;
- **Certificate of Provisional Acceptance:** the document that is drawn up in twofold by the Company and that is subsequently duly signed by the Parties as proof of the Provisional Acceptance by the Company of the Goods, Works and/or Services specified therein, as further described in Article 19 of the present General Terms and Conditions;
- **Commissioning:** the phase during which the Goods, Works and/or Services are put to the test, so as to determine whether the Goods, Works and/or Services can be operated safely, reliably and in strict accordance with the Agreement, as further described in Article 17 of the present General Terms and Conditions;
- **Company:** refers to Luminus N.V./S.A. (and the legal successors in title thereto), a company incorporated and existing under the laws of Belgium, with its registered office at Boulevard Roi Albert II 7, 1210 Brussels and registered in the Register of Legal Entities of Brussels under number BTW BE-0471.811.661, which engages the Contractor to supply Goods, Works and/or Services under the Agreement;
- **Company's Representative(s):** the person(s) that is(are) designated by the Company in the Contract and/or Purchase Order and is(are) authorised, if and to the extent so specified, to represent the latter for the purposes of the Agreement and to receive notices on his behalf;
- **Contract/Purchase Order (P.O.):** sets forth the Specific Terms and Conditions agreed to by the Parties;
- **Contract Price:** the total aggregate amount agreed to between the Parties in the Contract and/or Purchase Order for the Contractor's performance of the Agreement (excluding VAT and any possible Liquidated Damages, other damages, interests, penalties and/or expenses paid or to be paid by the Contractor to the Company);
- **Contractor:** refers to the physical person or legal entity (and the legal successors in title to this physical person or legal entity), specified in the Contract and/or Purchase Order, with whom the Company has concluded the Agreement;
- **Contractor's Representative:** the representative of the Contractor during the works on Site, who is assigned full authority over the Contractor's personnel and any Subcontractors and is vested with all powers to legally bind the Contractor, as is further set forth in Article 15.2 of the present General Terms and Conditions;

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- **Day(s) – Week(s) – Month(s):** refers to the number of official business days, weeks or months in Belgium, and not the number of calendar days, weeks or months;
- **Decennial Liability:** the Contractor's liability for the Goods, Works and/or Services during the Decennial Liability Period, as described in Article 28.2 of the present General Terms and Conditions;
- **Decennial Liability Period:** the ten-year period following Final Acceptance of the Goods, Works and/or Services, during which the Contractor *inter alia* remains liable for certain hidden defects, inaccuracies in the design of any foundations, structures and/or buildings and the appropriateness of any materials supplied by the Contractor under the Agreement, as further defined in Article 28.2 of the present General Terms and Conditions;
- **Luminus Affiliate:** any entity, whether incorporated or not, that is controlled by, is under common control with, or controls Luminus, where "control" means the ability, whether directly or indirectly, to direct the affairs of another by means of majority ownership, contract, or otherwise.
- **Luminus Supplier Portal** or **LSP:** a cloud-based platform to which the Contractor is granted access as part of the Luminus contractor onboarding process;
- **Effective Date:** the specific date at which the Agreement becomes binding upon the Parties to it, as defined in the Contract and/or Purchase Order or, failing that, in Article 3.2 of the present General Terms and Conditions;
- **Final Acceptance:** the moment of unconditional acceptance by the Company of the Goods, Works and/or Services as provided by the Contractor under and according to the Agreement, as further described in Article 22 of the present General Terms and Conditions;
- **Force Majeure:** shall mean any event beyond the control of the affected Party, the occurrence of which could not reasonably have been foreseen and the consequences of which could not be overcome, and which prevents the affected Party from performing some or all of the obligations incumbent on it pursuant to the Agreement. The procedure to be followed by a Party that presumes it has been affected by a Force Majeure event is set forth in Article 25 of the present General Terms and Conditions. Force majeure may include, without limitation, the following elements: terrorism, strikes or serious interruption of business operations at national level or within the Company's business sector, and natural disasters such as earthquakes, hurricanes or typhoons;
- **General Terms and Conditions:** the Company's present general terms and conditions of purchase with reference: GTC\_EXT\_JANUARY 2020;
- **Goods Receipt:** refers to the form that is drawn up by the Company and, when duly signed and issued by the Company, constitutes sole proof of the Contractor's successful delivery of a certain batch of Goods in case the Agreement merely covers the supply of certain Goods by the Contractor and it was furthermore explicitly agreed between the Parties that there was no obligation to conduct Commissioning tests on those Goods;
- **Goods, Works and/or Services:** designate, depending on the case, all or part of the drawings or documents, substances, materials, equipment, tools, machinery, structures, plant, civil works, industrial buildings etc. to be studied, designed, manufactured, supplied, erected, built, assembled, modified, arranged, tested or put into service by the Contractor under the Agreement, including all the studies, tasks, works and services related thereto and, as the case may be, specified in the Contract and/or Purchase Order. In a specific context, the definition 'Goods, Works and/or Services' may be broken down into either Goods, Works or

Services individually, or any combination thereof, such use of individual or combined terms however always referring back to the full scope of the definition for 'Goods, Works and/or Services' set forth here above;

- **Instructions:** refer to any indication, decision, explanation, clarification provided by the Company during the implementation of this Contract/Purchase Order.
- **Liquidated Damages:** designate the pre-ascertained liquidated damages that shall be paid by the Contractor to the Company in case the circumstances set forth in Article 18 of the present General Terms and Conditions are materialized;
- **Losses:** shall mean any and all claims, judgments, demands, damages, fines, losses, liabilities, interest, awards, penalties, causes of action, litigation, lawsuits, administrative proceedings, administrative investigations, costs and expenses, including, reasonable attorneys' fees, court costs, and other reasonable costs of suit, arbitration, dispute resolution or other similar proceedings;
- **Milestone(s):** refers to one or more significant project milestones set forth in the Project Schedule, which all individually embody an important step in the project, as further defined in Article 11.1 of the General Terms and Conditions;
- **Parent Company Guarantee:** a guarantee of Contractor's parent company or main undertaking, by which the latter stands surety towards the Company for and throughout the performance of the Agreement by the Contractor;
- **Party or Parties:** refers to either the Company or the Contractor, or both, as the context requires;
- **Payment Schedule:** refers to the schedule of payments linked to the Milestones set forth in the Project Schedule, as further defined in Article 8.4 of the present General Terms and Conditions;
- **Project Schedule:** sets forth the specific Milestones in the performance of the Agreement by the Contractor, as further defined in Article 11 of these General Terms and Conditions;
- **Provisional Acceptance:** refers to the moment when the Goods, Works and/or Services have successfully passed all relevant and applicable Commissioning tests, all other conditions for Provisional Acceptance set forth in the Agreement have been fulfilled in relation to those Goods, Works and/or Services and (a specified part of) the order is overall (largely) completed, as a result of which the Company decides to provisionally accept (a specific part of) the Goods, Works and/or Services, as is further defined in Article 19 of the present General Terms and Conditions;
- **Punch List:** refers to the list of minor works, if any, that forms an integral part of the Certificate of Provisional Acceptance and that sets forth all minor works that are still outstanding at the moment of Provisional Acceptance but that must, in any case, be completed or remedied by the Contractor prior to Final Acceptance, as described in Article 22. It shall be left to the Company's sole discretion to decide whether or not the existence of a Punch List and/or any item on that list in specific precludes Provisional Acceptance and, more generally, whether or not any works can be deemed minor works and as such fit for inclusion on the Punch List;
- **Site:** refers to all or part of the location(s) affected by the activities carried out under the Agreement;
- **Site Language:** the official language of the country, or, when applicable, the region where the

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Site is located;

- **Specific Terms and Conditions:** contained in the Contract/Purchase Order, these set forth the specific provisions agreed to by the Parties for the purposes of the Agreement;
- **Subcontractor(s):** the legal person(s), entity or combination of entities, to which parts of the Contractor's obligations under the Agreement are subcontracted by the Contractor, directly or indirectly, and in accordance with Article 5 of the present General Terms and Conditions;
- **Technical Documentation:** means, *inter alia*, all such technical documentation, specifications, samples, patterns, models, calculations, computer programs (software), operation and maintenance manuals and other documents or information of a similar nature, to be submitted by the Contractor to the Company in strict accordance with the Agreement;
- **Technical Specifications:** refers to the section of the tender documents consisting of all technical documents that are applicable to the order, which is specific set forth the Company's minimum technical requirements for the Goods, Works and/or Services;
- **Variations:** refer to any Instruction given by the Company that represents a change in the initial Contract/Purchase Order (the Contract/Purchase Order being interpreted as a whole), including any Instruction involving:
  - a quantity increase or decrease of part of the Goods, Works and/or Services; or
  - an addition to the Goods, Works and/or Services or a reduction at that level; or
  - a change in specification, quality or nature of any part of the Goods, Works and/or Services.
- **Warranty Period:** refers to the period of warranty on the Goods, Works and or Services, including any extensions thereof, as specified in Article 21.1 of the present General Terms and Conditions.

### **3 The Agreement**

#### **3.1 Constituent Documents**

The Agreement shall be comprised in part or in whole of the following documents:

- the Contract and/or Purchase Order and, if applicable, all of its(their) supplements, setting out the Specific Terms and Conditions agreed to between the Parties;
- the present General Terms and Conditions;
- the Company's Technical Specifications;
- the Company's construction and/or Site regulations;
- if applicable, the Company's rules and requirements concerning access, safety, well-being and the environment; and
- if applicable, any other relevant documents issued by the Company.

In case of interpretation difficulties, ambiguities, contradictions or other divergences between the constituent documents, each document prevails over the one which follows it in the order in which they are listed in the Contract and/or Purchase Order, or, failing such specification, in the order as listed here above.

In case of interpretation difficulties, ambiguities, contradictions or other divergences between the provisions of a constituent document of the Agreement and those of its supplements or annexes, the provisions contained in the main document shall prevail.

#### **3.2 Conclusion**

The Agreement shall be considered concluded:

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- for a Contract, upon its signature by both Parties;
- for a Purchase Order, after the Company has dispatched or delivered it to the Contractor via the Luminus Supplier Portal and the latter has either failed to make any reservations within the time-limit set forth therein or has returned an acknowledgement of receipt via the Luminus Supplier Portal, containing no reservations, regarding the Purchase Order to the Company or has returned the Purchase Order duly dated and signed without any reservations to its content.

If no Effective Date is explicitly mentioned in the Contract or in the Purchase Order, the latter shall be:

- for a Contract, the date it is signed by the Company;
- for a Purchase Order, the date it is postmarked or given directly to the Contractor's representative or, if applicable, the date of commencement of execution of the Agreement by the Contractor.

In case of a Contract, it is drawn up in as many originals as there are Parties. If the Parties can meet, they sign the Contract simultaneously and initial all the constituent documents; if they cannot meet, they sign and initial following the exchange of mail, though no more than 15 (fifteen) Days shall elapse between the signing by one and the other of the Parties. Should this time limit be exceeded, the Company reserves the right to forgo the conclusion of the Agreement.

In case of a Purchase Order, the Contractor confirms, via the Luminus Supplier Portal, his acknowledgment of the Purchase Order within the time-period specified therein, or within 5 (five) calendar days if no such period is specified. If the Contractor's acknowledgment of receipt is not received within the respective time-limit specified in the Purchase Order, the Purchase Order will be deemed unconditionally accepted by the Contractor. In case the Contractor returns the Purchase Order with any reservations whatsoever or upon a conditional basis, the Company reserves the exclusive right to annul such Purchase Order, without any justification or compensation being due.

By accepting the Agreement, the Contractor waives all his own general or specific terms and conditions, whenever and in whatever form these are communicated.

### 3.3 Language

The Agreement shall be executed in the English language and any translation shall be for convenience only.

Wherever provision is made for the giving or issue of a notice, instruction or other communication by any Party or person pursuant or with regard to the Agreement, such communication shall be written in the English language.

In case of interpretation difficulties, ambiguities, contradictions or other divergences between different documents or different versions of the same document, the (version of a) document that is drawn up in the language of the Agreement shall prevail.

### 3.4 Headings

The headings used for the different Articles of the present Terms and Conditions are for indicative purposes only, and shall in no instance affect the interpretation thereof.

### 3.5 Delegation of Powers

The Agreement may specify the persons authorised to represent the Company. In any case, the Company cannot be bound by nor be held liable for any statement, whether verbal or in writing, by a person not authorized to make such statement according to the Company's Delegation of Authorities,

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published in the Belgian Official Gazette (latest applicable version).

### 3.6 Notices

Except as set out in Article 8.3, any notice, instruction, consent, approval, comment, certificate or determination required or desired to be given in connection with the Agreement shall be in writing and shall be validly delivered if delivered either by hand, by fax, by registered mail, by e-mail or by an internationally recognized courier service to the addressee, fax number and/or address stipulated in the Contract and/or Purchase Order to that end, as changed from time to time in accordance with this Article 3.6.

Such validly delivered notice shall be deemed received by the other Party:

- in the case of delivery in-hand, when delivered;
- in the case of successfully completed facsimile transmission, on the date shown on the facsimile transmission report or confirmation; and
- in case of delivery by courier service, on the date indicated on the acknowledgement of receipt.

Contrary to the foregoing, day-to-day communications between the Parties (with the explicit exclusion of amendments to the Agreement and acceptance documents, such as the Certificate of Provisional Acceptance) may also be transferred via e-mail, addressed to the e-mail address(es) stipulated in the Contract and/or Purchase Order to that end or notified by a Party to the other Party from time to time.

Either Party may modify the representative(s) that is(are) competent to receive notices on its behalf, its address and/or its fax number for the receipt of notices, by simple notice to the other Party given in accordance with this Article 3.6.

### 3.7 Applicable Law

The Agreement shall be governed by Belgian law, to the explicit exclusion of (i) any conflict of law rules or provisions and (ii) the "United Nations Convention on Contracts for the International Sale of Goods" dated April 11, 1980.

### 3.8 Jurisdiction

Any dispute arising out of or in relation with the Agreement shall be finally settled by the courts of Brussels.

In no event shall any dispute between the Parties result in the suspension of the Contractor's contractual obligations.

### 3.9 Waiver

Neither Party, by any act, delay, omission or otherwise shall be deemed to have expressly or impliedly waived any of its rights, powers or remedies, or any one or more of them, unless such waiver is in writing and signed by an authorized representative of such Party. Any such waiver shall be enforceable only to the extent specifically set forth in the waiver. A waiver by a Party of any right, power or remedy, or any one or more of them, on any one occasion shall not be construed as a bar to or waiver of any right, power or remedy, or any one or more of them, such Party should have on any future occasion, whether similar in kind or otherwise.

### 3.10 Severability

If any provision of the Agreement is held to be invalid, illegal or non-enforceable by a court of

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competent jurisdiction in whole or in part, such (part of the) provision shall be deemed to be excluded from the Agreement, without affecting the validity, legality or enforceability of the remaining provisions. If the invalidity, illegality or non-enforceability of a (part of a) provision could have an impact on the rest of the Agreement, the Parties will promptly convene to negotiate in good faith with the aim of agreeing, as soon as possible, on a new, valid provision (or part of such provision) that reflects as close as possible the economic impact that the Parties intended with the illegal, invalid or unenforceable provision (or the illegal, invalid or unenforceable part thereof).

### 3.11 Surviving Provisions

The provisions of the Agreement that by their nature are intended to survive the termination, suspension, cancellation, completion or expiry of the Agreement (in specific but not limited to the provisions with regard to confidentiality, warranty and liability) shall continue as valid and enforceable provisions notwithstanding any such termination, suspension, cancellation, completion and expiry.

### 3.12 Entire Agreement

This Agreement represents the entire agreement between the Parties hereto relating to the subject matter hereof and may only be amended in writing, signed by the duly authorised representatives of both Parties. The Parties expressly waive all provisions contained in any past, written or verbal, agreements or correspondence between them which negate, limit, extend or conflict with the provisions set forth in this Agreement. Such past agreements or correspondence may only be invoked for the purpose of clarifying ambiguous provisions of the Agreement, which allow for more than one interpretation.

## **4 Follow-up agreements and Luminus Affiliates**

Follow-up agreements – Supplier commits, at Luminus' request, to negotiate in good faith with Luminus to enter into follow-up agreements that are in relation to the Agreement and to propose conditions that are at least at arm's length with the conditions in the related Agreement.

Luminus Affiliates – Supplier expressly authorizes Luminus Affiliates to make reference to and use this Agreement without having to negotiate new conditions. For this purpose any reference to Luminus will be interpreted as a reference to the Luminus Affiliate.

## **5 Subcontracting**

The Contractor shall not delegate all or part of the execution of the Agreement without the Company's prior written consent.

Subcontracting beyond one level (i.e. sub-subcontracting) shall in any case be prohibited. The Contractor shall see to it that, in case subcontracting is approved by the Company in accordance with the preceding paragraph, the aforementioned prohibition is imposed on and respected by the Contractor's Subcontractor.

The Contractor shall defend and hold harmless the Company from and against any and all Losses it may suffer as a result of any possible present or future claims a Contractor's Subcontractor may have against the Company pursuant to Article 1798 of the Belgian Civil Code.

Subcontracting risks shall be assumed in their entirety by the Contractor, and shall in no way discharge the latter from his contractual obligations. In addition, the Contractor shall ensure that any of the rights the Company may have under the Agreement vis-à-vis the Contractor, it shall also have vis-à-vis any and all of the Contractor's Subcontractors.

## **6 Partnerships**

Once the Agreement has been concluded, the Contractor shall be prohibited from entering into a partnership with a third party for its execution without the Company's prior written consent.

When the Agreement has been concluded with a joint venture, consortium, temporary partnership (*société momentanée/tijdelijke handelsvennootschap*) as defined in article 47 of the Belgian Corporate Code or another unincorporated grouping of two or more partners, said partners shall be jointly and severally liable in respect of the Company for any and all obligations resulting from the Agreement for the Contractor, unless specifically agreed otherwise in the Agreement. The partners shall designate one of them to represent the partnership with full rights and powers and to ensure that the performance of the Agreement is coordinated optimally. Such designation shall be subject to the Company's prior written consent.

## **7 Assignment**

### **7.1 By the Contractor**

The Contractor shall be prohibited from assigning all or part of his rights and obligations resulting from the Agreement to a third party without the Company's prior written consent.

### **7.2 By the Company**

The Company shall have the ability to assign all or part of its rights and obligations resulting from the Agreement to a third party of its choice and shall inform the Contractor of said assignment as soon as possible thereafter.

## **8 Invoicing and Payment**

### **8.1 Contract Price**

The Contract Price shall include all costs, taxes and expenses from any origin whatsoever, but shall exclude value-added tax (VAT).

Furthermore the Contract Price shall be Delivery Duty Paid (DDP), unloaded on Site, in accordance with Incoterm provisions (latest applicable edition).

The Contract or Purchase Order shall specify whether the Contract Price may be revised as well as the remuneration mode to be used, failing which no revision of the Contract Price of any kind whatsoever shall be applicable.

In case the Contractor is not remunerated by means of a lump sum, the abovementioned shall equally apply to any and all time and material prices and rates agreed upon in the Agreement.

### **8.2 Sufficiency of the Contract Price**

In case the Contractor is remunerated by means of a lump sum, he shall be deemed to have satisfied himself as to the correctness and sufficiency of the Contract Price.

In specific, the Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the proper provision of the Goods, Works and/or Services on time. Therefore, it is expressly agreed that by signing the Agreement, the Contractor accepts full responsibility for having foreseen all difficulties and costs of successfully providing the Goods, Works and/or Services, in particular with regard to any and all contingencies relating to the conditions, period and Site during and at which the Goods, Works and/or Services are to be supplied. With regard to the contingencies relating to the Site, the Contractor

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expressly agrees to have taken the following, non-exhaustive list of particulars into account:

- any possible natural phenomena;
- normal use of public premises or use of public services;
- the presence of existing structures, machinery, ducts, piping and cables of all kinds at the Site;
- if applicable, the presence at Site of construction sites necessary for the relocation or modification of the aforementioned installations;
- the simultaneous execution of other works at the Site;
- the presence of other contractors at the Site; and
- the simultaneous operation of installations or structures at the Site.

Furthermore, the Contractor shall be deemed to have taken into account any possible increase in costs or expenses resulting from any change in laws, (Royal, Ministerial or regional) decrees, ordinances, local government laws, municipal codes, regulations, directives, rules, statutes or other binding prescriptions of any kind whatsoever that apply to the provision of the Goods, Works and/or Services in strict accordance with the Agreement, whether occurring prior to or after the Effective Date.

Consequently, unless explicitly stated otherwise in the Contract and/or Purchase Order, the Contract Price covers all the Contractor's obligations under the Agreement and all things necessary for the proper design and provision of the Goods, Works and/or Services and the remedying of any defects. The Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs.

### 8.3 Invoicing Procedure

All exchanges and communication between Luminus and the Contractor with respect to invoicing and related documentation under the Agreement shall take place via the Luminus Supplier Portal (LSP). The Contractor will submit via the LSP the amounts to be invoiced for the performance of its obligations under the Agreement, as well as, each as applicable, time reports, a description of the performed tasks and other documentation, to Luminus for approval prior to actual invoicing. After approval by Luminus via the LSP, the Contractor will send the invoice to Luminus via the LSP.

All invoices issued by the Contractor under this Agreement shall contain:

- the full references of the Contract/Purchase Order to which such invoice relates (title of the Agreement, description of the subject, complete reference number);
- for Goods, Works and/or Services, the time sheets approved by the Company or its representatives;
- the Contract Price or, as the case may be, the partial amounts of the Contract/Purchase Order in case a remuneration by means of a fixed lump sum is foreseen in the Contract/Purchase Order, or the amount consistent with the progress statement in case a remuneration based on fixed unit prices is foreseen in the Contract/Purchase Order;
- the indication of the due term and the Milestones as provided for in the Contract/Purchase Order;
- in the case of partial or complete delivery, the detail of the Goods, Works and/or Services for which payment is requested; and
- the supporting documents (progress statements, work orders, delivery notes, etc).

In addition, invoices shall meet all the requirements regarding VAT, failing which they will also be considered not sent.

The absence of any of the statements or references mentioned above and/or the non-observation of any of the Company's invoicing instructions shall automatically render the invoice null and void. In such case, although not being strictly required to do so, the Company reserves the right to return the invoice to the Contractor at any time prior to the invoice due date. This shall be equivalent to the Company contesting the invoice without it being required to take any other action to this end.

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Additionally, in such case the Company shall have the right to demand the issuance of a credit note to the Company's account upon first request.

Invoices shall strictly respect the structure of the Contract/Purchase Order to which they relate (e.g. if a Purchase Order includes 2 items lines, the invoice will be issued accordingly).

Invoices containing amounts exceeding those agreed in the Contract/Purchase Order shall automatically be considered erroneous and accordingly null and void, without the Company being required to take further action to that effect.

Any invoices sent by the Contractor to the Company pursuant to the Agreement shall be addressed to the billing address set forth in the Contract/Purchase Order.

#### 8.4 Payment Schedule

Unless specifically agreed otherwise, the Agreement shall specify the Payment Schedule agreed upon by the Parties. The payment due-dates set forth in the Payment Schedule shall correspond to the Milestones set forth in the Project Schedule. In no case whatsoever, payment of a certain amount can become due if the Milestone to which it is linked has not yet been attained.

The Payment Schedule shall be approved by the Company simultaneously with the Project Schedule. As long as either the Payment Schedule or the Project Schedule has not been approved, no payment may be demanded from the Company pursuant to the Agreement.

In case the Agreement does not contain a Payment Schedule, the Contractor shall, within the time-limit specified in the Contract and/or Purchase Order, or if none has been specified therein, at the latest 30 (thirty) Days from the Effective Date, suggest a Payment Schedule to the Company, which shall not unreasonably withhold its approval thereof. If, however, the Parties fail to reach agreement on the Payment Schedule, the Company shall have the right to terminate the Agreement with immediate effect, without court intervention or any legal formality being required, and without prejudice to the Company's right to claim damages in accordance with Article 28 of these General Terms and Conditions.

In case a detailed Project Schedule is put forward by the Contractor after the Effective Date of the Agreement, in accordance with Article 11.1 of these General Terms and Conditions, and if as a result thereof the Payment Schedule set forth in the Agreement no longer corresponds to such proposed Project Schedule, the Contractor shall, simultaneously with his proposal for a Project Schedule, suggest a Payment Schedule to the Company, which shall not unreasonably withhold its approval thereof. If, however, the Parties fail to reach agreement on the Payment Schedule, the Company shall have the right to terminate the Agreement with immediate effect, without court intervention or any legal formality being required, and without prejudice to the Company's right to claim damages in accordance with Article 28 of these General Terms and Conditions.

#### 8.5 Payment Terms

Uncontested invoices relating to amounts that have become due are payable 75 (seventy-five) Days from the end of the Month in which the respective invoices are received by the Company. The invoices shall indicate the amounts due in as much detail as possible, must be accompanied by the contractually required documents, and shall furthermore be drawn up in accordance with the Company's stipulations.

Payments shall not be made unless the Contractor has fulfilled all contractual obligations or, in case of a Payment Schedule, has at least attained the respective Milestone to which the payment is linked on the date listed on the invoice itself. No invoice shall become due so long as one or more invoices relating to a previous period or Milestone remain outstanding as a result of a defect or other failure on the part of the Contractor.

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Payments shall be made exclusively via bank transfer into the account specified by the Contractor on his invoice.

#### 8.6 Late Payment

The Contractor may verify the payment status of its invoices via the Luminus Supplier Portal. Should the Company be late with the payment of an uncontested invoice, and the Contractor has sent a notice to that effect, either by registered mail or via the Luminus Supplier Portal, to the Company, which, however, remained without effect for 30 (thirty) days from receipt by the Company thereof, the Contractor shall be entitled to the payment of default interest applied to the outstanding amount, calculated from the date such interest became contractually due.

The amount of this default interest shall be equivalent to the number of Days the payment is late, multiplied by the one-month Euro Interbank Offered Rate (EURIBOR) as published on the last trading day of the month prior to the date the respective invoice was issued.

#### 8.7 Interdependence

If any claims or debts exist between the Parties to the Agreement, of any origin whatsoever, the Company shall reserve the exclusive right to offset the Contractor's debt to it against its own debt to the Contractor, or to exercise its right of deduction or to withhold payment, as if all such claims and debts were part of a single and exclusive contractual commitment.

### **9 Guarantees**

#### 9.1 Bank Guarantee

Should the Company, at any given moment, deem it necessary, it shall be able to require that a first class bank, having at least an A+/A1-rating according to Standard and Poor's/ Moody's latest applicable surveys, stands surety for the Contractor by providing the Company with a Bank Guarantee.

#### 9.2 Parent Company Guarantee

Should the Company deem it necessary, the Contractor shall provide the Company with a Parent Company Guarantee, in case the latter forms a branch or is a subsidiary of a larger undertaking.

#### 9.3 Right to Audit

The Company shall, at all reasonable times during normal business hours and upon at least twenty-four (24) hours advance notice, have the right to audit, examine, and make copies of or extracts from the Contractor's books of account and records (in whatever form they may be kept, whether written, electronic or other) relating or pertaining, directly or indirectly, to the Agreement (including *inter alia* any and all documents and other materials, in whatever form they may be kept, which support or underlie those books and records) and kept by or under the control of the Contractor (including, without limitation, by his employees, agents, assigns, successors and Subcontractors).

### **10 Provision of Goods, Works and/or Services**

#### 10.1 Contractor's Obligations

The Contractor shall supply any and all Goods, Works and/or Services in strict accordance with the Agreement, and in specific with the present Article and Articles 11, 14 and 21 of these General Terms and Conditions.

Where and when the Agreement foresees or implies the provision of Goods, including those Goods that are necessary for the performance of the Works and/or Services subject of the Agreement, such Goods shall be new, of first quality and free of any defect.

Furthermore, the Goods, Works and/or Services must be complete in every respect; they must comprise all the work, substances, materials, plant, equipment, systems and accessories as are needed to fully meet their purpose and destination and for their safe and proper operation, even if not expressly mentioned in the Agreement, of which the specifications in this regard are accepted as a non-exhaustive indication.

If the Agreement requests construction, erection, installation, repair or replacement work by the Contractor, this shall be read as including the supply of all the goods, materials, plant equipment and accessories, the construction of temporary structures and any other work and services that may be necessary in that respect to complete such Works and/or Services.

## 10.2 Compliance with Laws

The Contractor shall, in executing his obligations pursuant to the Agreement, strictly comply with any and all laws, (Royal, Ministerial or regional) decrees, ordinances, local government laws, municipal codes, regulations, directives, rules, statutes or other binding prescriptions of any kind whatsoever that are or become applicable to the provision of the Goods, Works and/or Services in the country in which the Site is situated.

## 10.3 Administrative Authorizations

Unless explicitly agreed otherwise in the Contract and/or Purchase Order, the Contractor is responsible for obtaining all permits, licences or approvals required for the supply of the Goods, Works and/or Services pursuant to any and all of the applicable laws, (Royal, Ministerial or regional) decrees, ordinances, local government laws, municipal codes, regulations, directives, rules, statutes or other binding prescriptions of any kind whatsoever. The previous shall be equally pertinent for permits, licences or approvals known to be required for the provision of the Goods, Works and/or Services at the time of signature of the Agreement, as to any future permits, licences or approvals that may become applicable for the provision of the Goods, Works and/or Services after signature of the Agreement. It is expressly agreed that any and all costs and expenses for obtaining such permits, licences or approvals are included in the Contract Price.

## 10.4 Safety, Well-being and the Environment

When providing Goods, Works and/or Services on Site, the Contractor shall strictly observe the Company's Site rules and requirements concerning access, safety, well-being and the environment.

Furthermore, the Contractor shall:

- strictly comply with all applicable laws, (Royal, Ministerial or regional) decrees, ordinances, local government laws, municipal codes, regulations, directives, rules, statutes or other binding prescriptions of any kind whatsoever concerning safety, well-being and the environment;
- take care for the safety and well-being of all persons entitled to be on Site;
- use reasonable efforts to keep the Site and the Goods, Works and/or Services clear of unnecessary obstruction so as to avoid any danger to the aforementioned persons;
- if necessary for the provision of the Goods, Works and/or Services, provide fencing, lighting, guarding and watching of the Goods, Works and/or Services until Provisional Acceptance thereof; and
- if necessary for the provision of the Goods, Works and/or Services, provide any temporary facilities (*inter alia* roadways, footways, guards and fences) for the use and protection of the

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authorized persons on Site, as well as for the public and the owners or occupiers of adjacent land.

In specific, the Contractor undertakes to strictly comply with all the obligations applicable to him pursuant to the Belgian employment, social and tax legislation, including in specific his obligations regarding employees' well-being when performing their work (including but not limited to the Act on employees' well-being at work, adopted on the 4<sup>th</sup> of August 1996, and its implementing decrees) and those stemming from the legislation on prior registration of employees and self-employed individuals temporarily working in Belgium (including but not limited to Chapter 8 of Title IV of the Program Act (I), adopted on the 27<sup>th</sup> of December 2006, and its implementing decrees; cf. [www.limosabe.be](http://www.limosabe.be)). The Contractor shall save free and hold the Company harmless against and from any and all Losses resulting from any failure to do so. If the Contractor does not comply with the obligations incumbent on him regarding his personnel's well-being, the Company can perform such obligations on behalf of the Contractor, and claim compensation from the Contractor for any expenses made in respect of obeying to such obligations.

Finally, the Contractor shall assume full responsibility for making his personnel obey all applicable laws, (Royal, Ministerial or regional) decrees, ordinances, local government laws, municipal codes, regulations, directives, rules, statutes or other binding prescriptions of any kind whatsoever, including those concerning safety at work, as well as the Company's Site rules and requirements concerning access, safety, well-being and the environment.

#### 10.5 Contractor's Duty to Report

In case the Contractor's personnel or any other persons engaged by Contractor to perform works at the Site (such as, *inter alia*, his Subcontractors and their personnel) should be involved in an accident, the Contractor shall promptly (and in any case before evacuating the respective injured person from the Site) inform the Company thereof and shall allow the Company and/or its health and safety coordinator ample time to investigate the matter in detail immediately after its occurrence, in specific with the aim to inspect the work conditions of the person involved as well as the general circumstances that allowed for the accident to occur, insofar as the personal injuries sustained by the person involved do not impede or hinder such examination.

Similarly, in case any other incident with potentially significant consequences (i.e. any personal injuries or damages to property) occurs during or as a result of the Contractor's provision of the Goods, Works and/or Services on Site, the Contractor shall promptly (and, as the case may be, in any case before evacuating the respective injured person or debris from the Site) inform the Company thereof and shall allow the Company and/or its health and safety coordinator ample time to investigate the matter in detail immediately after its occurrence.

### **11 Project Schedule**

#### 11.1 Project Schedule

The Agreement shall specify the Project Schedule agreed between the Parties.

In case the Agreement does not contain the Project Schedule, or in case the Project Schedule set forth in the Agreement is not sufficiently detailed, the Contractor shall, within the time-limit specified in the Contract and/or Purchase Order, or if none has been specified therein, at the latest 30 (thirty) Days from the Effective Date, propose a detailed Project Schedule to the Company, which shall not unreasonably withhold its approval thereof, notwithstanding the fact that the Project Schedule is to be approved by the Company simultaneously with the Payment Schedule. If, however, the proposed Project Schedule does not correspond to previously made agreements between the Parties or the Parties fail to reach agreement on the Project Schedule for any other reason, the Company shall have the right to terminate the Agreement with immediate effect, without court intervention or any legal formality being required, and without prejudice to the Company's right to claim damages in

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accordance with Article 28 of these General Terms and Conditions.

The Project Schedule shall set forth all Milestones in the performance of the Agreement by the Contractor, including as a minimum the following Milestones:

- the date for provision by the Contractor of all drawings, designs, plans, study and/or engineering documents, procedures and reports for the provision, construction, installation, assembly, erection, commissioning, performance-, acceptance- and/or any other tests of the Goods, Works and/or Services on Site;
- the date of arrival on Site of the Contractor with his equipment;
- the deadlines for delivery on Site, in accordance with Article 14 of the present General Terms and Conditions, of the principal components of the Goods, Works and/or Services;
- the deadline for commencement of Commissioning; and
- the stringent deadline for the Contractor to fulfil all conditions for Provisional Acceptance of the Goods, Works and/or Services, as set forth in Article 19 of these General Terms and Conditions.

The Project Schedule shall furthermore set forth the manner in which the Contractor shall attain to these Milestones, including the categories of personnel, their quantities as well as the number of working days per category of personnel the Contractor foresees during each stage of the Project Schedule.

The deadlines for achievement of the Milestones contained in the Project Schedule shall come into effect on the Effective Date and shall be considered strictly mandatory.

When the deadline or time-limit is determined in days, it expires at the end of the last Day of the allocated period. When the deadline or time-limit is determined in weeks, it is counted from Day to Day. When it is specified in months, the period is counted from Day of Month to Day of Month. If the respective Day of Month does not exist in the Month in which the deadline or time-limit expires, the latter shall expire at the end of the last Day of that Month.

If the last day of a time-limit is a public holiday in the country where the Site is located or if the specified date of a deadline falls together with a public holiday in the country where the Site is located, the deadline or time-limit is extended to the end of the first working day that follows.

## 11.2 Changes to the Project Schedule

Extension of any of the deadlines for achievement of the Milestones contained in the Project Schedule shall not be permitted except upon the occurrence of a Force Majeure event within the meaning of Article 25 of the present General Terms and Conditions or in case such extension would result from a prior written agreement with the Company.

The expiry of a contractual deadline shall itself be deemed sufficient notice to the Contractor that it is outstanding, and a Contractor shall not be permitted to claim the absence of an explicit written notice to that effect as grounds for not respecting the deadlines set forth in the Project Schedule or elsewhere in the Agreement.

In any case of expiry of a contractual deadline, the Liquidated Damages for delay relating thereto, as specified in the Contract and/or Purchase Order or, failing such specification, in Article 18.1 of the present General Terms and Conditions, shall automatically become due.

## 12 Technical Documentation

### 12.1 Submission of Technical Documentation

The Contractor shall, at the times indicated in the Contract and/or Purchase Order and/or in the [www.luminus.be](http://www.luminus.be)

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Technical Specifications, or, failing such specification, at regular intervals and at least as soon as these are available, submit to the Company all shop drawings, PFDs, PIDs, drawings of the mechanical parts and of the electrical power, control and instrumentation circuits, all documentation needed for the proper and safe operation and maintenance of the Goods, Works and/or Services, as well as the technical specifications needed for the procurement of spare parts on the market for such Goods, Works and/or Services. The Agreement may specify additional Technical Documentation to be submitted by the Contractor to the Company.

Unless a larger amount of copies is required pursuant to the terms of the Contract and/or Purchase Order, all documents whose submittal to the Company is compulsory shall be submitted in two copies and shall be drawn up in the Site Language.

The Contractor will not be allowed to commence Commissioning on the Goods, Works and/or Services before at least a provisional version of all such Technical Documentation is provided to the Company. Provisional Acceptance of the Goods, Works and/or Services shall in no event occur before a final version of all such Technical Documentation, approved by the Company, is made available to the Company in twofold and drawn up in the Site Language.

#### 12.2 Review of Technical Documentation by the Company

The Company shall have the right to make observations with regard to any Technical Documentation submitted to it, within thirty (30) Days following such submission.

Should the Company fail to provide its observations within such period, the Technical Documentation shall be deemed admissible for the purposes of filing the request set forth in Article 19.2 of these General Terms and Conditions.

Should the Company nevertheless provide its observations to the Contractor within the aforementioned term for such submission, the latter shall give due consideration to the Company's observations and shall provide his findings and resolutions with regard to such observations within a further twenty (20) Days following receipt thereof. Should the Contractor fail to provide his findings or solutions or otherwise provide a reply to the Company's observations within such period, the Company's observations and the adjustments that would necessarily result from them shall be deemed accepted by the Contractor and shall be integrated in full in the final Technical Documentation and/or implemented on the Goods, Works and/or Services.

Any changes to the Technical Documentation after the Company has made its observations thereto or after the Technical Documentation was deemed admissible, shall require the Contractor to restart the above procedure all over.

The provision of observations to the Technical Documentation by the Company shall not discharge the Contractor in any way from any of his responsibilities, obligations or liabilities pursuant to the Agreement, nor shall forbearance by the Company from exercising its right to provide such observations. Such provision of or forbearance to provide observations shall in no event be construed as a change order or request or as a modification of the terms of the Agreement, and shall consequently have no impact on the Contract Price.

#### 12.3 Errors in Technical Documentation

The Contractor shall be liable for any Losses (i) incurred in correcting any discrepancies, errors or omissions in the Technical Documentation prepared by him or on his behalf, whether or not any such Technical Documentation has been commented upon by the Company, (ii) incurred in correcting any work carried out by the Contractor, his Subcontractors, the Company or any other contractors appointed by the Company in reliance upon such Technical Documentation and/or (iii) otherwise resulting from a delay in the submission of such Technical Documentation by the Contractor.

In addition, the Contractor shall bear unlimited liability for any Losses incurred by the Company as a result of one or more discrepancies, errors or omissions in the Technical Documentation.

#### 12.4 As-Built Documents

Once the Goods, Works and/or Services have been erected and constructed on Site, all Technical Documentation will promptly, and in any case prior to Provisional Acceptance of the Goods, Works and/or Services, be transmitted to the Company in an “as-built” status, showing the exact as-built locations, sizes and details of the work as executed.

### 13 Shop Manufacture

#### 13.1 Inspection

Where the Agreement concerns the design, manufacture, assembly and/or storage of any Goods or the performance of any Works and/or Services at the Contractor’s or any of his Subcontractors’ workshops, offices, warehouses and sites, the Company (and/or its representatives, such as, *inter alia*, its subcontractors or consultants) shall have full access rights during normal working hours to such facilities for the supervision and inspection of said labour, and shall furthermore be given all necessary information to the performance of that task. Additionally, the Contractor shall provide sufficient and convenient facilities for such supervision and inspection. Such supervision and/or inspection by the Company (and/or its representatives, such as, *inter alia*, its subcontractors or consultants) shall in no way affect or limit the Contractor’s or any of his Subcontractors’ responsibility for the timely and due provision of the Goods, Works and/or Services, in strict accordance with the Agreement.

#### 13.2 Factory Acceptance Tests

If the Contractor is, according to the Contract and/or Purchase Order, to perform tests on any of the Goods, Works and/or Services at his facilities, the provisions of Article 15.5 of these General Terms and Conditions shall apply *mutatis mutandis* to such tests (i.e. as if these tests were conducted on Site).

However, in case of tests at the Contractor’s facilities, the Contractor shall give the Company at least 30 (thirty) Days’ prior notice of his intent to conduct such tests, so as to allow the latter ample time to organise itself (and/or its representatives, such as, *inter alia*, its subcontractors or consultants) to attend the proposed tests. The attendance of any such tests by the Company and/or any of its representatives shall in no way affect or limit the Contractor’s responsibilities or liability under the Agreement.

### 14 Delivery

#### 14.1 General Specifications

Delivery of the Goods, Works and/or Services shall be Delivery Duty Paid (DDP), unloaded on Site, in accordance with Incoterm provisions (latest applicable edition).

The Contractor shall give the Company not less than 20 (twenty) Days’ notice of such delivery on Site.

#### 14.2 Transport

In accordance with Article 14.1 of these General Terms and Conditions, the Contractor shall be responsible for the transportation of the Goods, Works and/or Services, including, but not limited to their packing, loading, actual transporting, receiving, unloading, storing and protecting, if and where

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applicable.

The Contractor shall indemnify and hold the Company harmless against and from any and all Losses resulting from said transport, and shall negotiate and pay all claims in relation to such transport.

## **15 Work at the Site**

### **15.1 General**

The Contractor shall provide all the necessary equipment, tools and personnel on Site for the timely and proper execution of the Agreement.

Provision of the Goods, Works and/or Services by the Contractor on Site includes the unloading and checking of the supplies upon delivery, the storage and protection after delivery and, if applicable, the transportation from the place of storage to the place for building and/or erection, assembly, adjustment, finishing and setting up.

From the moment of delivery of any supplies, materials or equipment on Site up to the moment of Provisional Acceptance of the Goods, Works and/or Services, the Contractor shall be responsible for the overall surveillance of the Site, as well as of any other places used for storage or assembly of any supplies, materials, equipment or parts of the Goods, Works and/or Services.

### **15.2 Contractor's Representative**

The Contractor shall propose a Contractor's Representative, whose nomination must receive the Company's prior written consent, which shall, however, not be unreasonably withheld. The Contractor's Representative's qualifications and experience must be compatible with the type and importance of the Goods, Works and/or Services to be provided under the Agreement. He must have a very good knowledge of the Site Language. The Contractor's Representative shall be appointed prior to the start of any works on Site and shall remain in duty throughout the complete duration of the works on Site. The Company reserves the right to demand replacement of the Contractor's Representative at any time. The appointment of a new Contractor's Representative shall be subject to the Company's prior written approval, based upon his qualifications and experience. Approval of the Contractor's Representative by the Company shall in no way affect or limit the Contractor's responsibilities or liability under the Agreement.

The Contractor's Representative shall be the point of contact for the Company on Site in case of instructions pertaining to the works on Site. To that end, he shall be attributed full authority over the Contractor's personnel and any Subcontractors, and he shall be vested with all necessary powers to represent and legally bind the Contractor. Any notices given to the Contractor's Representative shall be deemed given to the Contractor.

### **15.3 Personnel on Site**

The Contractor shall comply with all relevant labour laws applicable to its employees, and shall duly pay them and afford them all their legal rights. The Contractor shall require all such employees to obey any and all applicable laws and regulations concerning safety at work.

The Contractor's staff shall comply with the Company's instructions in relation to working hours, as long as these instructions do not unreasonably affect the progress or increase the costs of the Contractor. In no case shall the Contractor apply working hours in excess of those permitted under the applicable laws and regulations.

The Contractor shall carry out the Works and/or Services on Site using staff having adequate knowledge of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents) for the safe performance of

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such Works and/or Services.

The Company may require the Contractor to remove (or cause to be removed) any employee, including the Contractor's Representative, who, in the reasonable opinion of the Company:

- a) persists in any material violation of any applicable law;
- b) is incompetent, negligent or unsuitable in the performance of his duties;
- c) fails to comply with any material provisions of the Agreement; or
- d) persists in any conduct violating reasonable rules aiming to protect safety, health or the environment at the Site.

If appropriate, the Contractor shall then appoint (or cause to be appointed) a suitable replacement for the employee removed in accordance with the abovementioned procedure. In case the Contractor's Representative is removed in accordance with the above procedure, the provisions of Article 15.2 of these General Terms and Conditions shall apply in respect of his replacement.

#### 15.4 Site Communications

The main language for communications on Site (in specific with the Company and other contractors present at the Site) and communications with the competent authorities shall be the Site Language.

The Contractor's Representative as well as a reasonable proportion of the Contractor's superintending staff shall therefore have a good working knowledge of the Site Language, such that any safety instructions and Site regulations can at all times be properly explained by them to the remainder of the Contractor's personnel.

In general, the Contractor shall organise himself in such a way that any lack of knowledge of the Site Language by the Contractor's personnel does not hamper the performance of his obligations and does not impact safety on the Site.

#### 15.5 Site Tests

##### 15.5.1 Procedure

Where the Agreement provides for intermediary tests of (parts of) the Goods, Works and/or Services by the Contractor on Site, such tests shall be conducted at the risk and expense of the Contractor. The Contractor shall give the Company at least 15 (fifteen) Days' prior notice of his intent to conduct such tests, so as to allow the Company (and/or any of its representatives, such as, *inter alia*, its subcontractors or consultants) to attend such tests, and shall propose a date and time for that purpose in such notification.

In case the Company (and/or any of its representatives, such as, *inter alia*, its subcontractors or consultants) would, contrary to its wishes, be unable to attend the tests at the date and time proposed by the Contractor, it shall so notify the Contractor within 5 (five) Days following receipt of the Contractor's first notice, failure of which shall be deemed approval by the Company of such date and time for performance of the proposed tests, whether or not in the presence of the Company (and/or its representatives, such as, *inter alia*, its subcontractors or consultants). In case the Company would in fact notify the Contractor of its inability to attend the tests at the date and time first proposed by the Contractor, it shall, in such notification, propose one or more alternative dates for carrying out said tests, all of which must fall within a 5 (five) Day period following the date initially proposed by the Contractor. Within a further 5 (five) Days from receipt of the Company's counterproposal, the Contractor shall either confirm to execute the tests on (either of) the date(s) and time(s) proposed by the Company or propose a further and last set of at least 3 (three) alternative dates, the earliest of which shall be at least 15 (fifteen) Days remote from the date at which such notice is given to the Company. In case the Company (and/or its representatives, such as, *inter alia*, its subcontractors or consultants) would prove unable to attend the tests at any of those dates and times, the Contractor

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shall be allowed to proceed with said tests in the absence of the Company (and/or its representatives, such as, *inter alia*, its subcontractors or consultants).

In any case, the Contractor shall provide the Company with a written report setting forth the results of such tests, within the shortest possible time, and at the latest 5 (five) Days after performance of the tests. Within a further 15 (fifteen) Days after receipt of the test report, the Company shall have the option to:

- require the Contractor to re-perform (part of) the tests in the presence of the Company (and, if applicable, any of its representatives, such as, *inter alia*, its subcontractors or consultants), at the Contractor's sole risk and expense, within the shortest possible time, but in any case at the latest 5 (five) Days after the Company's notice of such demand; and/or
- refuse or reject any of the Goods, Works and/or Services; and/or
- require the Contractor to conduct additional tests, in accordance with Article 15.5.2 of these General Terms and Conditions.

Where the Company refrains from exercising any of the abovementioned options within the specified time limit, the Contractor shall be allowed to continue any further anticipated tests or Site works. Under no circumstances, however, shall forbearance by the Company from exercising any of the abovementioned options discharge the Contractor in any way from any of his responsibilities, obligations or liabilities under the Agreement, nor shall such forbearance be construed as acceptance by the Company of the Goods, Works and/or Services that were the subject of such tests.

#### 15.5.2 Additional Tests

Even when the Goods, Works and/or Services are presumed by the Contractor to have successfully passed any of the Site tests, the Company shall retain the right to require the performance of additional tests of the Goods, Works and/or Services. In such case, these additional tests shall be performed by the Contractor in the presence of the Company (and, if applicable, its representatives, such as, *inter alia*, its subcontractors or consultants) within the shortest possible time, but in any case at the latest 10 (ten) Days after the Company's notice of such requirement. Where such additional tests show that the Goods, Works and/or Services are in accordance with the specifications of the Agreement, the costs for such additional tests shall be borne by the Company and the delay caused by such additional tests shall be attributable to the Company. However, where such additional tests demonstrate deficiencies in said Goods, Works and/or Services, the Contractor shall bear any expenses or costs relating to these additional tests and shall assume full responsibility for any delay resulting from their performance.

#### 15.6 Suspension of Work

The Company reserves the right to suspend the provision of the Goods, Works and/or Services partially or completely and in the way it deems necessary at any time, by simple notice to the Contractor. For the duration of the suspension, the Contractor shall be responsible for the maintaining and/or storage of the Goods, Works and/or Services.

The Losses arising as a result of such suspension shall be borne by the Contractor in case the interruption is required for safety reasons or shortcomings attributable to the Contractor, as well as in case of Force Majeure.

However, to the exception of costs relating to the maintaining and/or storage of the Goods, Works and/or Services during the period of suspension, all expenses incurred by the Contractor as a result of a suspension of the works that is attributable to the Company shall be reimbursed by the latter upon the Contractor's first written request, adjoined by documented proof of such costs.

## **16 Operation and Maintenance**

### **16.1 Training**

The Contractor shall carry out the training of the Company's personnel in the operation and maintenance of the Goods, Works and/or Services to the extent specified in the Contract and/or Purchase Order and/or in the Company's Technical Specifications. In case such provisions require certain training to be provided prior to Provisional Acceptance, no such Provisional Acceptance of the Goods, Works and/or Services shall occur before such training is effectively provided.

### **16.2 Operation and Maintenance Manuals**

Prior to commencement of any Commissioning tests, the Contractor shall supply to the Company the provisional operation and maintenance manuals, drawn up in the Site Language and in sufficient detail for the Company to operate, maintain, dismantle, reassemble, adjust and repair the Goods, Works and/or Services. Provisional Acceptance of the Goods, Works and/or Services shall in no event occur before such operation and maintenance manuals are provided to the Company in strict accordance with the provisions of Article 12 of these General Terms and Conditions.

## **17 Commissioning**

### **17.1 Commissioning**

Unless specified otherwise in the Contract and/or Purchase Order, the Contractor shall, as a minimum, successfully carry out the tests set forth in this Article on the Goods, Works and/or Services during Commissioning.

Commissioning shall as a minimum comprise:

- pre-commissioning tests, which shall include the appropriate inspections and ("dry" or "cold") functional tests, to demonstrate that every part of the Goods, Works and/or Services can safely commence the commissioning tests;
- commissioning tests, which shall include the operational tests, specified in the Contract and/or Purchase Order, to demonstrate that the Goods, Works and/or Services can be operated safely and as specified, under all available operating conditions;
- trial operation, which shall demonstrate that the Goods, Works and/or Services operate reliably and in strict accordance with the Agreement; and
- performance tests, which shall demonstrate that the Goods, Works and/or Services conform with the criteria specified in the Agreement and, as the case may be, with the Performance Guarantees.

The Contractor will give the Company not less than 20 (twenty) Days written notice of the date on which he will be ready to commence Commissioning of the Goods, Works and/or Services. The tests to be carried out during Commissioning shall be initiated within 10 (ten) Days of that date, on the day or Day to be specified by the Company, unless agreed otherwise between the Parties.

The Contractor shall furthermore give the Company written notice of his intent, including a proposed date, to commence trial operation and the performance tests, so as to allow the latter (and/or any of its representatives, such as, *inter alia*, its subcontractors or consultants) to be present during those tests. Should the Company (and/or any of its representatives, such as, *inter alia*, its subcontractors or consultants) be unable to attend the tests at the proposed date, it shall, without by doing so providing a reason for the Contractor to review the Project Schedule, have the right to propose a new date, which shall not exceed 5 (five) Days from the date initially proposed by the Contractor. The Contractor shall subsequently perform the respective tests on the date proposed by the Company.

In any case, the Contractor shall provide the Company with a written report containing the results of

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such tests, within the shortest possible time, and at latest 5 (five) Days after conducting the tests.

Any product produced by the Goods, Works and/or Services during trial operation shall become the Company's property upon production.

#### 17.2 Retesting

Should any of the Goods, Works and/or Services fail to successfully pass any of the tests during Commissioning, as set forth in Article 17.1 of the present General Terms and Conditions, the Company may require the failed tests to be re-performed once under the same conditions and without any additional costs to the Company. In case any of the Goods, Works and/or Services would fail to successfully pass these subsequent tests, Article 17.3 of the General Terms and Conditions shall apply.

Prior to retesting, the Contractor shall be allowed to perform additional labour on the Goods, Works and/or Services. Any costs or delays resulting thereof, shall be the Contractor's sole responsibility. Notwithstanding the foregoing, the Contractor shall promptly, and in any case as soon as reasonably possible, perform the required retesting.

#### 17.3 Failure to Pass Tests

Should any of the Goods, Works and/or Services fail to successfully pass any of the tests during Commissioning and even after retesting of the Goods, Works and/or Services, as provided for in Article 17.2 of these General Terms and Conditions, the Company shall, at its sole discretion, be entitled to:

- require further retesting of the Goods, Works and/or Services, in accordance with Article 17.2 of these General Terms and Conditions, without prejudice to the Company's right to reject (any part of) the Goods, Works and/or Services if these fail to pass these consecutive tests;
- reject any of the Goods, Works and/or Services, without prejudice to any other rights the Company may have, such as, *inter alia*, its right to terminate the Agreement pursuant to Article 23.2 of these General Terms and Conditions and its right to claim damages; or
- proceed to Provisional Acceptance of the Goods, Works and/or Services, without prejudice to any other right the Company may have, such as, if applicable, its right to claim Liquidated Damages further to Article 18.2 of these General Terms and Conditions.

### 18 Liquidated Damages

#### 18.1 For Delay

In case of expiry of any of the deadlines for achievement of the Milestones set forth in the Project Schedule or, if no Project Schedule is used, in the Contract and/or Purchase Order, the Contractor shall pay the Company Liquidated Damages for delay. Unless stated otherwise in the Contract and/or Purchase Order, the Liquidated Damages for delay shall be calculated as follows:

- during the first week of delay: 0,25% of the Contract Price per commenced day of delay;
- during the second week of delay: 0,5% of the Contract Price per commenced day of delay; and
- from the third week of delay onwards: 0,75% of the Contract Price per commenced day of delay.

Unless specified otherwise in the Contract and/or Purchase Order, the total amount of Liquidated Damages for exceeding a specific deadline for the achievement of a Milestone contained in the Project Schedule shall not exceed 15% of the Contract Price.

The various Liquidated Damages for delay, as described above, are cumulative and do not discharge

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the Contractor in any way from his contractual obligations.

Without prejudice to any other rights or recourse it may have, the Company shall have full rights to deduct any Liquidated Damages that have become due without notice from any amounts that are or become payable to the Contractor.

## 18.2 For Failure to Achieve Performance Guarantees

If agreed to between the Parties, the Contract and/or Purchase Order shall set forth the Liquidated Damages owed by the Contractor to the Company for failure by the former to make the Goods, Works and/or Services meet the technical requirements set forth in the Company's Technical Specifications, in specific where the Contractor has guaranteed specific performance levels.

## 19 Provisional Acceptance

### 19.1 Provisional Acceptance

Provisional Acceptance of the Goods, Works and/or Services shall only take place after:

- all Goods, Works and/or Services have successfully passed any and all Commissioning tests determined in or pursuant to Article 17.1 of the present General Terms and Conditions and can therefore be deemed successfully completed in strict accordance with the Agreement;
- the Contractor has provided to the Company the final versions of all required Technical Documentation, in strict accordance with the requirements set forth in Article 12 of these General Terms and Conditions;
- the Contractor has, in accordance with Article 16 of these General Terms and Conditions, provided the necessary training and the final operation and maintenance manuals to the Company's personnel so as to allow it to properly operate and maintain the Goods, Works and/or Services;
- the Contractor has fulfilled all other obligations that he was required to perform pursuant to the Agreement prior to Provisional Acceptance; and
- a Certificate of Provisional Acceptance is duly signed by both Parties.

Provisional Acceptance, as well as all of its consequences, shall take effect at the date and time set forth in the Certificate of Provisional Acceptance.

In case the Agreement merely covers the supply of certain Goods by the Contractor and it is furthermore explicitly agreed between the Parties in the Contract and/or Purchase Order that there is no obligation for the Contractor to conduct Commissioning tests on those Goods, Provisional Acceptance of the Goods in question shall take place at the date and time indicated in the Goods Receipt relating to the respective Goods, duly signed by the Company and handed over to the Contractor. Such Goods Receipt shall in no case be issued prior to delivery of the Goods on Site, in strict conformity with Article 14 of these General Terms and Conditions. Apart from the prohibition to include a Punch List in the Goods Receipt, the Goods Receipt shall state the same particulars as the Certificate of Provisional Acceptance, as determined in Article 19.2 of the present General Terms and Conditions.

### 19.2 Certificate of Provisional Acceptance

The Milestone of Provisional Acceptance shall not be considered to have been achieved by the Contractor until the Company has issued a Certificate of Provisional Acceptance relating to all of the Goods, Works and/or Services to be provided by the Contractor to the Company pursuant to the Agreement. The Contractor may only apply for a Certificate of Provisional Acceptance relating to a specified part of the Goods, Works and/or Services if and insofar as such partial Provisional Acceptance was provided for in the Contract and/or Purchase Order. In any case, a Certificate of Provisional Acceptance may only be applied for once any and all requirements for Provisional

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Acceptance, as set forth in Article 19.1 of these General Terms and Conditions, have been satisfied.

In case the Company deems such requirements have indeed been satisfied, and only in such case, a Certificate of Provisional Acceptance shall be drawn up by the Company in twofold and set forth:

- a brief description of the Goods, Works and/or Services that are the subject of the Certificate of Provisional Acceptance;
- a reference to the Agreement;
- the date of such Provisional Acceptance; and
- a Punch List of all the items that are to be remedied by the Contractor prior to Final Acceptance, if any.

The Certificate of Provisional Acceptance shall constitute sole proof of Provisional Acceptance by the Company of the Goods, Works and/or Services described therein.

### 19.3 Unfulfilled Obligations

Even after a Certificate of Provisional Acceptance has been issued, each Party shall remain liable for the fulfilment of any obligation that remains unperformed at that time with respect to the Goods, Works and/or Services that are the subject of that Certificate of Provisional Acceptance, which shall particularly apply for the Contractor's obligation to remedy the items on the Punch List contained in the Certificate of Provisional Acceptance, if any.

### 19.4 Clearance of Site

Once the Company has issued a Certificate of Provisional Acceptance for all of the Goods, Works and/or Services that the Contractor is to provide pursuant to the Agreement, the Contractor shall remove any remaining equipment, surplus material and/or parts, wreckage, rubbish and other temporary facilities for the provision of the Goods, Works and/or Services from the Site. The Contractor shall have the same obligation in case of early termination by the Company of the Agreement pursuant to Article 23 of these General Terms and Conditions.

If, within 30 (thirty) Days from issuance of the Certificate of Provisional Acceptance by the Company, any of the abovementioned items remain on Site, the Company may sell or otherwise dispose of them and perform or have performed any other works that it deems necessary for restoring the Site, at the risk and cost of the Contractor. Any sums received by the Company for the sale of such items shall be to the Company's sole benefit.

## **20 Transfer of Title and Risk**

### 20.1 Transfer of Title

The transfer of title shall have occurred:

- with respect to Goods, once said Goods have been produced or in any event once partial payment has been made; to that purpose, as from the moment of their production the Contractor shall individually mark the Goods as Company property or –in case the Goods are not manufactured by the Contractor– place separate orders for those Goods and, in doing so, require similar conditions for the transfer of title and similar protection of the Company's rights to those Goods; and
- with respect to Works and/or Services, once they have been provided or in any event once partial payment has been made.

Transfer of title to the Goods, Works and/or Services shall be without prejudice to any rights of refusal or rejection the Company may have.

## 20.2 Transfer of Risk

Without prejudice to any provisions to the contrary contained in the Agreement and without prejudice to the Contractor's obligations and liabilities during the Warranty Period and/or the Decennial Liability Period, the risks of loss or damage to the Goods, Works and/or Services shall be transferred from the Contractor to the Company to the extent set forth in and at the date of signature by the Company of the Provisional Acceptance Certificate relating to those Goods, Works and/or Services and, in case the Agreement merely covers the supply of certain Goods by the Contractor and it was furthermore explicitly agreed between the Parties that there was no obligation to conduct Commissioning tests on those Goods, the risks of loss or damage to those Goods shall be transferred from the Contractor to the Company to the extent set forth in and at the date of signature by the Company of the Goods Receipt.

## 21 Warranty

### 21.1 Warranty Period

The Contractor shall warrant the Goods, Works and/or Services as per Article 21.2 of these General Terms and Conditions for a period of at least 24 Months following Provisional Acceptance of such Goods, Works and/or Services.

In the event any services, replacements or repairs are necessitated during the initial 24 Month-warranty period, as determined in the preceding paragraph, or during any extension thereof, the Goods, Works and/or Services shall be covered by a new 24-Month warranty period starting on the date of re-implementation or provision of said services, replacements or repairs.

### 21.2 General Warranty

The Contractor warrants that all the Goods supplied for the purposes of the Agreement are new, unused, and the most recent model of those kind of Goods, and that they incorporate all recent improvements in design and materials, unless expressly agreed otherwise in writing by the Parties.

The Contractor shall exclusively provide Goods and Services that are free of any and all apparent or hidden defects and are moreover generally in strict conformity with the provisions of the Agreement, any and all laws, regulations, decrees, statutes or ordinances, the state of the art and all standard requirements relating to usage, reliability, product life and end usage that the Contractor is or should be aware of. With regard to these standard requirements in specific, the Contractor attests to having been sufficiently informed by the Company concerning the nature and scope of application of the Agreement.

### 21.3 Obligation to Correct Defects

Without prejudice to any more severe provisions of the Agreement or any mandatory requirements of law, the Contractor shall, at his own cost and risk, repair and/or replace, according to the Company's stated wish, any and all defects, defaults or non-compliance in the Goods, Works and/or Services observed during the Warranty Period, and moreover reimburse the Company for any and all Losses resulting there from.

Repair and replacement, as mentioned in the previous paragraph, shall include: dismantling, transport (from and to the Site), repairs, replacements, reinstallation, testing, implementation and all other costs related to the repair and/or replacement of the defect, defaulted or non-compliant Goods, Works and/or Services.

### 21.4 Failure to Correct Defects

Should the Contractor fail to fulfill any of his obligations under this Article 21 and continue to do so for

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a fifteen (15) day period following a notice of default relating thereto, the Company may:

- a) carry out the work itself or have the respective work carried out by another qualified and experienced contractor at the Contractor's sole risk and expense. The Contractor explicitly declares that such work shall not void or otherwise affect Contractor's warranty on the Goods, Works and/or Services and agrees to reimburse the Company for any and all costs and expenses associated with such work; and
- b) without prejudice to any other rights the Company should have (including, but not limited to its right to claim damages pursuant to Article 28 of these General Terms and Conditions), claim an additional compensation for inconvenience and delay (incl. loss of profit), fixed at 10 (ten) percent of the total cost of such work, without prejudice to the Company's right to claim compensation for its actual damages should these exceed the fixed amount.

## **22 Final Acceptance**

Without prejudice to the Contractor's Decennial Liability pursuant to Article 28.2 of the present General Terms and Conditions, Final Acceptance of the Goods, Works and/or Services shall take place automatically once the Warranty Period has passed and shall constitute the moment of unconditional acceptance by the Company of the Goods, Works and/or Services as provided by the Contractor under and according to the Agreement.

However, Final Acceptance cannot take place if, at the end of the Warranty Period, some or all of the items on the Punch List have not yet been remedied by the Contractor. In such case the Warranty Period (incl. all other guarantees that are valid during the Warranty Period, such as for example Bank Guarantees) shall automatically be extended until the Contractor has remedied all outstanding items of the Punch List. The Company shall, nevertheless, have the option not to await any remedial action by the Contractor and perform these outstanding works itself or have them performed by another competent contractor, in both cases at the Contractor's sole risk and expense.

## **23 Early Termination of the Agreement**

### **23.1 Convenience**

The Company reserves the right to terminate the Agreement, in whole or in part, within 30 (thirty) Days, by simple notice of such intent by registered mail, and without any further formalities or justifications being required. The Contractor shall be reimbursed for any reasonable costs that result from such termination, upon documented proof of such costs. Only those costs that cannot be recovered by exerting the respective Goods, Works and/or Services to other projects in which the Contractor is or may be involved in the future shall be reimbursed further to termination in accordance with this Article 23.1.

### **23.2 Culpable Non-performance by the Contractor**

If the Contractor fails to perform any or all of his obligations under the Agreement, the Company reserves the right to terminate the Agreement, in whole or in part, after having notified the Contractor of such culpable non-performance by registered mail, which remained without effect for 10 (ten) Days, without prejudice to any other rights or recourses the Company may have.

### **23.3 Insolvency**

The Company may terminate the Agreement, in whole or in part, with immediate effect and without any court intervention or legal formality being required if the Contractor's situation, after the Agreement has been concluded, should become attenuated in such a way that serious concerns arise as to the Contractor's ability to fulfil his contractual obligations. This shall particularly be the case in the event the Contractor would file for bankruptcy protection, would be placed in receivership, would enter into negotiations with his creditors or would be subject to liquidation or any other equivalent

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procedure.

In any of the foregoing cases, the Contractor shall be required to reimburse the Company for any and all Losses it incurs as a result of such termination.

#### 23.4 Serious Misconduct

The Company shall reserve the right to terminate the Agreement, in whole or in part, by registered mail with no prior notice and without any court intervention or other legal formality whatsoever being required, should the Contractor seriously default on his obligations. This option shall be without prejudice to any other rights or recourses the Company may have.

#### 23.5 Obligations Prior to Termination

Termination or expiration of the Agreement shall not relieve the Contractor of any obligation arising out of work performed prior to termination or expiration of the Agreement.

### **24 Penalties**

In the event the Contractor does not meet his contractual obligations or in the event of an early termination of the Agreement due to an error on the part of the Contractor, the latter shall be required to pay a penalty that shall be stipulated in the Contract and/or Purchase Order, although this amount shall not be less than the amount of any actual Losses.

Any penalties that apply, in addition to their amounts and methods of calculation, shall also be set forth in the Contract and/or Purchase Order. Penalties shall, in specific, be provided for in the following cases:

- early termination of the Agreement for serious misconduct, within the meaning of Article 23.4 of these General Terms and Conditions;
- violation of the confidentiality requirements set forth in Article 26 of these General Terms and Conditions; and
- failure to observe any other obligations that are made subject to penalty in the Agreement.

The various penalties referred to in the present Article are cumulative and do not discharge the Contractor in any way from his contractual obligations.

Without prejudice to any other rights or recourse it may have, the Company shall have full rights to deduct any penalties that have become due without notice from any amounts that are or become payable to the Contractor.

### **25 Force Majeure**

#### 25.1 Force Majeure Procedure

In case of a presumed Force Majeure event, the affected Party must notify the other Party of the presumed occurrence of a Force Majeure event as soon as it has knowledge of such event, and no later than 5 (five) Days following such occurrence. The notification must specify the nature, the starting date, presumed end date, as well as the estimated effects of the event on the performance of the affected Party's obligations.

As soon as the presumed Force Majeure event comes to an end, the affected Party shall notify the other Party of the precise end date of the Force Majeure event. In its notification, the affected Party shall furthermore describe the precise causes of the presumed Force Majeure event and the actual impact it has had on its execution of the Agreement. If applicable, the affected Party must attach any

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attestations issued by official bodies to its notification.

Each Force Majeure event shall have the effect of suspending the obligation to fulfil the commitments affected by it. The affected Party will make every endeavour to limit the effects of the Force Majeure event. It shall in no way be exempted from its contractual obligations except during the minimal period of Force Majeure in question, whose duration shall not exceed the duration of the actual delay caused by the instance of Force Majeure itself.

## 25.2 Termination for Force Majeure

Both Parties shall have the right to terminate the Agreement when fulfilment thereof has become utterly impossible due to Force Majeure or when suspension of the Agreement owing to the Force Majeure event lasts more than six (6) consecutive Months.

## **26 Confidentiality and Personal Data**

### 26.1 Confidentiality

The Contractor undertakes to keep strictly confidential any and all information and data that is transmitted to him and/or his partners and associates by the Company for the purposes of the Agreement or otherwise and furthermore undertakes to refrain both from disclosing such confidential information to any third party, in any way, shape or form, as well as from using it in any way other than for the purposes of executing the Agreement.

The Contractor shall take any and all measures necessary in order to ensure that this confidentiality requirement is observed in full by its employees, partners and associates, as well as by any other person who is not an employee of the Contractor but for whom the Contractor is responsible and who needs to be made aware of or given access to confidential information of the Company, even after that respective party's services to the Company or to the Contractor have been completely fulfilled.

The confidentiality obligation described in this Article 26 of the General Terms and Conditions shall apply during the full term of the Agreement and shall survive its termination or expiration for a period of 5 (five) years.

### 26.2 Personal Data

As part of the provision of the Professional Services and for the entire duration thereof, Contractor will be led to process (use, modify, store, ...) personal data within the meaning of applicable data protection law and the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

With respect to such processing, Contractor shall:

- (a) process such personal data only for the specific fulfilment of its contractual obligations arising from the Agreement, and in accordance with Luminus' documented instructions;
- (b) only process such personal data in a Member State of the European Union or European Economic Area, unless specifically authorised in writing by Luminus;
- (c) ensure that persons authorised to process such personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- (d) implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, taking into account in particular the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted, stored or otherwise processed, and ensure that any natural person acting under the authority of the Contractor who has access to personal data does not process them except on instructions from Luminus, unless he or she is required to do so by Union or Member

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State law;

(e) respect the following conditions for engaging another processor:

- Contractor shall not engage another processor without prior specific or general written authorisation of Luminus. In the case of general written authorisation, Contractor shall inform Luminus of any intended changes concerning the addition or replacement of other processors, thereby giving Luminus the opportunity to object to such changes.

- Where Contractor engages another processor for carrying out specific processing activities on behalf of Luminus, Contractor shall impose on that other processor the same data protection obligations as set out in this Article 26.2, by way of a contract or other legal act under Union or Member State law. Where that other processor fails to fulfil its data protection obligations, Contractor shall remain fully liable to Luminus for the performance of that other processor's obligations.

(f) taking into account the nature of the processing, assist Luminus by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of Luminus' obligation to respond to requests for exercising the data subject's rights under applicable data protection legislation;

(g) taking into account the nature of processing and the information available to Contractor, assist Luminus in ensuring compliance with the obligations under applicable data protection legislation in relation to security of processing, to the notification of any breach of personal data to supervisory authorities and data subjects where relevant, to the carrying out of data protection impact assessments where required and to prior consultation of the supervisory authority;

(h) at the choice of Luminus, delete or returns all such personal data to Luminus after the end of the provision of the Professional Services and delete existing copies unless European Union or Member State law requires storage of the personal data;

(i) make available to Luminus all information necessary to demonstrate compliance with these obligations and allow for and contribute to audits, including inspections, conducted by Luminus or another auditor mandated by Luminus.

The Contractor shall indemnify Luminus for claims of any third party that arise as a result of Contractor's breach of this Article 26.2 and the applicable European and Member State law and regulation regarding data protection and/or privacy.

## **27 Intellectual Property Rights**

### **27.1 Held by the Company**

Any and all information, plans, diagrams, technical and commercial results, objects, devices, installations, machinery or other elements developed for the Company under the Agreement or resulting directly or indirectly from performance of the Agreement, shall become the Company's sole property as of when they are developed.

No reproduction or use of or reference to such elements, or reference to the Company or any associated company, to their names, brands, logos, photos, codes, drawings or specifications may be made by the Contractor in announcements, promotional activities, advertising, publications or presentations, of a technical, commercial or other nature, without the Company's prior written consent.

### **27.2 Held by Third Parties**

The Contractor shall bear and be solely responsible for any and all costs that arise in the performance of the Agreement as a result of or in connection with intellectual property rights, of any kind whatsoever. In any such case the Contractor will, at his expense, come to an arrangement with the holder of the respective intellectual property rights, pay the royalties due and obtain the assignments, licences and authorisations required or, if an agreement cannot be reached, modify the Goods, Works and/or Services so as to avoid any infringement of any intellectual property rights held by third parties.

In case there would be any legal action or proceedings against the Company for infringement of intellectual property rights, of any kind whatsoever, relating to the whole or part of the Goods, Works and/or Services performed by the Contractor, the latter will indemnify, safe free and hold harmless the

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Company form any resultant costs and expenses, including the fees of lawyers, experts, technical advisers, etc. If, as a result, any part of the Goods, Works and/or Services needs modification and/or replacement, the Contractor will, free of charge and without delay, perform such modification and/or replacement, bearing all risks and liabilities in the course thereof as well as those that may result there from. Any such modification to and/or replacement of the Goods, Works and/or Services will invoke a new Warranty Period, as defined in Article 21 of the present General Terms and Conditions, for the entirety of said Goods, Works and/or Services.

## **28 Liability**

### **28.1 General Liability**

Until the transfer of risk pursuant to Article 20.2 of these General Terms and Conditions, the Contractor is fully and solely responsible towards the Company and towards third parties, for all financial consequences, accidents, damage and other prejudice that occurs while the Agreement is being carried out, regardless of their cause.

Any time the Contractor's liability is thus triggered, the Contractor shall indemnify, defend, save free and hold harmless the Company, the Company's Representative(s) and the Company's affiliates, officers, agents, shareholders, partners, members, employees, subcontractors, consultants and advisors from any and all Losses incurred or suffered by any of the foregoing.

In case the Contractor believes that certain damage to the personnel or goods of the Company was in fact caused by a third party, the Contractor shall himself file any claims against that third party, after having compensated the Company for the respective damage thus caused.

Even after the transfer of risk pursuant to Article 20.2 of these General Terms and Conditions and besides the Contractor's Decennial Liability, the Contractor remains liable for any financial consequences, accidents, damage and other prejudice inflicted to one or more of the parties enumerated in the second paragraph of this Article, insofar as it can be established that such financial consequences, accidents, damage and other prejudice are ascribable to the Contractor or any of his Subcontractors.

The Contractor furthermore bears full responsibility for any nuisances to the neighbourhood (*troubles de voisinage/burenhinder*), unless he can show that such nuisances were inherent in and unavoidable during the provision of the Goods, Works and/or Services ordered by the Company.

During the Warranty Period, the Contractor assumes, both towards the Company as towards third parties, the responsibility for any damage that occurs during or due to his intervention and/or by his fault, by those of his personnel, or as a result of faults in his supplies which gave rise to an application of Article 21 of these General Terms and Conditions.

### **28.2 Decennial Liability**

Without prejudice to the provisions of Article 28.1 of these General Terms and Conditions, the Contractor shall remain liable for the Goods, Works and/or Services, to the extent set forth hereafter, for a period of ten (10) years following Final Acceptance of the Goods, Works and/or Services. During such Decennial Liability Period, the Contractor shall remain liable for (i) any and all, minor or serious hidden defects or other inaccuracies in the design of any foundations, structures and/or buildings, or any particular part thereof, that are provided by the Contractor as part of the Goods, Works and/or Services and (ii) the appropriateness of any materials and the professional abilities of craftsmen that are used or selected by the Contractor for the construction and/or design of those foundations, structures and/or buildings, or any particular part thereof, in specific where those defects and/or inaccuracies or where the materials and/or craftsman used or selected may prevent or materially impair the use of the Goods, Works and/or Services for the purpose they are intended to serve in

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accordance with the Agreement. The aforementioned Decennial Liability of the Contractor shall only apply in respect of claims notified to the Contractor in writing within a period of ten (10) years from Final Acceptance of all of the Goods, Works and/or Services. Should the Company at any time believe that the Contractor may be held liable further to this paragraph, it shall, in any case, without undue delay notify the Contractor thereof.

## **29 Insurance**

### **29.1 Contractor's Insurance**

Prior to undertaking the supply of any Goods, Works and/or Services, the Contractor shall take out the following insurance policies, which he shall maintain in full effect for so long as necessary to cover his potential liability pursuant to the Agreement, and as a minimum throughout the entire duration of the Agreement:

- a) The insurance policies that are compulsory for the provision of goods, works and/or services in Belgium, such as, *inter alia*:
  - a "Legal" insurance policy, guaranteeing compensation for accidents at work and accidents on the way to/from work as may be incurred by members of the Contractor's personnel, even if they work under the authority, supervision and control of the Company; and
  - an "Automobile Public Liability" insurance covering the officially-registered vehicles which have access to the Site and the installations as well as any damage caused by them.
- b) A "Public Liability" insurance policy (including accidental damage to the environment and neighbourhood nuisances (*troubles de voisinage/burenhinder*)) for any type of damage sustained by third parties, the Company and/or its personnel, with an insured limit per claim up to the amounts stipulated in the Contract and/or Purchase Order or, failing such specification, up to an amount not lower than € 5.000.000,- (five million euros) per claim.

This policy must furthermore include the following clauses:

- the cover applies without restrictions nor reservations to the civil liability as may devolve upon the Contractor under any legal provisions or regulations, as a result of damage of any nature caused to third parties as well as to the goods of the Company, whether entrusted or not to the Contractor and resulting directly or indirectly from his provision of the Goods, Works and/or Services under the Agreement or otherwise caused by his personnel, machinery or equipment, during or outside the working hours, on or off the Site;
  - the Company's employees are considered third parties in relation to the Contractor; and
  - the policy also covers accidents or damage caused by the personnel, equipment and/or materials made available to the Contractor by the Company, insofar as such accidents are, directly or indirectly, attributable to the Contractor.
- c) A "Product Liability" and/or "Post Delivery Liability" and/or "Post Completion Liability" insurance policy and/or which guarantees third parties as well as the Company against any type of damage resulting from defects in the Goods, Works and/or Services manufactured for the purposes of and/or supplied pursuant to the Agreement by the Contractor, up to the amounts per claim specified in the Contract and/or Purchase Order or, failing such specification, up to a minimum amount of € 5.000.000,- (five million euros) per claim and per insurance year.

The Contractor shall keep this policy into effect for a period that covers at least the entire Warranty Period (incl. any extensions thereof).

- d) A "Professional Liability" insurance policy, which guarantees third parties as well as the Company against any type of damage resulting from any defaults in the intellectual works performed by the Contractor for the purposes of the Agreement, up to the amounts per claim specified in the Contract and/or Purchase Order or, failing such specification, up to a minimum amount of € 5.000.000,- (five million euros) per claim and per insurance year.

The Contractor shall keep this policy into effect for a period that covers at least the entire Warranty Period (incl. any extensions thereof).

- e) A "Decennial Liability Insurance" to cover the Contractor's liability pursuant to Article 28.2 of these General Terms and Conditions for an amount that is at least equal to the new replacement value of the Goods, Works and/or Services provided by the Contractor pursuant to the Agreement. The Contractor shall maintain this insurance in full force and effect throughout the entire Decennial Liability Period. In order to set up this "Decennial Liability" Insurance the Contractor shall obtain the expert report that is needed for setting up this insurance.
- f) A "Transport" (or "Marine Cargo") insurance policy covering the damage caused to and/or loss of any of the Goods, Works and/or Services during transport anywhere in the world, including that incurred during loading, intermediate storage, unloading, including stowing and covering and this, up to the amount per means of transport as stipulated in the Contract and/or Purchase Order or, failing such specification, up to a minimum amount equal to the new replacement value of the transported Goods, Works, and/or Services.

All the insurance policies taken out by the Contractor must contain a clause whereby his insurer(s) waive(s) any recourse against the Company, its personnel and any third party against which the Company has committed to waive any recourse.

## 29.2 Miscellaneous Provisions

The choice of the insurance companies and the clauses of the policies taken out by the Contractor in compliance with Article 29.1 of these General Terms and Conditions must receive the approval of the Company, such approval not giving rise to responsibility of the Company nor limiting that of the Contractor.

Prior to carrying out the Agreement, the Contractor shall provide the Company with the applicable insurance certificates as well as with a copy of any and all receipts of the premiums paid. The Contractor shall obtain from the insurers that they commit themselves to giving 30 (thirty) Days notice by registered mail to the Company in the event of a change to or cancellation of those policies.

## **30 Sustainable Development, Ethics and Integrity**

### 30.1 Environmental clause

To respond to sustainable development issues, the Company has set the target of controlling environmental impact and obtaining and maintaining NF EN ISO 14001 certification for all its activities (production, distribution, engineering, etc.).

Under its environmental policy, the Company has undertaken commitments, particularly for:

- saving non-renewable resources;
- preventing pollution and controlling greenhouse gas emissions;
- improving health and safety.

In particular, the Company is a stakeholder in this approach for continuous improvement by also seeking ISO 14001 certification for its main sites.

The Company has therefore undertaken, in the process of contracting and execution of its contracts, to identify the key points regarding respect for the environment and in particular those relating to waste control and the use of chemical products.

As a result, the Contractor shall be reminded, and shall pass this on to his Subcontractors and suppliers, that the execution of the Agreement must strictly comply with the applicable regulations in that respect.

As part of his duty as an advisor to the Company and to allow the Company to respect its commitments regarding ISO 14001 certification, the Contractor is also requested, in the context of execution of the Agreement, to send to the Company any relevant information regarding respect for the environment (existing commitments, planned action for progress, reduction or prevention of impacts obtained, etc.) and to warn it of any circumstance likely to have a significant impact on the environment.

The duty of advisor, like the obligations required of the Contractor pursuant to the present Article 29.1, shall be assessed with regard to and within the limits of the missions entrusted to him in accordance with his specific competences.

### 30.2 Social clause

According to its commitments on ethics, the Company has particularly obliged itself to respect the fundamental principles and rights stated in the United Nations Declaration of Human Rights, the European Union Charter of Fundamental Rights and the Conventions made under the International Labour Organization. In this context, the Company applies these principles –and, particularly, those relating to child labour and forced or obligatory labour– to its purchases.

The Contractor declares that he shall adhere to the fundamental principles and rights stated above. He shall respect and implement the industrial and human resources required to ensure their application, by his own personnel, his sub-contractors and his suppliers. He shall also undertake to provide proof of their layout to the Company at the latter's first request. The Company reserves the right to verify, through a competent and authorized organization, that the working conditions that are applied by the Contractor, his sub-contractors and his suppliers do not violate these principles.

### 30.3 Integrity clause

Both Parties warrant to respect at all times all the applicable, national and international law relating to the combating of fraud and corruption in all of its forms, whether public or private, active or passive, by any person acting on their behalf, as well as any trade embargoes which may be applicable to their contractual relationship.

Both Parties warrants that they have given no commissions, payments, gifts of substantial value, kickbacks, extensive entertainment or other things of substantial value to any employee or agent of the other Party in connection with this present agreement or any other contract between the Parties.

Both Parties guarantee that their personnel, representatives, subcontractors and/or any other person for whom they are responsible, will respect this clause at all times.

Each proven non respect of the above is a substantial breach of this present agreement and may result in the immediate termination of this present agreement with no payment or compensation of any kind being due by the non-breaching Party.

### 30.4 Ethical Reporting

The confidential Luminus Ethical Reporting e-mail address is a method for reporting conduct that may be unethical, in violation of professional standards, relating to employment, labour, work environment, information management, environmental protection, possible conflicts of interest, unfair trade practices, thefts or for seeking guidance about possible violations of laws related to existing or expected contracts. The Contractor can contact Luminus by sending an e-mail to [ethics@luminus.be](mailto:ethics@luminus.be).

### 31 Renegotiation

If, while the Agreement is in effect, Goods, Works and/or Services of similar or equal quality to those falling within the scope of the Agreement become available at substantially lower cost or under conditions which shall be clearly advantageous to those set forth in the Agreement, the Company shall have the right to renegotiate the Agreement.

Similarly, if any law, decree or regulation should be issued or amended in such a way as to have an impact on the Agreement, the Company may require its renegotiation.

The Company shall notify the Contractor by registered mail of its intent to renegotiate the Agreement. If the Contractor and the Company are unable to reach a new agreement that reflects the changes in market conditions and/or the law within a period of 3 (three) Weeks from the date of the above mentioned notification, the Company shall be able to terminate the Agreement with immediate effect and without any indemnification being due.

### 32 Claims

If the Contractor considers himself entitled to any additional payment and/or Planning extension which he deems not covered by the Contract/Purchase Order, he shall notify the Company of the claim, describing the event or circumstances underlying the claim. The notification shall be sent to Luminus' technical manager as soon as possible and no later than 28 days after the time when the Contractor should have been aware of the event or fact causing the claim.

Within 42 days after the time when the Contractor should have been aware of the event or fact causing the claim, the Contractor shall submit a detailed claim including all the details supporting the previously submitted claim and the claimed additional payment and/or Planning extension. If the event or fact underlying the claim continues, the Contractor shall inform the Company every month and shall send the detailed claim no later than 42 days after the end of the elements causing the event or the fact.

Failure on the part of the Contractor to comply with the deadlines set out above renders the Contractor unable to submit a claim later based on the aforementioned event or fact underlying the claim.

Within 56 days after the Contractor sent the detailed claim, the Company shall answer either by accepting or by requesting additional information or by refusing the claim.

### 33 Instructions and Variations

The Company has the right to issue Instructions at any time before the Final Acceptance. Instructions are not necessarily Variations. The Contractor is obliged to bring forward any possible adverse effect of the Instruction and subsequently to comply with those Instructions as soon as possible.

#### Variation: process

If an Instruction is a Variation in the opinion of the Contractor, the latter shall notify that to the Company within 28 days after the notification of the Instruction by the Company, a reasonably detailed offer related to the effects of such a Variation, including the consequences on the Contract Price

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and/or Planning extensions. Within a reasonable period of time after receipt of the notification and the offer, the Company shall answer to approve or reject the classification of an Instruction as a Variation.

If a Variation is implemented, the Parties agree that the work performed shall be charged through open book (namely the Contractor shall submit all supporting documents related to the costs for the work performed under the Variation) and that the Contractor shall charge additional costs for overheads and any other costs, amounting to maximum 7.5% of the costs for the work performed.

The Variation shall only be implemented by the Contractor if the latter has received an offer, signed for approval, from the Company's Representatives.

#### Variation: effects

If the Company's Representatives sign the offer for approval, the result of the Variation is that the Contractor is entitled to a Planning extension and/or an adjustment of the Contract Price depending on the aforementioned offer.

### **34 Quality control by the Company**

The Company shall at any time have the right to inspect and check Goods, Works and/or Services on the Site, at the Contractor's premises or elsewhere.

The Company's approval or consent within the framework of the quality control for any part of the Goods, Works and/or Services does not relieve the Contractor from his obligations under the Agreement and does not limit the Contractor's liability with respect to the implementation of the Goods, Works and/or Services under the Agreement.

The Contractor guarantees that the quality control standards as defined in the Technical Specifications shall be met.

### **35 Replacement before Provisional Acceptance**

The Company has the right, before achieving the Provisional Acceptance of the Goods, Works and/or Services, and in the event of any failure by the Contractor, to take any reasonable measures to limit the effects of the Contractor's fault.

The Company shall send a notification to the Contractor specifying a reasonable deadline for the repair (depending on the seriousness of the fault and the urgency of any intervention).

If the Contractor cannot repair the fault before the end of that period, the Company has the right to perform any part of the work (including the reduction or acceleration of the interventions) himself or through a third party, at the Contractor's expense and risk.