

# GENERAL TERMS AND CONDITIONS OF SALE (version 2014.01)

## 1. Scope of Application

- 1.1. The following terms and conditions (hereinafter the "General Conditions") apply to sales contracts and contracts for services (performance of services or execution of works), and to any contracts that cover a combination of sales and services. These General Conditions govern the relationship between the Seller and the contracting party (hereinafter the "Customer"). The Seller is an Elia Group company which could be Elia System Operator SA/NV, Elia Asset SA/NV, Elia Engineering SA/NV, Elia Grid International or any of these companies' subsidiaries (hereinafter, the 'Seller').
- 1.2. These General Conditions always prevail over any of the Customer's general conditions, regardless of whether there are any other stipulations or conditions contained in the Customer's order form or any of its documents that may be contrary to these General Conditions, unless the Seller accepts expressly and in writing the applicability of the Customer's conditions in whole or in part. The General Conditions may not be modified tacitly. Any conduct that is contrary to what is contained in the General Conditions -even if tolerated by the Seller- shall not operate as a waiver of these General Conditions.

## 2. Formation and Elements of the Contract

- 2.1. Only the Seller's firm offer, which has been accepted unconditionally within the offer's validity period, shall be binding upon the Seller.

In all other instances (e.g., an offer with no validity period, an acceptance that is notified after the offer's expiry, conditional acceptance, modifications to the offer, additional items requested by the Customer, etc.), there shall be a valid contract only if there is a confirmation of the order i.e. a written acceptance by the Seller of the Customer's order (hereinafter, the "Confirmation"). The Contract shall be subject to the conditions contained in the Confirmation.

If the Customer does not agree with the terms contained in the Confirmation, he must inform the Seller immediately and, in any event, no later than eight (8) calendar days from the date of the Confirmation's sending. Failing which, the Customer is deemed to have accepted the terms of the order's Confirmation.

- 2.2. The contract between the Customer and the Seller (hereinafter the "Contract") only concerns the delivery of goods and the execution of works and/or performance of services as described in the Contract (hereinafter "the Goods and/or Works and/or Services").
- 2.3. The Customer waives the application of Article 1794 of the Belgian Civil Code.
- 2.4. The Contract is made up of the following documents:
  - the Confirmation and -to the extent that the terms contained in the following documents do not depart from those of the Confirmation- the Seller's Offer, the Customer's Order, and any subsequent changes to those documents;
  - where applicable, the Seller's technical descriptions and the Customer's technical specifications only to the extent the latter does not depart from the former;
  - where applicable, the local regulations that apply to works and construction;
  - where applicable, the provisions regarding access, safety, well-being, and the environment;
  - these General Conditions.

### **3. Price**

- 3.1. The price always excludes VAT and does not include taxes and duties that are directly levied on the Goods and/or Works and/or Services. Unless otherwise stipulated, the price does not include the cost of transportation, delivery, or collection of the Goods, nor does it include the cost of fitting or installation. All taxes, charges, duties, and costs shall be borne by the Customer.
- 3.2. Unless it has been agreed that the prices are firm and non-revisable, prices are subject to revision pursuant to the Agoria (national) index. The reference index number is that of the month preceding the Seller's offer and the new index number is that of the month preceding the execution of the works, services, or supplies.

An exceptional increase in the prices of raw materials, materials, fuels, or salaries or in the prices that subcontractors and suppliers have charged to the Seller entitles the Seller to revise its own prices to the corresponding amounts.

### **4. Guarantee**

- 4.1 The Seller can request the Customer to make an advance payment and/or give a security that is adequate for guaranteeing the full payment of the price. Failing to pay this advance or security entitles the Seller to suspend the performance of its obligations without prior and formal notice, and any deadlines imposed on them will be automatically suspended. If the Customer's failure persists, the Seller may terminate unilaterally the Contract and claim damages.

### **5. Payment – Interest and Costs – Protest**

- 5.1. Despite any protest made in accordance with these Terms and Conditions, all invoices must be paid within thirty (30) calendar days after they have been received. An invoice is considered received three (3) business days after its sending date.
- 5.2. If an invoice is not paid in full by the above-mentioned period of time, the sum due is increased automatically from its due date by interests at the rate set forth in Article 5 of the Law of 2 August 2002, and this without prior notice and without prejudice to any claim for damages for collection costs.
- 5.3. Any protest of an invoice must be notified by registered letter within fifteen (15) calendar days from the invoice's sending date. Failing which the invoice shall be considered accepted.

### **6. Performance Deadlines**

If the Seller undertakes to fulfil its obligations by a particular date or within a particular period of time (hereinafter the "Deadline"), the Seller shall make every effort that can be reasonably expected of it to meet the Deadline or to minimise any delays. Deadlines are only binding if the Contract expressly stipulates that they are binding or are essential prerequisites of the Contract.

If the Seller is prevented from complying with the Deadline due to circumstances beyond its control, the Seller may extend the Deadline by an appropriate period that is at least equal to the duration of the circumstances that occurred. These circumstances can be, among others, any social conflict, violence, riots, acts of terrorism, assaults, natural or climatic phenomena, war or state of war, delay in the supply of goods, materials or parts, delays in transport by land, air or waterways, etc., that jeopardizes the Seller's performance of its obligations. Any similar circumstance which is invoked by one of the Seller's suppliers or subcontractors against the Seller is also valid towards the Customer.

The Customer must meet its own the deadlines.

### **7. Intellectual Property Rights**

The intellectual rights relating to the Goods and/or Works and/or Services shall remain entirely and exclusively the property of the Seller. The Customer only obtains from the Seller the non-exclusive right to use the technical and commercial documents (including plans and diagrams) provided under the Contract.

## **8. Performance of the Contract**

- 8.1. The Customer guarantees the correctness and completeness of any information, documents, and/or plans that it has provided to the Seller, and exempts the Seller from inspecting or verifying them unless such inspection or verification is explicitly foreseen in the Contract. The Customer shall indemnify the Seller against any damage arising from the use of the information, documents and/or a plan that it has provided to the Seller and shall guarantee the Seller in any third party claims arising therefrom.
- 8.2. The Seller undertakes to execute and/or provide the Works and/or Services in accordance with the rules of practice and standards in force. The Seller is not under a duty to advise.

## **9. Safety – Environment**

- 9.1. The Customer must prepare for and facilitate the performance of the Contract and must obtain all the permits and authorizations required. The Seller may, upon request, provide any necessary assistance in this regard. The Customer is responsible for the access to and protection of the work site, and it discharges the Seller from this responsibility. The Customer must ensure that it has received all the applicable safety instructions from the Seller and undertakes to observe them and to ensure that its personnel, persons under its control, and third parties entering the site also observe them. The Customer is solely liable for any damage caused to the personnel and materials of the Seller as well as to its own personnel and materials should it fail to observe or make others observe all the safety standards and measures. It shall indemnify the Seller for any consequences arising therefrom.

## **10. Reception – Acceptance**

- 10.1. The Customer shall ensure that a person authorized to accept the Goods is present at the place, date, and time communicated by the Seller. If the Goods cannot be delivered due to reasons beyond Seller's control, the costs of a later delivery shall be borne by the Customer. Partial deliveries and performances are always allowed.
- 10.2. Under penalty of forfeiting its rights of recourse, the Customer must notify to the Seller of any visible defects no later than:
  - 1) with respect to Goods: the seventh (7th) calendar day after the delivery of the Goods;
  - 2) with respect to Works and/or Services: the thirtieth (30th) calendar day after the completion of the Works and/or Services or the date of putting the installation into service (in the event that this latter act must take place before the completion of the Works and/or Services).

From these moments on, the Seller will no longer be liable for visible defects, and only any eventual guarantee against any hidden defects shall be valid, subject to the conditions and limitations mentioned in article 11 below.

- 10.3. If a visible defect attributable to the Seller is established, the Seller shall repair or replace the Goods and/or Works and/or Services or credit the invoiced price, depending on the circumstances, with the exclusion of any payment of damages.

## **11. Quality – Hidden Defects**

- 11.1. Without prejudice to the guarantee for hidden defects subject to the conditions and limitations stated hereafter, the Seller is not bound by any guarantee whatsoever.
- 11.2. The Seller guarantees the Customer against hidden defects in the Goods delivered and in the Works and/or Services performed. The guarantee shall expire twelve (12) months after the date of delivery of the Goods and/or completion of the Works and/or Services or after the date of putting the installation into service (in the event that this latter act should have taken place before completion of the Works and/or Services). Any claim by the Customer under this guarantee must be submitted to the Seller by registered letter without undue delay and in any event no later than seven (7) calendar days after the Customer has noticed or ought to have noticed the hidden defect. The hidden defect must be confirmed by both parties. Any interference, intervention, or modification applied or carried out after discovery of the defect by the Customer, but before the defect has been confirmed by the Seller, automatically implies the Customer's forfeited right of recourse against the Seller.
- 11.3. The Seller shall not be liable for hidden defects in the event of inadequate, abnormal, or incorrect use of the installation, or if -after the Seller's completion of its performance- the Customer or third parties have modified, interfered with, or intervened in the installation.

- 11.4. The Seller's liability for hidden defects shall be strictly limited to the repair or replacement of the Goods and/or Works and/or Services free of charge or the credit of the invoiced price, depending on the circumstances, without prejudice to article 13.

## **12. Proprietary right – Risks – Transport**

- 12.1. Delivered Goods and executed Works and/or Services shall remain the property of the Seller until all payments have been made in full.
- 12.2. Risks of the Goods' deterioration or loss due to reasons not attributable to the Sellers shall pass to the Customer as soon as the Goods have been identified in the Seller's storage facilities or workplaces. Unless otherwise stipulated, transport of the Goods shall be carried out at the Customer's risks, responsibility, and costs, even if the Seller provides the transport.
- 12.3. The risks relating to the Works and/or Services shall pass to the Customer gradually as the work progresses.

## **13. Liability**

- 13.1. Without prejudice to the guarantee towards hidden defects, the Seller may only be held liable for wilful misrepresentation, intentional or material breach.
- 13.2. If the Seller's liability for any delay is established, actual or liquidated damages shall be limited to 5% of the Contract's global price.
- 13.3. If the Seller commits a material breach, its liability shall be limited to the price of the Goods and/or Works and/or Services under the Contract.
- 13.4. In any event, the Seller is never liable for any indirect damage such as but not limited to the loss of profit, interruption of business activities, loss of data, damage to equipment, overheads increase, or damage to third parties or third parties' goods. The Customer shall fully guarantee the Seller in any third party claims.
- 13.5. Information communicated in the form of catalogues, brochures, graphics, illustrations, or similar publications are purely descriptive and do not bind the Seller.

## **14. Confidentiality**

All technical and commercial information exchanged between the Seller and the Customer before, during or after the performance of the Contract are strictly confidential and shall be treated as such by the Customer/Seller. More specifically, the Customer/Seller shall use this confidential information solely for the purpose for which it has been communicated and shall never disclose it to third parties.

## **15. Nullity**

The nullity or unenforceability of any provision of these Terms and Conditions or of the Contract shall in no way affect the validity or enforceability of the other provisions and shall never render the legal relationship null or void. The parties agree to make every best effort to replace the invalid or unenforceable clause with a valid clause that has the same or largely the same economic impact as the invalid or unenforceable one.

## **16. Applicable Law – Disputes**

This Contract is governed by Belgian law. Any disputes are to be submitted to the exclusive jurisdiction of the courts of Brussels.