

# GENERAL TERMS AND CONDITIONS FOR THE PERFORMANCE OF WORK AND SERVICES

## **1 - DEFINITIONS**

These General Terms and Conditions for the Performance of Work and Services are hereinafter referred to as the "GCWS" or the "Conditions". In these Conditions, the following terms shall have the meanings set out below:

**"Acceptance"**: the acceptance of the Work and Services by the Customer as set out in article 9 and "Accept" shall be construed accordingly.

**"Conformity"**: the conformity of the Work and Services with each and all of the following: - the specifications provided and/or approved by the Customer and/or any expected results set out in the Contract; - the other provisions of the Contract; - the prevailing industry standards; and - any applicable statutory provisions and "Conforming" shall be construed accordingly.

**"Contract"**: the contract governing the relationship between the Contractor and the Customer in respect of the Work and Services including in particular and in descending order of priority the following documents: 1) the Order Form, 2) any specific terms and conditions and their appendices; 3) the GCWS, and 4) where applicable, the documents drawn up by the Contractor which the Customer expressly agrees to incorporate into the Contract.

**"Contractor"**: the legal entity or natural person selected by the Customer to perform the Work and Services.

**"Customer"**: any legal entity of the HUTCHINSON group

**"Order Form"** or **"Order"**: the paper or electronic form (as part of electronic transactions) with which the Customer orders the Work and Services from the Contractor, which shall include the following as a minimum: a description of the Work and Services, the price(s) payable for the Work and Services, details of the Site at which the Work and Services are to be performed, the periods and deadlines for performance, the Customer's identification details, and the reference number of the Contract.

**"Parties"** or **"Party"**: the Customer and/or the Contractor collectively or individually, as the case may be.

**"Site"**: the location(s) where the Work and Services are performed.

**"Subcontractor"**: any subcontractor or supplier appointed by the Contractor to perform a portion of the Work and Services.

**"Work and Services"**: any and all work and services to be performed by the Contractor and any elements (including but not limited to supplies, fittings, equipment and associated documents) to be delivered by the Contractor pursuant to the Contract.

## **2 - CONTRACTUAL DOCUMENTS**

These Conditions shall prevail and shall override any and all general conditions issued by the Contractor, as well as any and all provisions contained in (or on the back of) any invoices and in any other documents issued by the Contractor and shall be applicable insofar as no statutory provision, contractual provision or other specific condition set out in the Contract stipulates otherwise. Any modifications or departures from these Conditions shall only apply if they have been agreed in writing between the Parties and shall only be valid for the applicable Contract. The Contractor shall not rely on any of these modifications or departures for other Work and Services it performs for the Customer pursuant to these Conditions. The Customer is not bound by, and shall not be liable for any costs associated with the performance by the Contractor of a request made verbally or of a verbal modification of the Contract unless the Parties agree to the same in writing. The Contract constitutes the entire agreement between the Parties and supersedes and replaces all prior exchanges, undertakings and agreements relating to the Work and Services.

## **3 - ACCEPTANCE OF THE CONTRACT AND ELECTRONIC TRANSACTIONS**

**3.1 General** : each Contract shall be in writing. Performance of the Work and Services is conditional upon the Customer issuing an Order Form in advance of such performance. The Contractor shall ensure that it acknowledges receipt in writing of the Order Form within seven (7) calendar days from the date on which the Order Form was sent. Should the Contractor fail to acknowledge receipt of the Order Form within such period, the Customer shall have a further period of seven (7) calendar days within which to notify the Contractor of the Customer's decision to cancel the Order Form. By replying to an invitation to tender for the Work and Services, the Contractor is deemed to have unreservedly accepted the Conditions. Alternatively and in the absence of an invitation to tender, by commencing performance of the Work and Services, the Contractor is deemed to have accepted the Conditions.

### **3.2 Electronic transactions**

**3.2.1 General principles** : if the Customer and the Contractor so provide in the specific conditions of the Contract, the Order Form may be issued in whole or in part by electronic means. Should this be the case, the Order Form may be issued either through an electronic marketplace (hereinafter referred to as the "Marketplace") requiring the Parties to contract with the agreed Marketplace provider, or alternatively, through any other agreed electronic means. Further conditions applicable to the use of electronic means for issuing the Order Form shall be set out in the specific conditions. Should an electronic Order Form be issued this shall not prevent the Customer from subsequently issuing a paper Order Form and furthermore, shall not prevent the Parties from agreeing that subsequent transactions shall be performed in part or whole by alternative means. These Conditions shall apply to all electronic transactions and the issuing of an electronic Order Form.

**3.2.2 Proof of electronic transactions** : where an Order Form is issued by electronic means, the Parties are deemed to act in full knowledge of the technical specifications (or, by joining the Marketplace, the Parties are deemed to have accepted its technical specifications) aimed at ensuring the identification, integrity and generally the security of correspondence between them. In particular, the electronic Order Form and subsequent electronic notice of acceptance thereof shall constitute an electronic signature which, as between the Parties, shall have the same effect as a handwritten signature and shall also constitute proof of the Order Form and of its acceptance by the Contractor. Unless otherwise provided for in the Contract, the electronic registers stored on the computer systems of the Marketplace's provider or, failing that, on the Customer's computer systems (which shall have adequate security safeguards in place) are agreed to be conclusive evidence of the entire electronic correspondence between the Parties and, as the case may be, of the payments made. In particular, if a time limit is set for a particular action, only the computer dating system of the Marketplace's provider or, failing that, the computer dating system of the Customer shall be valid and relied upon. The Parties expressly waive all rights to question the appropriateness of or to challenge the validity of any contractual undertaking conducted by way of exchange of electronic correspondence where such correspondence is stored in the form set out above.

## **4 - CHANGES TO THE WORK AND SERVICES**

The Customer shall be entitled to request in writing that the Contractor makes changes to the Work and Services as initially described in the Contract. The Contractor shall inform the Customer as soon as possible (and, in any event, no later than seven (7) calendar days following the Customer's request

for changes to the Work and Services) of the following: (i) any effect the changes will have on prior agreed completion dates and/or deadlines for performance and/or on the anticipated date for Acceptance; (ii) any variations to the agreed price(s) for the Work and Services as initially set out in the Contract; and (iii) generally, any other impact on the Contract arising directly from such changes. The Contractor shall only perform the corresponding changes after the Parties have signed a written amendment to the Contract or, at the very least, upon receipt of the Customer's prior written consent to the project estimate, the new periods and/or deadlines for performance and to the corresponding variation in the price(s) for the Work and Services.

## **5 - REGISTRATIONS, APPROVALS, AUTHORISATIONS**

The Contractor warrants that it and its Subcontractors and suppliers, if any, have all statutory registrations, approvals and authorisations required to perform the Work and Services on the Site including but not limited to all licences, permits and registrations with public authorities and all authorisations and certifications as are required from professional organisations. The Contractor shall deliver to the Customer a copy thereof prior to commencement of the Work and Services. In the event any or all such licences, permits, registrations, approvals and/or authorisations are withdrawn from the Contractor or from any of its Subcontractors or suppliers or are not renewed, the Contractor shall immediately inform the Customer of the same whereupon the Customer shall be entitled to terminate the Contract in accordance with article 20.1.2.

## **6 - TERMS AND CONDITIONS SPECIFIC TO THE PERFORMANCE OF THE WORK AND SERVICES**

The Contractor is bound by an obligation to obtain a specific result in respect of and guarantees the following: the Conformity of the Work and Services and compliance with completion dates and deadlines for performance. The Contractor shall put in place any necessary internal organisational measures, under its sole responsibility, required to perform the Work and Services.

**6.1 Duty to inform** : the Contractor shall ensure it is aware of all potential external factors and conditions (including but not limited to technical conditions) that may affect its performance of the Work and Services and undertakes to inform the Customer of the same and to advise it and give prior warnings, regardless of the Customer's knowledge or expertise. The Contractor shall warn the Customer in particular of all risks connected with the Work and Services, including but not limited any health, hygiene, safety and environmental risk. Prior to commencing performance of the Work and Services, the Contractor shall carry out a careful examination of the information provided by or on behalf of the Customer for the performance of the Work and Services, such as but not limited to any plans and specifications. The Contractor shall request from the Customer any documents or information, which is lacking. The Contractor shall inform the Customer, without delay of any and all irregularities, omissions, contradictions, inconsistencies between the information provided by the Customer and the prevailing industry standards. Failure to inform the Customer of the same shall preclude the Contractor from any later right of recourse in relation thereto. In the event that the Contractor fails to comply with the above provisions, all consequences (including any costs) arising from or associated with any error in or insufficiency of the information provided by the Customer shall be borne by the Contractor.

**6.2 Compliance with the periods and deadlines for performance – Incentives for late performance**: the Contractor shall perform the Work and Services within the time limits and/or periods set out in the Contract. Compliance with the periods and deadlines for performance (including in particular but not limited to the date for Acceptance and/or the date for remedying any reservations arising after Acceptance of the Work and Services and/or, where Acceptance is postponed, the date of putting in Conformity the Work and Services) is a condition of the Contract. As soon as the Contractor becomes aware that it will not be in a position to comply with periods and deadlines for performance of the Work and Service (including but not limited to the date of Acceptance of the Works and Services), the Contractor shall immediately inform the Customer of the reasons and extent to which it shall not be able to comply and shall propose suitable corrective measures, it being understood that the Customer shall have the right to refuse any measures. In the event of any non-compliance by the Contractor, the incentives for late performance set out in the Contract shall immediately as of right and without notice become due and payable by the Contractor to the Customer. The payment by the Contractor of these incentives shall not affect the Customer's right in to terminate the Contract in accordance with article 20.1 and to claim damages from the Contractor, in addition to the reimbursement of the price(s) already paid by the Customer for the portion of the Work and Services not performed at the date of termination.

**6.3 Equipment tools** : the Contractor shall keep, at its own expense and risk, its own equipment and tools in good state of repair and in conformity with applicable laws and regulations. The Contractor shall repair or replace, at its own expenses, all equipment, fittings and tools provided by the Customer which the Contractor or its employees or Subcontractors has damaged, so as to restore them to their original state.

**6.4 Cleaning and clearing of the Site – Packaging material** : the Contractor shall keep the Site(s) clean and tidy. The Contractor shall, in the appropriate manner and without delay as and when the Work and Services are performed, remove all materials, scaffoldings and temporary structures, debris and other items belonging to the Contractor or for which it is responsible and which are no longer required to continue performance of the Work and Services. All waste produced by the Contractor during performance of the Work and Services shall be removed and disposed of by the Contractor in strict compliance with applicable laws and in accordance with any health, hygiene, safety and environment regulations in force at the Customer's Site(s).

## **7 - PERSONNEL**

**7.1 Skill, permanence and management of the Contractor's teams** : the Contractor shall assign to the performance of the Work and Services teams of personnel who have the experience, skills, qualifications, authorisations and certifications required for the proper performance of the Work and Services. The Contractor shall have responsibility for the management and supervision of such personnel who shall remain under its sole and full hierarchical authority. Any indications or requests regarding the performance of the Work and Services that the Customer may have shall be communicated to the operational representative(s) of the Contractor without this creating or constituting any relation of subordination between said operational representative(s) and the Customer.

**7.2 Presence on the Site and official language at the Site** : whenever the Work and Services are performed in whole or in part on a Customer's Site, the Contractor shall ensure that its teams comply with the Site's internal rules and that said teams wear any identification sign as required by the Customer during the whole of their presence on the Site. The Contractor's operational representative(s) shall be responsible for the said teams and he/she together with the Contractor's

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safety manager who will also be present on the Site shall be fluent in the official language of the Site where the Work and Services are to be performed and shall be able to liaise with the Contractor's teams and ensure compliance with any and all instructions, rules and procedures in force at the Site.

**7.3 Prevention of illegal labour :** in performing the Work and Services, the Contractor guarantees that its personnel and the personnel of its Subcontractors (if any), involved in the performance of the Work and Services shall be employed and registered in full compliance with the applicable legislation. In the event the Contractor and/or its Subcontractors, intend to use foreign employees for the performance of the Work and Services, the Contractor hereby guarantees that the said employees shall, prior to their attendance on the Site of the Customer and subsequently during any period of attendance at the said Site, have all required authorisations to work in the country of the Site and have at their disposal all necessary work permits and residence permits. The Contractor shall procure that its Subcontractors, if any, comply with the provisions of articles 7.1 and 7.2 and shall obtain from them the representations and certifications set out in this article 7.3.

### **8 - WORKING CONDITIONS, HEALTH, HYGIENE, SAFETY AND THE ENVIRONMENT**

The Contractor undertakes on its behalf and on behalf of its Subcontractors (if any), to: - facilitate the coordination of the performance of the Work and Services with the activities of the Customer and those of third parties who are present on the Site; and - prevent the risks of any bodily injury and damage to property during the performance of the Work and Services. The Contractor shall comply and ensure that its personnel and the personnel of its Subcontractors (if any), comply with the rules in force on the Site with regard to working conditions, health, hygiene, safety and environment as well as with the applicable legislation in respect of the same. The Contractor shall: - ensure that its personnel and the personnel of its Subcontractors (if any), are qualified to use all fittings, equipments and tools required for the performance of the Work and Services, - ensure that no part of the Work and Services is performed by its personnel or by the personnel of its Subcontractors (if any), under the influence of alcohol, drugs or any other illegal substance, and - cease, immediately and at its own expenses, any situation or activity under its control, which is dangerous or harmful to anyone's health, is unhygienic or poses a safety threat to the environment. In the event of non-compliance with any foregoing obligation, the Customer: (i) may take or cause to be taken immediately and without notice, at the Contractor's expenses, all measures which it deems appropriate if in the Customer's opinion such measures have not been taken or not implemented promptly enough by the Contractor, and (ii) reserves the right to deny the Contractor and/or its Subcontractors (if any), access to or continued presence on the Site. All consequences arising from the Contractor's non-compliance with any foregoing obligations, including any costs associated with the implementation of the measures taken by the Customer in the event of deficiency or negligence on the part of the Contractor and the denial of access or of continued presence on the Site, shall be borne solely by the Contractor. In the event of non-performance by the Contractor of any of the obligations set out in this article 8, the Customer shall have the right to terminate the Contract in accordance with the provisions of article 20.1.2.

### **9 - ACCEPTANCE OF THE WORK AND SERVICES**

Acceptance of the Work and Services shall take place once the Customer has examined the Work and Services to see whether they are in Conformity and only once all elements described in the Contract have been delivered to the Customer. Acceptance of the Work and Services by the Customer (with or without reservation(s)), or the refusal to Accept shall be recorded in a memorandum dated and signed by the Parties (hereinafter the "Memorandum of Acceptance"). The decision of the Customer to Accept shall neither exempt the Contractor from its warranties and liabilities for any defects or for any non-Conformity whatsoever which were not apparent at the time of Acceptance. Acceptance shall take place in accordance with the procedures set out in the Contract, or, should the Contract be silent on such procedures, in accordance with the following:

**9.1 Acceptance without reservation :** acceptance without reservation shall be deemed to have occurred once the Customer confirms that the Work and Services are Conforming with the provisions of Contract.

**9.2 Acceptance with reservation(s) :** if the Customer decides to Accept the Work and Services with reservation(s), the Contractor shall remedy the reservations within the period set out in the Memorandum of Acceptance and the Contractor shall submit, at the agreed date, the Work and Services for a new examination, it being understood that the incentives for late performance set out in article 6.2 shall apply in the event of non-compliance by the Customer with the date for remediation of the reservations. If the Contractor has not lifted the reservations within the specified period or if Conformity is not achieved at the date agreed for the new examination, the Customer shall have the option either (i) to perform itself or cause to be performed by a third party, at the Contractor's risks and expense, all work required to be undertaken to lift the reservations, five (5) calendar days after formal notice hand-delivered with receipt to the Contractor's representative or sent by registered letter with acknowledgment of receipt, remained unsuccessful (without prejudice to the Customer's right to terminate the Contract in accordance with the provisions of article 20.1) ; or (ii) not to ask the Contractor to remedy all or part of the reservations subject to a reduction in the price(s) payable for the Work and Services.

**9.3 Postponement of the date of Acceptance :** in the event the Customer identifies that the Work and Services do not Conform during the examination of the Work and Services, and if in the sole opinion the Customer, the Work and Services can be performed in their entirety, and/or that the non-Conformity can be corrected within an acceptable period, then the Customer shall have the right to postpone the date of Acceptance by sending a notice of postponement to the Contractor. Such notice shall include a final deadline for a new examination of the Work and Services. At this final deadline, the Customer may either (i) decide to Accept the Work and Services, with or without reservation(s) in accordance with the provisions of articles 9.1 and 9.2; or (ii) refuse to decide to Accept the Work and Services in accordance with the provisions of article 9.4. In the event the date of Acceptance is postponed, the incentives for late performance referred to in article 6.2 shall apply with effect from the date of the notice of postponement.

#### **9.4 Refusal of Acceptance**

The Customer shall have the right to refuse to Accept the Work and Services if the same are not performed in full or if they are not in Conformity. Such refusal will mean that the Contractor has failed to perform the Work and Services. In such circumstances, the Customer shall be entitled to terminate the Contract in accordance with the provisions of article 20.1.

### **10 - TRANSFER OF OWNERSHIP AND OF RISKS**

Ownership of the Work and Services shall transfer to the Customer gradually as and when the Work and Services progress. However, whenever the Work and Services include the manufacture/supply and delivery of any elements, such as equipment or materials (including but not limited to fittings supplies, equipment and associated documents), the transfer of ownership of any such element shall

occur at the time of its delivery, except if the whole or part of the payment thereof has been made by the Customer prior to the date of delivery. In such case, the transfer of ownership shall occur in advance as soon as said element can be identified. In such circumstances, the Contractor undertakes to identify and set aside in the name of the Customer, any element as and when the same is manufactured in such a way that such element cannot be confused with the Contractor's own stock or with that of other supplies to be delivered to third parties. The Contractor shall ensure that its Subcontractors (if any), do the same. The Contractor hereby waives the right to rely on any retention of title clause not expressly agreed by the Customer. The Contractor warrants that it shall ensure its Subcontractors and suppliers' chain (if any) do the same. The transfer of risks in the Work and Services and of any element, as referred to above, shall occur in all cases at the date of Acceptance by the Customer in accordance with the provisions of article 9. The Contractor shall thus be liable for any damages and losses affecting or relating to the Work and Services and any element, as referred to above, before their Acceptance.

### **11 - PRICE**

Unless otherwise specified in the Contract, the price(s) stated in the Contract is (are) fixed lump sum(s) and not subject to any revision, except to the extent provided for under article 13. The price(s) shall include, but not be limited to all costs incurred by the Contractor for the performance of the Work and Services in accordance with the Contract. The price(s) is (are) exclusive of VAT. The Contractor shall bear all costs relating to customs duties, taxes, fees and levies for which it is liable in connection with the performance of the Work and Services.

### **12 - INVOICING AND PAYMENT TERMS**

Invoices shall be prepared in duplicate by the Contractor, in compliance with applicable statutory provisions and in the name of the Customer. The invoices shall be sent to the address specified in the Order Form and shall quote the Contract and the Order Form reference numbers. The invoices shall be made out in the currency specified in the Contract. The Customer will only pay invoices if the Work and Services have been performed and have been accepted by the Customer. In such event, the invoice shall, unless otherwise provided for in the Contract, be paid within sixty (60) days end of the month the 15<sup>th</sup> date of performance of the works, i.e the fifteenth calendar day . of the third month following the date of performance of the works.

### **13 - COMMERCIAL CONDITIONS AND RENEGOTIATION CLAUSE**

**13.1 Commercial Conditions :** the Contractor hereby confirms that it has granted the Customer the most favourable commercial conditions it is able to grant third parties for works and services comparable to the Work and Services ordered by the Customer and described in the Contract under comparable performance and payment conditions.

**13.2 Renegotiation clause :** if the Contract has a duration of more than one (1) year and if the Customer becomes aware that the price(s) payable for the Work and Services as provided for in the Contract is (are) more expensive than conditions offered on the market for work and services comparable in quantity and quality to those to be provided by the Contractor pursuant to the Contract, the Contractor undertakes, upon request from the Customer, to renegotiate in good faith the conditions, including financial conditions, contained in the Contract. The Customer shall set out in writing its proposal vis-à-vis the agenda, the procedure and duration of this re-negotiation. Where such re-negotiation leads to new agreed conditions, a written amendment to the Contract shall be entered into setting out such new agreed conditions.

### **14 - WARRANTIES**

**14.1 Scope and duration :** the Contractor warrants the Conformity of the Work and Services after Acceptance, including but not limited to, a warranty that the Work and Services will be free of any defect of whatsoever nature. Consequently, the Contractor undertakes, for a period of twelve (12) months from the date of Acceptance, to remedy, at its own expenses and risk, as soon as possible and at the latest within any agreed periods, any non-Conformity and any defect affecting the Work and Services after Acceptance. Such expenses shall include, but are not limited to, travel expenses, transport, (spare) parts and labour costs. In the event the Contractor fails to remedy any non-Conformity, the Customer may, seven (7) calendar days after written notice to the Contractor, perform any remedial work itself or arrange for the same to be performed by a third party, at the Contractor's expenses and risks. Any re-performance of the whole or part of the Work and Services under the initial warranty shall give rise to a new warranty from the Contractor for a minimum period of twelve (12) months from the date of the Customer's Acceptance of such re-performed part of the Work and Services. In addition to the above, the Contractor shall remain bound by all applicable statutory warranties including the warranty for latent defects.

**14.2 Spare parts and information systems :** the Contractor warrants that it shall promptly supply all spare parts required for the Work and Services and/or for the proper operation of any associated elements supplied, for a minimum period of ten (10) years from the date of Acceptance, unless otherwise provided for in the Contract. In addition to the above, the Contractor warrants that, for the same period, it shall maintain the requisite skills for maintenance of the processors, operating systems and software delivered with any equipment, system or element that form part of the Work and Services.

### **15 - QUALITY**

**15.1 Audits and/or quality controls :** the Contractor represents that it has a quality management system in place. Provided the Contractor is given three (3) calendar days' advance notice, the Customer (or its representative) shall be entitled to carry out audits and/or quality controls on the Site and/or in the Contractor's or its Subcontractors' (if any) premises. Such audits and/or quality controls shall not in any way lessen the Contractor's responsibility, in particular with regard to the extent of its own controls, and shall not affect the Customer's right to refuse Acceptance of all or any portion of the Work and Services. The Contractor shall provide to the Customer all assistance necessary for carrying out such audits and/or quality controls.

**15.2 Traceability :** in respect of any equipment and tools used by the Contractor and the elements delivered to the Customer in connection with the Work and Services, the Contractor undertakes, upon the Customer's written request, to provide the Customer with: - all information necessary to identify the origin, place and date of manufacture of the same, - the results of the controls carried out, - any other relevant information, such as serial or batch numbers.

### **16 - INTELLECTUAL PROPERTY RIGHTS - INFRINGEMENT**

#### **16.1 Intellectual property rights**

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16.1.1 *Specific/ Bespoke elements* : the price(s) include(s), without need to make any reference to the same in the Contract, the acquisition of the intellectual property rights pertaining to any specific elements prepared by the Contractor or any Subcontractor and delivered to the Customer (including but not limited to plans, studies, manuals and documents). The Contractor shall assign to the Customer, and shall procure the assignment by its Subcontractors (if any) of all the exclusive rights to use and exploit such specific elements, including the rights of reproduction, representation, translation, adaptation and sale, on all media and for all forms of use and exploitation. This assignment shall be made for the whole duration of the intellectual property rights, for all countries and in all languages. This assignment of intellectual property rights shall occur as and when such specific elements are created.

16.1.2 *Standard elements* : in case the Work and Services contain standard elements protected by intellectual property rights (including but not limited to standard plans, manuals, documents and software), delivered to the Customer by the Contractor, the Contractor hereby grants the Customer, the legal entities of the Customer's group who can possibly benefit from the Contract and third parties acting on behalf of or for the benefit of the Customer (at no additional cost), a personal and non-exclusive right to use, reproduce, represent, translate and adapt such standard elements for its own needs. This licence shall be granted for the entire duration of the intellectual property rights protection, for all countries and for all media. In case of transfer by the Customer to a third party of any equipment or any material or asset, which embody or uses a standard element, the above Customer's right to use shall be transferred to such third party at no additional cost.

16.2 *Infringement of intellectual property rights* : the Contractor guarantees that it and its Subcontractors (if any), is either the owner of all intellectual property rights pertaining to any delivered elements or that it has been granted all necessary licences from third parties owning these intellectual property rights, in order that the Customer can freely use and exploit such elements in accordance with the provisions of articles 16.1.1 and 16.1.2. The Contractor shall indemnify and hold the Customer harmless against any and all claims, costs, damages, expenses or legal action by third parties arising out of or in connection with any infringement or any other breach of their intellectual property rights. If in the opinion of the Customer or the Contractor the Work and Services carry a risk of claim or legal action, the Contractor shall undertake to take all measures necessary to eliminate such risk of infringement or other breach. In case an allegation is made that the Customer may not use an element which forms part of the Work and Services without infringing a third party's intellectual property right, the Contractor shall, at its own cost and at the sole option of the Customer, either replace the element in respect of which such allegation is made, or modify such element so that the infringement or any other breach no longer exists, in compliance with the specifications applicable to such element. Such replacements or modifications shall be performed within periods compatible with the Customer's needs. Should the Contractor fail to make such replacements or modifications, the Contractor undertakes to reimburse the Customer for the price of the Work and Services. The above provisions do not affect the Customer's right to claim damages from the Contractor and/or to terminate the Contract in accordance with the provisions of article 20.1.1.

### **17 - LIABILITY / INSURANCES**

17.1 *Liability* : Each Party shall be liable for any damage that it, its employees, representatives and Subcontractors, cause to the other Party or to a third party in relation to the Work and Services and/or arising in connection with the performance of the Contract. Such Party shall indemnify and hold the other Party and its insurers harmless against any damage, cost and/or liability that the other Party may suffer in this respect.

17.2 *Insurances* : the Contractor shall take out and maintain in force and shall procure that any Subcontractor takes out and maintains in force and effect the following insurance policies, at their own expenses throughout the entire period of performance of the Contract including any extension thereof: - a "General/Public Liability" insurance policy for a minimum amount of two million five hundred thousand euros (EUR 2,500,000) for all types of damage and per occurrence, - a "Product Liability" insurance policy and/or a "Professional Liability" insurance policy for a minimum amount of two million five hundred thousand euros (EUR 2,500,000) per occurrence and per year, - a civil or third party automobile liability insurance policy for motor vehicles used in connection with the performance of the Work and Services, - an insurance policy covering damages caused to its (their) personnel, when the Contractor and/or the Subcontractors is located in a country in which there is no system of social security insurance - in addition, any other insurance policy mandatory in the country of the Site in which the Work and Services are performed. None of the amounts set out above shall be construed or interpreted as limiting the Contractor's liability in any respect. Prior to commencing performance of the Work and Services and at each insurance policy's renewal required throughout the duration of the Contract, the Contractor shall provide the Customer with the certificate(s) issued by its insurer or by its insurance broker certifying the existence of the above mentioned insurance policies, the insured amounts, the type of coverage and the period of cover of the policy or policies.

### **18 - FORCE MAJEURE**

None of the Parties shall be deemed to be in breach of their contractual obligations to the extent that their non-performance is due to an event of force majeure as recognised by the law and the courts. Force majeure shall only relieve the affected Party from its contractual obligations to the extent and for such period as the said Party is prevented from performing its obligations. Each Party shall bear all its own expenses resulting from the occurrence of a force majeure event. The Party affected by an event of force majeure shall immediately notify the other Party ("the Non-Defaulting Party") of the situation by fax confirmed by registered letter with receipt, and shall provide all necessary documentary evidence of the force majeure event. The Non-Defaulting Party shall have the right to verify the existence of the situation. The Party invoking an event of force majeure shall make every effort to mitigate as far as possible any adverse effect arising from this situation. In all events, strikes which are limited to the personnel of the Contractor or of its Subcontractors shall not relieve the Contractor from its liability for late performance or for any failure to perform and shall therefore not be deemed to be a force majeure event. If the event the situation giving rise to an event of force majeure continues for longer than fifteen (15) consecutive calendar days, the Non-Defaulting Party shall be entitled to terminate the Contract immediately as of right and without compensation. The Contractor shall reimburse to the Customer any amount already paid in advance pursuant to the Contract and not corresponding to the Work and Services already performed or to elements already delivered at the time of occurrence of the force majeure event.

### **19 - ASSIGNMENT / SUBCONTRACTING**

19.1 *Assignment* : the Contractor shall not assign the Contract to any third party, in whole or in part, without the prior written consent of the Customer. The Customer shall be entitled to assign all or part of the Contract to any legal entity of the Customer's group, subject to a prior written notice regarding

such assignment being sent to the Contractor. In the event of a change of Control of the Contractor, the Contractor shall promptly notify the Customer thereof. A change of Control is deemed to include any contribution, assignment, merger or other operation which modifies the Control, whether directly or indirectly, of the Contractor; Control shall mean the ownership, direct or indirect, of the majority of shares giving voting rights of a company or the right to appoint the majority of the members of the board of directors. Within thirty (30) calendar days following receipt of such notice, the Customer shall have the right to terminate the Contract (with the exception of the Order Form(s) in the course of being performed) without compensation on giving a one (1) month prior notice. Where the Contract is assigned by the Contractor to a third party, each and every right of the Customer arising by virtue of the Contract, including the right to claim damages, shall be enforceable against said third party. The Contractor shall remain jointly and severally liable with the assignee towards the Customer for the full performance of the Contract.

19.2 *Subcontracting* : the Contractor shall not subcontract all of the Work and Services to a Subcontractor or any third party, such as a supplier of services. Should the Contractor wish to assign a portion of the Work and Services, it shall: - in respect of its suppliers, provide the Customer with prior written notice, specifying the type and the origin of the supply and comply with the applicable statutory provisions, - in respect of its Subcontractors, obtain the Customer's prior written consent and comply with the applicable statutory provisions. Any request for the Customer's consent shall indicate, amongst other things, the type and the extent of the Work and Services to be subcontracted and the qualifications of the proposed subcontractor. The Contractor shall prohibit its own Subcontractors from subcontracting in turn all or a portion of the Work and Services entrusted to them by the Contractor, except with the consent of the Customer in accordance with the provisions above. In the event the Contractor fails to comply with the statutory obligations in respect of subcontracting, the Customer shall be entitled to immediately suspend any payment due to the Contractor so long as the latter continues to fail to perform such statutory obligations, but without prejudice to the Customer's right to terminate the Contract in accordance with the provisions of article 20.1.2. In any event, any consent given by the Customer to the Contractor to use a subcontractor and/or a supplier shall not relieve the Contractor from its contractual obligations in connection with the subcontracted portion of the Work and Services. The Contractor shall remain solely liable for the proper performance of the whole Work and Services and the Contractor shall indemnify and hold the Customer harmless from and against any and all claims by the Contractor's subcontractors and/or suppliers or by their respective employees.

### **20 - TERMINATION**

#### **20.1 Termination for non-performance**

20.1.1 Either Party shall be entitled to terminate the Contract in the event of a breach of an obligation under the Contract by the other Party but only following the expiry of fifteen days (15) written notice sent by registered letter with acknowledgment of receipt. The Customer shall so be entitled to terminate the Contract in the event of defect or breach or failure relating to the Conformity or to the condition of the performance of the Works and Services.

20.1.2 The Customer shall be entitled to terminate the Contract as of right and without prior written notice: (i) in the event of repeated defects or breaches by the Contractor as set out in Article 20.1.1, or (ii) because of the Contractor's breach(es) of one or more rules concerning health, hygiene, the safety and/or the environment, or (iii) in any other circumstance so provided in the Contract.

20.1.3 In the event of termination of the Contract by the Customer for non-performance, the Contractor shall immediately reimburse the Customer for all payments made by the Customer insofar as such payments exceed the value of the Work and Services decided by the Customer as being in Conformity. Furthermore, the Customer shall be entitled to require the Contractor to bear all possible additional costs necessary for the completion of the Work and Services either by the Customer itself or by any third party.

The right of a Party to terminate the Contract for non-performance is without prejudice to its rights to claim damages against the other Party.

20.2 *Termination at the initiative of the Customer* : the Customer shall be entitled to terminate the Contract, at any time on giving thirty (30) calendar days' notice by registered letter with acknowledgment of receipt. In this case and from receipt of such notice, the Contractor shall take all measures necessary to cease as soon as possible the performance of any Work and Services in progress. In such case the Customer: - shall pay the Contractor the price(s) payable for any Work and Services completed at the effective date of termination, and - shall also pay to the Contractor a termination fee for an amount equal to five percent (5%) of the price(s) of the Work and Services, which will not be performed due to such termination. Such termination fee shall only be payable in respect of those parts of the Work and Services that have been instructed by the Customer under firm Order Forms. This termination fee shall be a lump sum in full and final settlement of any claims whether in respect of costs incurred, loss, damages or any other cost suffered by the Contractor as a result of such termination and the Contractor shall waive any right of recourse against the Customer for any difference.

20.3 *Termination in the event of insolvency* : unless contrary to any statutory provision of public policy, the Customer shall be entitled to terminate immediately the Contract, as of right and without formal notice, in the event the Contractor has a petition for its winding up presented or advertised, calls a meeting with a view to going into liquidation, or otherwise enters into liquidation or has a petition presented for the appointment of any administrator in respect of the Contractor's business.

### **21 - PRINCIPLES OF ACTION SET OUT IN THE CODE OF CONDUCT**

The Contractor undertakes to acquaint itself and to comply and cause its Subcontractors (if any), to comply with the principles of the TOTAL group's code of conduct, available on TOTAL's website or on request.

### **22 - CONFIDENTIALITY**

Any information provided by the Customer to the Contractor in connection with the performance of the Contract and all specific elements created by the Contractor in connection with the performance of the Work and Services shall be treated as strictly confidential by the Contractor. All and any information which the Contractor could be aware of in connection with the performance of the Contract, in particular those concerning the Customer's organisation, activities and results, shall also be treated as strictly confidential by the Contractor. Any such information and/or all specific elements mentioned above shall only be used by the Contractor and by its Subcontractors (if any), for the purposes of the performance of the Contract and in connection with the performance of the Work and Services, and shall not be disclosed to any third party or to any of the Contractor's personnel not assigned to the performance of the Work and Services, except to the extent the disclosure is mandatory by virtue of any statutory obligations or by virtue of any court decision. The obligation of confidentiality shall not

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apply to information provided by the Customer which is already in the public domain without breach by the Contractor of the obligations set out in this article 22 and/or which have been lawfully obtained by the Contractor from any third party having the right to disclose such information. The Contractor undertakes to comply, and to procure its personnel and any Subcontractors comply with this obligation of confidentiality throughout the entire duration of the Contract and for a period of five (5) years following the termination of the Contract for whatever reason. The Contractor shall, at the expiry or termination of the Contract, for whatever reason, return to the Customer the information provided by the Customer and all data obtained by the Contractor, together with all copies thereof which the Contractor may have at its disposal in connection with the performance of the Contract, or shall, upon written request of the Customer, destroy the confidential information and data.

### **23 - REFERENCE TO THE CUSTOMER'S TRADEMARKS AND BUSINESS NAMES**

The Contractor shall not be entitled to use or make reference to the business names, trademarks or logos of the Customer or of the Customer's group, without the prior written consent of the Customer.

### **24 - APPLICABLE LAW - JURISDICTION**

Unless otherwise specified in the Contract, the Contract shall be:

- Governed by French law and any dispute arising out of or in connection with the Contract shall be subject to the exclusive jurisdiction of the Paris (France) Commercial Court if the Customer's site which is the destination of the Work and Services is located in France or outside the European Union;
- Governed by the laws of the country in which the Customer's site which is the destination of the Work and Services is located within the European Union (other than France) and any dispute arising out of or in connection with the Contract shall be subject to the exclusive jurisdiction of the relevant courts of such country.

### **25 - MISCELLANEOUS PROVISIONS**

25.1 Independence of the Parties : the Contract has been concluded between independent parties. None of its provisions shall be interpreted as giving the right or mandate to either Party to act on behalf of the other Party nor as implying any association, agency, partnership or society between them, or as creating a joint and several liability between them.

25.2 Partial invalidity : should any provision of the Contract be or become invalid or unenforceable under any law, regulations or court decision, such provision shall be considered as not written. All other provisions of the Contract shall, however, remain valid.

25.3 Waiver : the waiver by either Party of a breach of any of the provision of the Contract shall not be construed as a waiver of any further breach of the same or other provisions, nor shall any delay or omission by either Party to exercise any right herein operate as a waiver of any breach by such Party.

25.4 Surviving provisions : the provisions of articles 3.2.2, 10, 14, 15, 16, 17, 22, 23, 24, 25 and any other provision of these Conditions which is intended to apply after termination of the Contract shall survive the termination of the Contract for whatever reason and shall continue notwithstanding such termination and thereafter remain in full force and effect.

For the Contractor (Company stamp, date, name, capacity and signature)