

## GENERAL TERMS AND CONDITIONS FOR BIG ASS BATTERY B.V.

### PREAMBLE

- These General Conditions shall apply when the parties agree thereto. Any modifications of or deviations from them must be agreed in writing.

### DEFINITIONS

- In these General Conditions the following terms shall have the meanings hereunder assigned to them:
  - “Contract”:** the agreement in writing between the parties concerning delivery of the Product and performance of the Works, including all appendices and any amendments or additions agreed in writing;
  - “Contractor”:** the party responsible for supplying the Product and performing its installation under the Contract;
  - “Contract Price”:** the agreed price for the Works, which shall be either a fixed price or, if the parties have agreed on a price revision clause, the revised price. If installation is to be carried out on a time basis and has not been completed, the Contract Price, for the purposes of the relevant provisions of the Contract, shall be the price for the Product with the addition of ten percent or any other percentage agreed by the parties;
  - “Gross Negligence”:** a deliberate or reckless failure to take such care as is clearly required in the circumstances to avoid serious consequences for the other party;
  - “In Writing”:** communication by a document signed by both parties, or by letter, electronic mail, fax, or any other means agreed by the parties;
  - “Product”:** the items to be supplied under the Contract, including embedded software and related documentation;
  - ‘Existing Installations’:** any existing electrical, mechanical or structural installations;
  - “Customer”:** the party that buys the Product and receives installation services from Contractor;
  - “Site”:** the place where the Product is to be installed, including such surrounding areas as are necessary for unloading, storage, and internal transport of the Product and installation equipment;
  - “Works”:** the Product, the installation of the Product, and any other work to be carried out by Contractor under the Contract. If the Works are, according to the Contract, to be taken over by separate sections intended for independent use, these Conditions shall apply to each section separately, and the term “Works” shall refer to the relevant section.

### PRODUCT INFORMATION/INSTRUCTIONS

- All information and data contained in general product documentation and price lists, regardless of form, shall be binding only to the extent that they are by reference in writing expressly included in the Contract.
- Product information, technical specifications and performance characteristics required under applicable battery and product safety regulations shall be made available to Customer through the relevant product documentation, datasheets and technical manuals supplied with the Product or made available electronically. Such information is provided for informational and regulatory compliance purposes only and shall not constitute a warranty, performance guarantee or representation, unless expressly agreed otherwise in writing in the Contract. Any stated values, characteristics or performance indicators are based on standard test conditions and are subject to proper installation, configuration, operation and maintenance of the Product in accordance with the provided instructions.
- Contractor shall, not later than at the date of taking-over, provide free of charge information, drawings and instructions which are necessary to permit Customer to commission, operate and maintain the Works. Such information, drawings and instructions shall be supplied as one paper copy of each and also electronically. Contractor shall not be obliged to provide manufacturing drawings for the Product or for spare parts.

### REGULATORY AND CE COMPLIANCE

- Contractor acts as the importer of the Product within the European Union for the purposes of applicable product legislation.
- Contractor shall ensure that, at the time the Product is placed on the market, the Product complies with the applicable European Union legislation relating to product safety and conformity, including CE marking requirements.
- The relevant EU Declaration(s) of Conformity and applicable product documentation, including technical documentation and datasheets required under applicable legislation, shall be made available to Customer upon request or provided together with the Product, in accordance with applicable law.
- Compliance with product-related EU legislation does not constitute a warranty or performance guarantee and does not extend beyond the requirements imposed by mandatory law.
- Compliance with applicable grid codes, network requirements and site-specific regulations shall be the responsibility of Customer, unless expressly agreed otherwise in writing in the Contract.

### INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- All intellectual property rights in the Works, including in any embedded software, and in any technical information relating to the Works, shall rest with Contractor or, in the appropriate case, with a third party which has licensed Contractor to sublicense these rights. Subject to any limitations that may have been agreed between the third party and Contractor, Customer shall acquire a non-exclusive, perpetual and transferable right to use these intellectual property rights, but limited to the extent required by the purpose of the Contract. Contractor shall not be obliged to provide Customer with the source code or with updates for any embedded software, unless specifically agreed in writing or required by law. This clause shall also apply when the Works and/or software has been specifically developed for Customer, unless otherwise agreed in writing.

- Technical, commercial and financial information and information, which has been declared as confidential or which must by its very nature be deemed to be confidential, disclosed in writing or orally by one party to the other, shall be treated confidentially. The information shall therefore not without the consent of the disclosing party in writing be used for any other purpose than that for which it was provided. It may not, without the consent of the disclosing party in writing, be transmitted, communicated or otherwise disclosed to a third party.

### DATA

- Customer grants Contractor permission to read out and use all data from the energy meters that are installed or read out to ensure the systems function correctly and safely.
- Contractor uses data of the systems exclusively for commercial and technical purposes such as monitoring and improving the services and the product, unless explicitly otherwise agreed upon.
- In case and in so far a data processing agreement is necessary for the processing of data, Customer will cooperate with this.
- If this data processing agreement is not concluded due to the (lack of) actions of Customer, and Contractor is therefore unable to execute the Agreement, this will be at the account and risk of Customer.

### PREPARATORY WORK AND WORKING CONDITIONS

- Contractor shall, in due time, provide Customer with all drawings, specifications and information reasonably required to prepare suitable foundations, ensure adequate access for the delivery and installation of the Product, and enable all mechanical, electrical and communication connections to be made in accordance with the Contract.
- Customer shall, at its own cost and within the timelines indicated by Contractor, perform all preparatory work necessary to ensure that the Site is fully ready for installation and subsequent operation of the Product. Such work shall be executed strictly in accordance with the information provided by Contractor. Customer shall ensure that all foundations and support structures are structurally sound and compliant with applicable laws and standards. If Customer is responsible for transporting the Product to the Site, Customer shall ensure that the Product is delivered and available before the agreed installation date.
- Customer shall ensure, free of charge, that:
  - Contractor's personnel have unrestricted access to the Site, are able to commence work at the agreed time and perform installation during normal working hours, it being understood that work outside normal working hours may be carried out if reasonably required by Contractor and agreed in writing in advance;
  - Customer has provided Contractor in writing, prior to installation, with all applicable Site safety regulations, and no unsafe or hazardous conditions exist, with all necessary safety and precautionary measures implemented and maintained throughout installation;
  - Contractor's personnel have access to appropriate sanitary facilities, drinking water and, where required, suitable lodging and medical services near the Site;
  - all cranes, lifting devices, transport equipment, auxiliary tools, utilities (including electricity, water, fuel, compressed air, heating and lighting) and any Customer-owned measuring or testing instruments reasonably required for installation are made available at the proper time, it being understood that Contractor shall specify its requirements in writing no later than one (1) month before the scheduled installation date;
  - adequate workspace is made available for Contractor's personnel, including access to electricity and secure internet connectivity required for commissioning, configuration or diagnostic activities;
  - secure, covered and lockable storage facilities are made available for the Product, Contractor's tools and materials, and the personal effects of Contractor's personnel;
  - all access routes to the Site are safe and suitable for the transport of the Product and Contractor's equipment; and
  - all permits, approvals and other authorizations required for installation, to the extent they cannot legally be obtained by Contractor, are secured by Customer in due time, with Contractor providing any reasonably required documentation to support such process.
- If specified in the Contract or reasonably requested by Contractor, Customer shall make available, free of charge, auxiliary labor or operators required for installation. Such personnel shall use their own tools. Contractor shall not be liable for the acts, omissions or performance of Customer-provided personnel.
- If required, Customer shall, free of charge, provide all assistance reasonably necessary for the import, customs clearance and re-export of Contractor's tools, equipment and materials.
- Customer shall provide all reasonable assistance to ensure that Contractor's personnel obtain, in due time, visas, entry permits, work permits, tax certificates (if applicable) and secure access to the Site.

- Upon Contractor's written notice that the Product is ready for dispatch, Customer shall appoint a representative in writing authorized to act on its behalf in all matters relating to installation. The representative shall be present on or near the Site during installation and shall be authorized to receive all notices in writing under the Contract.
- Contractor shall maintain a site register documenting issues encountered during installation, including any safety-related incidents and any periods of waiting time caused by Customer or circumstances attributable to Customer. The register shall be updated daily and made available to Customer upon request.

### EXISTING INSTALLATIONS AND SITE CONDITIONS

- Contractor shall perform the Works on the basis of the information, data, drawings, specifications and representations provided by Customer regarding the Site and any Existing Installations.
- Customer warrants that all information relating to the Existing Installations is complete, accurate and up to date, and that the Existing Installations comply

with all applicable laws, regulations, grid codes and technical standards, unless expressly agreed otherwise In Writing.

27. Unless explicitly included in the scope of the Works In Writing, Contractor shall not be responsible for the condition, adequacy, conformity or suitability of any Existing Installations.
28. Contractor shall not be liable for defects, deficiencies, non-conformities or unsafe conditions in the Existing Installations that fall outside the visible and expressly agreed scope of the Works, including but not limited to hidden or concealed cable routes, junctions, connections, earthing arrangements, protective devices, or material choices located behind walls, ceilings, floors or other building structures.
29. Any damage, malfunction, outage or loss arising from or attributable to defects or inadequacies in the Existing Installations shall be for Customer's account and risk and shall fall outside Contractor's liability.
30. Customer acknowledges that the connection and operation of the Product and the Works may increase loads, currents or power demand on the Existing Installations. Customer confirms that the Existing Installations are suitable for such increased loads and shall bear all risks and consequences arising from any overloading or insufficient capacity of the Existing Installations.
31. Any advice, comments or observations provided by Contractor in relation to the Existing Installations shall be of an indicative nature only and shall not constitute a warranty, representation or guarantee. Such advice shall not relieve Customer of its responsibility for the condition, safety and compliance of the Existing Installations.
32. Upon Customer's request, Contractor may perform an additional inspection or assessment of the Existing Installations. Such inspection shall constitute a variation to the Contract and shall be carried out against additional compensation. Unless expressly agreed otherwise In Writing, such inspection shall not result in Contractor assuming responsibility for the Existing Installations.

#### **CUSTOMER'S DEFAULT**

33. If Customer anticipates that it will be unable to accept delivery of the Product at the agreed delivery time, or that it will be unable to timely fulfil any obligations necessary for installation, including compliance with the requirements specified for preparatory work, site readiness and working conditions, Customer shall promptly notify Contractor In Writing, stating the reason for the delay and, where possible, the expected time by which it will be able to meet its obligations.
34. Without prejudice to any other rights or remedies available to Contractor under the Contract or applicable law, if Customer fails to accept delivery at the agreed time or fails to correctly and timely fulfil the obligations required for installation, including all obligations relating to preparatory work, site readiness, safety, access, and associated conditions, the following shall apply:
  - a. Contractor may, at its sole discretion, perform Customer's obligations on Customer's behalf, engage a third party to do so, or take any other measures reasonably necessary to avoid or mitigate the consequences of Customer's default;
  - b. Contractor may suspend its performance under the Contract, in whole or in part, and shall notify Customer In Writing of any such suspension;
  - c. if the Product has not yet been delivered to the Site, Contractor may arrange storage of the Product at Customer's risk and, if requested by Customer, insure the Product during such storage at Customer's cost;
  - d. Customer shall pay any portion of the Contract Price that would have become due had the default not occurred; and
  - e. Customer shall reimburse Contractor for all reasonable and documented costs incurred as a result of Customer's default, including costs relating to the measures described above and any other costs not otherwise recoverable under the Contract.
35. If installation, commissioning or taking-over is prevented due to Customer's default and such default is not caused by circumstances that would constitute force majeure, Contractor may require Customer, by notice In Writing, to remedy the default within a final reasonable period.
36. If Customer fails to remedy the default within such period, and the failure is not attributable to Contractor and is not excused by force majeure, Contractor may terminate the Contract, in whole or in part, by notice In Writing. In such case, Contractor shall be entitled to compensation for the loss suffered directly resulting from Customer's default. Contractor's compensation shall not exceed the portion of the Contract Price attributable to the part of the Works for which the Contract is terminated.

#### **LAWS, REGULATIONS AND RULES**

37. Contractor shall ensure that the Works are carried out in accordance with all laws, regulations and rules applicable to the Works. If requested by Contractor, Customer shall provide all relevant information regarding such laws, regulations and rules In Writing.
38. Contractor shall perform any variation work required to comply with changes in applicable laws, regulations or rules, including changes in their generally accepted interpretation, occurring between the tender submission date and taking-over. Customer shall bear all additional costs and consequences arising from such changes, including the cost of the variation work.
39. Contractor shall be compensated for all time spent and costs incurred for such variation work at Contractor's standard rates and prices. Before implementing any variation, Contractor shall provide Customer with an estimate of the expected impact on time and cost.

#### **VARIATIONS**

40. Customer may request variations to the scope, design or construction of the Works until the Works are taken over. Contractor may also propose variations In Writing.
41. Variation requests shall be submitted to Contractor In Writing and shall include an exact and sufficiently detailed description of the requested variation.
42. As soon as reasonably possible after receiving a variation request, Contractor shall notify Customer In Writing whether the variation can be

carried out and, if so, shall provide a quotation detailing the resulting adjustment to the Contract Price, the schedule for taking-over, and any other affected contractual terms. The quotation shall include a final date for acceptance. If Customer does not accept the quotation by the stated final date, the Contract shall continue without the requested variation.

#### **DELIVERY TIME AND CANCELLATION BY CUSTOMER**

43. Any delivery time communicated by Contractor shall constitute Contractor's best estimate based on information available at the time of contracting. Contractor shall use commercially reasonable efforts to meet the indicated delivery time and shall promptly notify Customer In Writing if Contractor anticipates a delay, including an updated estimated delivery window. Contractor and Customer shall cooperate in good faith to mitigate the impact of any delay on the installation schedule.
44. Non-material delays in delivery shall not entitle Customer to termination or damages. In the event of a material delay exceeding eight (8) weeks beyond the indicated delivery window, Customer shall be entitled to either a reasonable adjustment of the installation schedule, or termination of the Contract with reimbursement of any payments made for undelivered Products, without further liability for either party.
45. Customer may cancel the Contract before the first instalment becomes due by paying a cancellation fee of fifteen (15) percent of the Contract Price, excluding VAT. This fee reflects Contractor's administrative, planning and resource allocation costs. Contractor shall confirm the cancellation In Writing upon receipt of the cancellation fee, after which neither party shall have further obligations, except for obligations accrued prior to cancellation.
46. Upon payment of the cancellation fee, the Contract shall be deemed terminated with immediate effect, and neither party shall have further claims against the other, except for obligations already accrued prior to cancellation.
47. Upon payment of the first instalment of sixty (60) percent of the Contract Price, Contractor shall initiate binding procurement and production processes with its suppliers and allocate resources for the Product. Therefore, any cancellation by Customer after payment of the first instalment shall not entitle Customer to any refund of that instalment.
48. The first instalment shall be considered a non-refundable deposit that covers Contractor's costs and commitments relating to procurement, logistics arrangements and administrative processing. Any cancellation after payment of the first instalment shall also require Customer to compensate Contractor for all additional reasonable and documented costs incurred up to the time of cancellation.
49. Any cancellation by Customer shall be made In Writing. Cancellation takes effect only upon Contractor's Written confirmation and after receipt of the applicable cancellation fee or non-refundable amounts. Cancellation does not affect Contractor's right to claim any amounts already accrued under the Contract.

#### **PASSING OF RISK**

50. The risk of loss of or damage to the Product shall pass to Customer upon physical delivery of the Product at the Customer's designated site, as specified in the Contract, after completion of transport and placement of the Product at that location.
51. If Customer requests or causes a postponement of the agreed delivery to the Customer's site, the risk of loss of or damage to the Product shall pass to Customer on the date on which delivery would have taken place in accordance with the agreed delivery schedule, irrespective of the actual location of the Product at that time.
52. From the moment the risk has passed due to such postponement, the Product shall be stored, handled and insured at Customer's risk and expense. Any storage or additional handling arranged by Contractor as a result of such postponement shall be for Customer's account.
53. Until the moment of delivery at the Customer's site, or until the moment risk passes due to postponement by Customer, whichever occurs first, the Product shall remain at Contractor's risk.
54. The passing of risk shall not affect Contractor's obligations under applicable product liability, product safety or regulatory compliance legislation.
55. Partial delivery shall not be permitted unless otherwise agreed In Writing.

#### **SITE ACCEPTANCE TESTS**

56. When installation has been completed, site acceptance tests shall, unless otherwise agreed, be carried out to determine whether the Works meet the requirements for taking over under the Contract. Contractor shall notify Customer In Writing that the Works are ready for taking over. The notice shall include the proposed date for the site acceptance tests and shall provide Customer with sufficient time to prepare and to be represented during the tests. Customer shall bear all costs related to the site acceptance tests. Contractor shall bear the costs of its own personnel and representatives.
57. Customer shall provide, free of charge, all power, lubricants, water, fuel, raw materials and any other materials required for the site acceptance tests, as well as any materials required for final adjustments in preparation for the tests. Customer shall also install, free of charge, any equipment and provide any labor or other assistance necessary for carrying out the site acceptance tests.
58. If Customer is unable to provide the required facilities or assistance for the site acceptance tests on the scheduled date, the parties shall jointly agree on a new reasonable date. Customer shall compensate Contractor only for additional costs directly resulting from such unavailability.
59. The site acceptance tests shall be carried out during normal working hours. If the Contract does not specify the applicable technical requirements, the tests shall be conducted in accordance with general practice in the relevant industry within Customer's country.
60. Contractor shall prepare a report of the site acceptance tests and shall send the report to Customer. If Customer was not represented at the tests after having been duly notified, the test report shall be deemed accurate.
61. If the site acceptance tests show that the Works do not conform to the Contract, Contractor shall remedy the deficiencies without delay. If

Customer requests so in Writing without delay, new site acceptance tests shall be carried out in accordance with the procedures described above. This obligation shall not apply if the deficiency does not affect the efficiency of the Works.

62. Site acceptance tests, scope inspections or similar verifications shall be limited exclusively to the Works performed by Contractor and shall not constitute any confirmation, certification or declaration regarding the completeness, conformity or safety of the Existing Installations at the Site.

**TAKING-OVER**

63. Taking over of the Works shall be deemed to occur when one of the following conditions is met:

- when the site acceptance tests have been satisfactorily completed, or are regarded as satisfactorily completed in accordance with the applicable provisions; or
- when the parties have agreed not to carry out site acceptance tests, when Customer has received Contractor's Written notice confirming that the Works have been completed, unless Customer substantiates within seven (7) days after receipt of such notice that the Works do not meet the requirements for taking over under the Contract.

64. Minor deficiencies that do not affect the efficiency of the Works shall not prevent taking over. Contractor's obligation to install the Product at the Site is fulfilled when the Works have been taken over in accordance with this provision, without prejudice to Contractor's obligation to remedy any remaining minor deficiencies.

65. Customer shall not use the Works or any part of them before taking over. If Customer uses the Works without Contractor's Written consent, the Works shall be deemed to have been taken over at the time of such use, and Contractor shall be released from any obligation to carry out site acceptance tests.

66. As soon as the Works have been taken over in accordance with the relevant provisions, the guarantee or liability period specified in the Contract shall commence. At Contractor's Written request, Customer shall issue a certificate confirming the date on which taking over has occurred. Customer's failure to issue such certificate shall not affect the validity of taking over.

**CONTRACTOR'S DELAY**

67. If the parties have agreed on a period within which taking over shall occur instead of specifying a fixed date, such period shall begin when the Contract is entered into and when all preconditions assigned to Customer have been fulfilled, including official formalities, any payments due at Contract formation, and the provision of any agreed securities.

68. If Contractor anticipates that Contractor will not be able to meet the expected time for taking over, Contractor shall promptly notify Customer In Writing, stating the reason for the delay and, where possible, the expected time by which taking over can be achieved. If Contractor fails to provide such notice, Customer shall be entitled to compensation for any additional costs that Customer incurs and that Customer could have avoided if timely notice had been given.

69. Contractor shall be entitled to an extension of the time for taking over if a delay occurs:

- due to circumstances that constitute force majeure,
- as a result of required variation work, or
- as a result of a suspension of work permitted under the Contract, or
- due to any act or omission of Customer or any other circumstance attributable to Customer.

The extension shall be for the time necessary in view of all relevant circumstances. This provision applies regardless of whether the cause of delay arises before or after the time initially agreed for taking over.

70. If the Works are not completed at the time taking over should have occurred, Customer shall be entitled to liquidated damages beginning on the date when taking over should have taken place. Liquidated damages shall be payable at a rate of zero point five (0.5) percent of the Contract Price for each commenced week of delay. The total liquidated damages shall not exceed ten (10) percent of the Contract Price. If only part of the Works is delayed, the liquidated damages shall be calculated on the portion of the Contract Price attributable to that part of the Works that cannot be used as intended due to the delay. Liquidated damages shall be payable monthly upon Customer's Written request once the delay has commenced, without requiring taking over to have occurred. Customer forfeits the right to liquidated damages if Customer does not submit a Written claim within six (6) weeks after the date taking over should have occurred.

71. If the delay continues until Customer becomes entitled to the maximum amount of liquidated damages, and the Works are still not ready for taking over, Customer may demand In Writing that Contractor complete the Works within a final reasonable period, which shall not be less than two (2) weeks. If Contractor does not complete the Works within this final period and the failure is not attributable to Customer, Customer may terminate the Contract by notice In Writing with respect to the part of the Works that cannot be used as intended due to Contractor's failure.

If Customer terminates the Contract on this basis, Customer shall be entitled to compensation for the loss Customer suffers as a result of Contractor's delay. This compensation may include consequential or indirect loss. The total compensation, including liquidated damages, shall not exceed fifteen percent of the portion of the Contract Price attributable to the part of the Works for which the Contract is terminated.

Customer may also terminate the Contract, by notice In Writing, if it is clear from the circumstances that a delay will occur which would entitle Customer to the maximum amount of liquidated damages. In such case, Customer shall be entitled to the maximum liquidated damages and to the compensation described above.

72. Liquidated damages and termination with limited compensation, as set out above, constitute Customer's sole and exclusive remedies in the event of delay by Contractor. All other claims related to such delay are excluded, except where Contractor is guilty of Gross Negligence.

**PAYMENT**

73. Payment shall be made in accordance with the following schedule, unless otherwise agreed In Writing:

- Sixty (60) percent of the Contract Price, invoiced at Contract formation, payable within fourteen (14) days from the invoice date. Contractor shall not place any purchase order with its suppliers, nor initiate the procurement process for the Product, until this upfront payment has been irrevocably credited to Contractor's account.
- Thirty (30) percent of the Contract Price, invoiced prior to delivery of the Product to the Customer's site, payable in full before delivery. Contractor shall be entitled to suspend or postpone delivery of the Product until this payment has been irrevocably received.
- Ten (10) percent of the Contract Price, invoiced upon commissioning of the Works, payable within fourteen (14) days from the invoice date. Contractor shall notify Customer In Writing when the Site Acceptance Test has been successfully completed and when the Works have been commissioned.

74. When installation is carried out on a time basis, the following items shall be charged separately:

- all reasonable travel expenses incurred by Contractor for personnel and for the transport of their equipment and personal effects, in accordance with the method and class of travel specified in the Contract, if any,
- the cost of board and lodging and other living expenses, including any applicable allowances for each day of absence from home, including non-working days and holidays, and such allowances remain payable during periods of incapacity caused by sickness or accident,
- the time worked, calculated on the basis of hours certified in time sheets signed by Customer, with overtime, Sunday work, holiday work and night work charged at special rates, and such rates shall be those agreed in the Contract or, failing agreement, Contractor's standard rates, and unless otherwise provided, the hourly rates cover normal wear and tear of Contractor's tools and light equipment,
- time necessarily spent on preparation and formalities incidental to the outward and return journeys of Contractor's personnel, the outward and return journeys and other journeys to which the personnel are entitled under applicable laws or collective agreements, and daily travel between lodgings and the Site when such travel exceeds half an hour each way and no suitable lodgings are available closer to the Site,
- any expenses incurred by Contractor in connection with equipment provided by Contractor, including any charge for the use of Contractor's own heavy equipment,
- any taxes or dues levied on the invoice and payable by Contractor in the country where installation takes place,
- any costs that could not reasonably have been foreseen by Contractor and that are caused by circumstances not attributable to Contractor,
- any additional costs arising from mandatory social regulations of Customer's country,
- any costs, expenses or time spent due to extra work not attributable to Contractor.

If these costs are time related, they shall be charged at the hourly rates specified above.

75. When installation is carried out for a lump sum, the Contract Price shall be deemed to include the items listed in the preceding clause under a through e. The items listed under f through i shall be excluded from the lump sum and shall be charged separately. If such costs are time related, they shall be charged at the applicable hourly rates.

76. If installation, whether carried out on a time basis or included in a lump sum, is delayed due to a cause not attributable to Contractor and not excused by force majeure, Customer shall compensate Contractor for all resulting additional costs, including but not limited to

- waiting time and time spent on extra journeys,
- costs and extra work resulting from the delay, including removal, securing and reinstatement of equipment,
- additional costs incurred because Contractor must keep equipment at the Site longer than anticipated,
- additional costs for travel and board and lodging for Contractor's personnel,
- additional financing costs and insurance costs,
- other documented costs incurred by Contractor as a result of the delay.

If these costs are time related, they shall be charged at the applicable hourly rates.

77. Payment shall not be deemed to have been made until Contractor's account has been irrevocably credited with the invoiced amount.

78. If Customer fails to pay by the due date, Contractor shall be entitled to interest from the day payment was due and to compensation for recovery costs. The interest rate shall be as agreed between the parties or, failing agreement, eight (8) percentage points above the interest rate applied by the European Central Bank to its main refinancing operations. The compensation for recovery costs shall be one (1) percent of the overdue amount.

If payment is late or if Customer fails to provide an agreed security by the stipulated date, Contractor may, after notifying Customer In Writing, suspend performance of the Contract until payment is received or security is provided. If Customer does not pay the overdue amount within three (3) months, Contractor may terminate the Contract by notice In Writing to Customer and, in addition to the interest and recovery costs specified above, may claim compensation for the costs and loss incurred by Contractor, including indirect and consequential damages.

**RETENTION OF TITLE**

79. The Product shall remain the property of Contractor until the Contract Price has been paid in full, including all amounts payable for installation, to the extent that such retention of title is valid under the applicable law. At Contractor's request, Customer shall assist in taking all measures necessary

to protect Contractor's title to the Product. Retention of title shall not affect the passing of risk, which shall be governed by the applicable delivery provisions of the Contract.

#### LIABILITY FOR DAMAGE BEFORE TAKING-OVER

80. Contractor shall be liable for direct damage to Customer's property occurring before taking over of the Works only if it is proven that the damage was caused by negligence of Contractor or of any person for whom Contractor is responsible in connection with the performance of the Contract. Contractor shall not be liable for any indirect or consequential loss, including loss of production, loss of profit, loss of use, loss of contracts or any similar economic loss.
81. Contractor's total aggregate liability for such direct damage shall in all cases be limited to the amount paid out by Contractor's liability insurer under the applicable insurance policy. If, for any reason, the insurer does not pay out, Contractor's total aggregate liability for such direct damage shall be limited to the Contract Price under the relevant Contract, excluding VAT.
82. Even where Contractor is not liable for damage to the Works, Customer may request Contractor to carry out remedial work. In such case, Contractor shall perform the remediation, and all costs associated with such remedial work shall be borne entirely by Customer. For the avoidance of doubt, the Product and the Works shall not be regarded as Customer's property prior to taking over, and any damage to the Works shall be handled exclusively in accordance with the Contract, including the defect liability and risk transfer provisions.
83. Nothing in this article shall limit or exclude Contractor's liability to the extent that such liability arises under mandatory product liability or product safety laws, including liability for death, personal injury or damage to private property caused by a defective product. Any limitation of liability shall apply only to the extent permitted by applicable law.

#### LIABILITY FOR DEFECTS

83. The Works shall conform to the Contract. Subject to the provisions of this section, Contractor shall remedy any defect in the Works, meaning any non-conformity resulting from faulty design, materials or workmanship.
84. Contractor shall not be liable for any defect, damage or malfunction caused by or resulting from deficiencies, non-conformities or failures of Existing Installations, even if such deficiencies only become apparent after installation, commissioning or taking-over of the Works.
85. Contractor shall not be liable for defects arising from any design, materials or production methods provided, stipulated or specified by Customer. Variations in performance parameters that fall within the ranges described in the applicable product documentation and datasheets shall not be considered defects.
86. Contractor shall be liable for defects only to the extent such defects appear under the operating conditions specified in the Contract and under proper use of the Works.
87. Contractor shall not be liable for defects caused by circumstances arising after risk has passed to Customer, including defects resulting from faulty, improper or incorrect maintenance or repair by Customer, or any alteration carried out by Customer or by a third party. Contractor shall not be liable for normal wear and tear or for deterioration.
88. Contractor's liability for defects is limited to defects that appear within twelve (12) months from taking over. If the use of the Works exceeds the agreed levels or conditions, this period shall be reduced proportionately. If taking over is delayed due to reasons attributable to Customer, the defect liability period shall not extend beyond twelve (12) months from delivery of the Product.
89. When a defect in a part of the Works has been remedied, Contractor shall be liable for defects in the repaired or replaced part under the same terms applicable to the original Works for a period of one year. For the remaining parts of the Works, the liability period shall be extended only by the period during which the Works could not be used due to the defect.
90. Customer shall notify Contractor in Writing without undue delay of any defect that appears. The notice shall include a description of the defect. Notice shall not be given later than two (2) weeks after expiry of the applicable defect liability period. Failure to notify Contractor within the required time results in loss of all rights with respect to the defect. If a defect may cause damage, Customer shall immediately notify Contractor and take reasonable steps to minimize damage.
91. Upon receipt of a timely notice, Contractor shall remedy the defect at Contractor's cost without undue delay. Remedial work shall be scheduled to avoid unnecessary interference with Customer's activities. Remedial work shall be carried out at the Site unless Contractor determines that return of the defective part is more appropriate. If the defect can be remedied by repair or replacement of a part and dismantling and reinstallation do not require special knowledge, Contractor may require Customer to send the part to Contractor. In such case, Contractor has fulfilled its obligations upon delivery of a repaired or replacement part.
92. Customer shall provide safe access to the Works and arrange for any intervention required in equipment other than the Works to enable Contractor to remedy the defect.
93. Unless otherwise agreed, necessary transport of the Product or parts to and from Contractor for remedying defects for which Contractor is liable shall be at Contractor's risk and expense.
94. Unless otherwise agreed, Customer shall bear any additional costs incurred by Contractor in remedying defects where the Works are located at a place other than the Site.
95. Replaced defective parts shall become Contractor's property.
96. If no defect is found for which Contractor is liable, Contractor shall be entitled to compensation for the costs incurred in relation to the inspection and handling of the notice.
97. If Contractor fails to fulfil its obligations to remedy a defect, Customer may set a final reasonable deadline of no less than two (2) weeks. If Contractor fails to meet this deadline, Customer may undertake, or engage a third party to undertake, the necessary remedial work at Contractor's risk and expense,

provided Contractor was informed beforehand. Contractor's reimbursement of reasonable costs constitutes full settlement of Contractor's liability for the defect.

98. If a defect has not been successfully remedied, Customer shall be entitled to a reduction of the Contract Price proportionate to the reduced value of the Works. Any monetary compensation related to defects shall be limited to direct costs and shall not under any circumstances exceed the amount paid out by Contractor's liability insurer. If the insurer does not pay out, any monetary compensation related to defects shall be limited to direct costs and shall not exceed the Contract Price under the relevant Contract, excluding VAT.
99. Except as expressly provided in this section, Contractor shall not be liable for defects, provided that nothing in this article shall exclude or limit Contractor's liability arising under mandatory product liability or product safety legislation, including liability for death, personal injury or damage to private property caused by a defective product. Contractor shall not be liable for any indirect or consequential loss arising from defects. Any contractual limitations shall apply only to the extent permitted by applicable law.

#### LIABILITY FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS

100. Unless otherwise agreed, Contractor shall be liable, in accordance with the provisions of this section, for the Works infringing any patent, copyright or other intellectual property right of a third party in the country where the Site is located. In such case, Contractor shall indemnify and hold Customer harmless against third party claims, provided such claims are confirmed as valid by a final award or by a settlement approved by Contractor. Contractor shall not be liable for loss of production, loss of profit, loss of use or loss of contracts, unless Contractor has been guilty of Gross Negligence.
101. Contractor shall have no liability for infringement of intellectual property rights arising from any of the following:
  - a. the Works being used outside the country where the Site is located,
  - b. the Works being used in a manner not agreed or in a manner Contractor could not reasonably have foreseen,
  - c. the Works being used together with equipment or software not supplied by Contractor,
  - d. any design or construction provided, stipulated or specified by Customer.
102. Contractor shall be liable for infringement only if Customer notifies Contractor in Writing without undue delay of any claim received. Customer shall permit Contractor to decide how the claim shall be handled and to conduct the defense at Contractor's cost. Contractor shall compensate Customer for any amount Customer is obligated to pay under a final award or a settlement approved by Contractor.
103. Any infringement of intellectual property rights shall, at Contractor's discretion, be remedied by one of the following measures:
  - a. securing the right for Customer to use the Works,
  - b. modifying the Works so that the infringement ceases,
  - c. replacing the Product with another product that can be used without infringing applicable intellectual property rights.
104. If Contractor fails to remedy the infringement without undue delay, the remedies available to Customer under the defect provisions of the Contract shall apply correspondingly.

#### ALLOCATION OF LIABILITY FOR DAMAGE CAUSED BY THE WORKS

105. Contractor shall not be liable for damage to property caused by the Works after taking over, except to the extent that such liability arises under mandatory product liability or product safety legislation. Nothing in this article shall prejudice the rights of injured parties under applicable product liability laws.
106. If Contractor incurs liability towards a third party for any damage described above, Customer shall indemnify, defend and hold Contractor harmless. If a third party submits a claim for such damage against either party, that party shall immediately notify the other party in Writing.
107. Contractor and Customer shall be mutually obliged to appear before any court or arbitral tribunal that examines claims brought against one of them based on alleged damage caused by the Works. The allocation of liability between Contractor and Customer shall be determined in accordance with the liability provisions of the Contract.
108. The limitations of Contractor's liability set out in this clause shall not apply if Contractor has been guilty of Gross Negligence.

#### PRODUCT LIABILITY

109. Nothing in these General Conditions shall exclude or limit Contractor's liability under applicable product liability or product safety legislation. Contractor acknowledges that, as importer of the Product within the European Union, it may be held strictly liable for damage caused by a defective product in accordance with Directive 85/374/EEC and any successor legislation.

#### FORCE MAJEURE

110. Either party shall be entitled to suspend the performance of its obligations under the Contract to the extent that such performance is prevented or materially hindered by an event of force majeure. Force majeure means any circumstance beyond the reasonable control of the affected party that could not reasonably have been foreseen or avoided at the time the Contract was entered into. Force majeure includes, without limitation, industrial disputes, fire, war, extensive military mobilization, insurrection, requisition, seizure, embargo, restrictions on the use of power, currency restrictions, import or export restrictions, epidemics, natural disasters, extreme natural events, terrorist acts, and defects or delays in deliveries by subcontractors that are caused by any such circumstance.
111. Force majeure also includes, without limitation, failures or unavailability of essential services or infrastructure, supply chain disruptions, unsafe or hazardous working conditions at the Site, and disruptions of telecommunications, network connectivity, cloud based systems or other digital systems required for installation, commissioning, remote support or

monitoring of the Works. Minor or short-lived disruptions of utilities or telecommunications shall not be considered force majeure.

112. Force majeure shall not suspend payment obligations for amounts already due, unless the payment systems or banking infrastructure necessary to effect payment are directly affected by the force majeure event.
113. A party claiming to be affected by force majeure shall notify the other party in writing without undue delay of the occurrence of the force majeure event and of its cessation. If the party fails to give such notice, the other party shall be entitled to compensation for any additional costs that could have been avoided had timely notice been given.
114. If force majeure prevents Customer from performing any of Customer's obligations, Customer shall compensate Contractor for all reasonable and documented costs incurred in securing, storing, protecting or preserving the Product or the Works, and for any costs incurred to avoid unreasonable interference with Contractor's activities.
115. If performance of the Contract has been suspended due to force majeure for a period exceeding three (3) months, either party may terminate the Contract, in whole or in part, by notice in writing to the other party. Upon termination, neither party shall be liable for damages arising solely from the termination. Customer shall, however, pay Contractor for all Works performed and for all costs incurred by Contractor prior to the termination date.

**ANTICIPATED NON-PERFORMANCE**

116. Each party shall be entitled to suspend the performance of its obligations under the Contract if it is clear from the circumstances that the other party will not perform its obligations. A party suspending performance shall notify the other party in writing without delay.

**CONSEQUENTIAL LOSSES**

117. Except as expressly stated in these General Conditions, neither party shall be liable to the other for loss of production, loss of profit, loss of use, loss of contracts or any other consequential or indirect loss. This exclusion shall not apply to liability that cannot be excluded or limited under applicable law, including liability for death, personal injury or damage to private property caused by a defective product.

**DISPUTES AND APPLICABLE LAW**

118. Any dispute arising out of or in connection with the Contract shall be finally resolved under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with those rules.
119. The Contract shall be governed by the substantive law of the country in which Contractor is established.