

## FLUXYS

### GENERAL TERMS AND CONDITIONS OF PURCHASE – MATERIAL

Version 08 – 10/02/2020

#### 1. INTRODUCTORY PROVISIONS

##### 1.1 Scope of application

- 1.1.1 The Parties agree that these General Terms and Conditions of Purchase apply to purchases of Material by FLUXYS. They do not apply to orders relating predominantly to the performance of works or the provision of services.
- 1.1.2 Deviations from the provisions of these General Terms and Conditions of Purchase only apply to the Agreement if they are expressly mentioned in the Particular Commercial Conditions.
- 1.1.3 The Parties definitively and irrevocably waive the additional and/or modificatory application of other general terms and conditions to the Agreement. If changes are nevertheless made to the Agreement, they must always be set down in a written agreement concluded between FLUXYS and the CONTRACTOR prior to their entry into force.

##### 1.2 Definitions

**Particular Commercial Conditions** means the contractual document drawn up by FLUXYS and signed by FLUXYS and the CONTRACTOR, in which the details of the Agreement and any deviations from these General Terms and Conditions of Purchase are set out.

**CONTRACTOR** means the natural person or legal entity with whom FLUXYS has concluded an agreement.

**Date Of Conclusion Of The Agreement** means the date on which the Particular Commercial Conditions are signed by the CONTRACTOR.

**Days – Weeks – Months** means the number of calendar days, weeks or months.

**FLUXYS** means the company that signed the Agreement, i.e. either FLUXYS BELGIUM SA or FLUXYS LNG SA or FLUXYS SA, as specified in the Particular Commercial Conditions, or any person authorised by that company.

**Intellectual Property Rights** means:

- (i) copyrights, patent rights, design rights, trademark rights, sui generis rights, know-how and all other possible intellectual property rights over the Intellectual Material; or
- (ii) all related rights, including but not limited to royalty and registration rights; or
- (iii) any other form of comparable protection, anywhere in the world.

**Intellectual Material** means any information, document, work, image, service, creation, computer program, code, study, research, construction, design, process, method, instrument or invention, in whatever form or medium, which can be protected by an Intellectual Property Right and which is held in whatever form or manner by the CONTRACTOR, including all future changes and improvements made thereto.

**Material** means the goods covered by the Agreement.

**Agreement** means the agreement between FLUXYS and the CONTRACTOR, through which the latter undertakes to provide FLUXYS with the agreed Material, the constituent parts of which are set out in Article 1.4.1.

**Party(ies)** means FLUXYS and/or the CONTRACTOR, depending on the case in question.

**Staff** or **Staff Member** means any person appointed by the CONTRACTOR to carry out the assignment, such as the CONTRACTOR's employees, executive agents or authorised representatives.

### **1.3 Parties to the Agreement**

#### **1.3.1 Joint and several liability**

If the Agreement has been concluded with a trade association or a company with no legal personality, the partners are jointly and severally liable to FLUXYS for all contractual obligations that the Agreement imposes on the CONTRACTOR. The partners must nominate one of them to represent them with full power of attorney and ensure the coordination of the execution of the Agreement.

#### **1.3.2 Subcontractors**

The CONTRACTOR must not allocate any of the assignments listed in the order form to its own subcontractor(s) without prior written authorisation from FLUXYS. Prior written authorisation from FLUXYS must be obtained for each individual assignment that the CONTRACTOR wishes to allocate to its own subcontractor.

Should FLUXYS authorise the CONTRACTOR to allocate part of the assignment to its own subcontractor, the CONTRACTOR undertakes to ascertain in advance that the intended subcontractor does not have any social security debts. The CONTRACTOR further undertakes to include the following clauses, as a minimum, in its agreement with its own subcontractor:

- a clause identical to the previous paragraph, whereby the CONTRACTOR's subcontractor, in turn, is not authorised to allocate tasks to its own subcontractor(s) without prior written authorisation from the CONTRACTOR; the CONTRACTOR may only permit its subcontractor to work with a subcontractor after receiving prior written authorisation from FLUXYS and ascertaining that the intended subcontractor has no social security debts;
- a clause identical to Articles 15.1.5 and 15.2 of these General Terms and Conditions of Purchase, whereby the CONTRACTOR's subcontractor undertakes to comply with all the relevant obligations incumbent upon it.

Under no circumstances shall there be or arise any legal bond between FLUXYS and the CONTRACTOR's subcontractor(s), even if these subcontractors are approved by FLUXYS. The CONTRACTOR remains wholly and personally liable for any parts of the Agreement that have been subcontracted.

### **1.4 Constituent parts of the Agreement**

**1.4.1** The Agreement shall be composed of the contractual documents listed in the Particular Commercial Conditions, which are in the possession of the CONTRACTOR. If there are interpretation difficulties or contradictions between the constituent parts of the Agreement, the order of precedence of the various documents shall be as specified in the Particular Commercial Conditions.

- 1.4.2 The CONTRACTOR must return the acknowledgement of the order (i.e. the duplicate of the Agreement) to the Procurement Department at the FLUXYS head office, duly and unreservedly signed for agreement, within the deadline specified in the Particular Commercial Conditions.

## **2. OBJECT OF THE AGREEMENT**

The CONTRACTOR shall deliver the Material as described in the Particular Commercial Conditions.

## **3. DURATION OF THE AGREEMENT**

- 3.1 The Agreement is concluded for the duration stipulated in the Particular Commercial Conditions. It shall end ipso jure on the date indicated in the Particular Commercial Conditions or, if no date is indicated, upon (final) complete and satisfactory delivery of the Material.
- 3.2 The Agreement shall enter into force on the date indicated in the Particular Commercial Conditions or, if no date is indicated, on the Date Of Conclusion Of The Agreement.
- 3.3 The Agreement cannot be renewed by tacit extension, unless otherwise indicated in the Particular Commercial Conditions.

## **4. PRICE**

### **4.1 Nature of the prices**

- 4.1.1 Prices are indicated in the Particular Commercial Conditions.
- 4.1.2 Prices are fixed and cannot be modified on the basis of e.g. economic or social fluctuations, except those specified in the Agreement.
- 4.1.3 If the Agreement explicitly states that such modification is possible, this shall not apply if the modification would alter the total value of the Agreement by less than one percent (1%).
- 4.1.4 If the rates applied to FLUXYS in general and/or in the framework of the Agreement are cut or reduced, such reduction shall also apply to the additional and/or supplementary services mentioned above.

### **4.2 Incoterms**

The price of the Material and/or equipment shall include the transport and delivery of the Material and/or equipment duly packed 'Delivery Duty Paid' (customs formalities, if any, and 'All Risks' transport insurance included) to the address mentioned in the Particular Commercial Conditions, in accordance with the version of Incoterms applicable at the Date Of Conclusion Of The Agreement.

## **5. EXECUTION OF THE AGREEMENT – SCHEDULE**

- 5.1 FLUXYS or the CONTRACTOR shall organise meetings whenever this is required to execute the Agreement properly. For each meeting, the CONTRACTOR's representatives shall draw up a summary report within five (5) working days and send it to FLUXYS for approval.
- 5.2 If the Agreement is executed at the CONTRACTOR's premises, FLUXYS shall be entitled to enter the CONTRACTOR's premises at any time to inspect the CONTRACTOR's activities and Staff in the context of the tasks it has delegated to the CONTRACTOR.

- 5.3 The Agreement sets out the cases in which work schedules are necessary. If such schedules are needed, the CONTRACTOR must provide FLUXYS with the contractually required schedules within the agreed period. If there are no further clarifications in the Agreement, the CONTRACTOR must provide FLUXYS with an appropriate schedule covering the key stages in the implementation of the CONTRACTOR's obligations, mentioning at the very least:
- (i) the dates by which the CONTRACTOR must provide the information and documents required by the Agreement;
  - (ii) the dates of the main orders, as well as the planned delivery dates;
  - (iii) how the Material will be delivered in order to guarantee that contractual deadlines will be met; and
  - (iv) the latest dates by which the CONTRACTOR must have at its disposal any information, works and equipment that it will not be supplying itself.

The CONTRACTOR shall keep these schedules up-to-date and shall revise them at FLUXYS' request whenever circumstances have a significant impact on the inputs used to compile them. However, such circumstances shall not relieve the CONTRACTOR of its obligation to meet the deadlines or of its liability.

- 5.4 The CONTRACTOR shall regularly inform FLUXYS of the progress made on executing the Agreement and shall make available all required documents in this connection.

## **6. INVOICING AND PAYMENT TERMS**

### **6.1 Invoicing**

- 6.1.1 Dispatch notes and invoices must be made out to FLUXYS BELGIUM SA, FLUXYS LNG SA or FLUXYS SA and must clearly state the number and title of the Agreement as well as the CONTRACTOR's VAT number. Invoices shall be drawn up in one (1) original copy and sent to:

For FLUXYS BELGIUM SA - *Supplier Accounting Department*, 31 Avenue des Arts, B-1040 BRUSSELS.

For FLUXYS LNG SA - *Supplier Accounting Department*, 4 Rue Guimard, B-1040 BRUSSELS.

For FLUXYS SA - *Supplier Accounting Department*, 31 Avenue des Arts, B-1040 BRUSSELS.

- 6.1.2 The CONTRACTOR's invoices shall be accepted provided the contractual terms are fulfilled and FLUXYS has the documents specified in the '*Documents to be provided*' section of the Particular Commercial Conditions.
- 6.1.3 If the Agreement includes delivery of Material on demand, invoices shall be paid after complete and satisfactory execution of the delivery of the quantities mentioned in the '*Performance Form according to Contract*' and on the basis of the corresponding dispatch notes or performance sheets, both duly signed by the authorised representatives of the CONTRACTOR and of FLUXYS. Invoices shall be limited to one (1) per Month. The '*Performance Form according to Contract*' and the dispatch notes shall be enclosed with the CONTRACTOR's invoice and shall mention the number of the Agreement.

All documents required for Material deliveries, as stated in the Agreement, must be delivered along with the Material (certificates, impact strength report, test certificates, EEX certificates, manuals, etc.). If one or more of these documents is missing, FLUXYS

will not pay the invoice for the Material until it is in possession of all the required documents.

- 6.1.4 In the event that one of the mandatory contractual references required by law or by Article 6.1.1 is not on the invoice, the invoice shall be declared null and void, in which case FLUXYS reserves the right to send the invoice back to the CONTRACTOR. Returning the invoice shall be considered a valid means of rejecting the invoice, without any other action being required of FLUXYS.

## **6.2 Payment terms**

- 6.2.1 The CONTRACTOR's invoices shall be paid in full after complete and satisfactory execution of the deliveries on the basis of the corresponding performance sheets or delivery documents, duly signed by the relevant FLUXYS representative.
- 6.2.2 Payment shall be made by bank or post office transfer within thirty (30) Days of receipt of the invoice, providing all other conditions contained in the Agreement have been met. No payment can be demanded if payments requested for an earlier payment deadline become non-payable following a shortcoming or misconduct on the part of the CONTRACTOR.
- 6.2.3 Under no circumstances shall FLUXYS accept bills of exchange.
- 6.2.4 If FLUXYS' order concerns a range of different Materials, FLUXYS shall consider the order undelivered if any of the items have not been delivered. The aforementioned payment period shall only begin once all the items in the order have been delivered and invoiced.
- 6.2.5 FLUXYS shall not accept any clauses in the CONTRACTOR's documents stating that interest, penalties or any other form of compensation must be paid if payment is not made on the due date, even after formal written notice by the CONTRACTOR.
- 6.2.6 Under no circumstances shall full or partial payment by FLUXYS be considered equivalent to approval and/or acceptance of the Materials.

## **6.3 Compensation and interaction**

If there are claims and debts between the Parties, regardless of their origin, FLUXYS reserves the exclusive right to set off its debts against its own claims against the CONTRACTOR, to obtain a lien or plead non-fulfilment of contractual obligations, as though all claims and debts are considered to be the result of a single contractual agreement.

## **6.4 VAT**

Belgian VAT legislation applies to the Agreement.

## **7. SUSPENSION OF EXECUTION OF THE AGREEMENT**

- 7.1 Should the CONTRACTOR suspend execution of the Agreement, it must give FLUXYS immediate written notification of the reasons for the suspension.
- 7.2 If the CONTRACTOR suspends execution of the Agreement for reasons other than Force Majeure, FLUXYS reserves the right to demand payment by the CONTRACTOR of a lump-sum compensation equal to ten percent (10%) of the total value of the Agreement, without prejudice to FLUXYS' right to demand higher compensation if it is shown that the value of the damage incurred is greater than the aforementioned ten percent (10%) and without prejudice to FLUXYS' right to immediately cancel the Agreement without compensation, to the detriment of the CONTRACTOR, by means of a registered letter.

- 7.3 FLUXYS may, at any time and without needing to provide justification, suspend execution of the Agreement for a duration of its choosing. In this case, the CONTRACTOR can receive payment for Material already delivered and for any damage suffered, provided the CONTRACTOR can present due justification to support its claim.

## **8. END OF THE AGREEMENT**

### **8.1 Termination or dissolution of the Agreement**

- 8.1.1 Without prejudice to the right to claim compensation, FLUXYS has the right to terminate the Agreement with immediate effect by means of registered letter, without being obliged to pay the CONTRACTOR any form of compensation or reimbursement, in each of the following cases:

- (i) death, suspension of payment, bankruptcy or liquidation of the CONTRACTOR, or a situation where the Continuity of Enterprises Act applies to the CONTRACTOR, or if the CONTRACTOR renounces all or a significant proportion of its assets; or
- (ii) in the event of wilful misconduct, serious misconduct, gross negligence or repeated minor incidents equivalent to serious misconduct on the part of the CONTRACTOR, its Staff or its subcontractor(s).

- 8.1.2 The application of one of the aforementioned penalties does not affect FLUXYS' right to obtain restitution for damage suffered as a result of one or more failings on the part of the CONTRACTOR or its subcontractor(s), including financial damage resulting from criminal convictions or administrative fines incurred by FLUXYS due to a failing on the part of the CONTRACTOR or its subcontractor(s).

### **8.2 Cancellation of the Agreement**

- 8.2.1 FLUXYS may cancel the Agreement at any time, without providing justification, by notifying the CONTRACTOR of the cancellation by registered letter. The notice period shall be seven (7) Days. If it exercises this right, FLUXYS shall not owe the CONTRACTOR any compensation. The notice period begins on the Day after the Day on which the registered letter is delivered at the post office.
- 8.2.2 The CONTRACTOR must return any work clothing, documents, information, source codes, and so on to FLUXYS by the final Day in the notice period at the very latest. These items and data are and shall remain the exclusive property of FLUXYS.
- 8.2.3 In the event that the Agreement is cancelled as per Article 8.2.1, FLUXYS shall reimburse the CONTRACTOR for the Material delivered up to the date of cancellation or suspension (only the earlier of these two dates shall be taken into account). FLUXYS shall not owe the CONTRACTOR any further compensation.

## **9. FORCE MAJEURE**

### **9.1 Definition**

- 9.1.1 For the purposes of the Agreement, Force Majeure includes, but is not limited to: natural disasters, strikes, lock-outs, decisions by the government or any other authorised body or its representatives (whether legally valid or not), wars, uprisings, rebellions, landslides, fires, floods, earthquakes and explosions, subject to such event being unforeseeable and not caused by misconduct or negligence by either Party.

For the purposes of Article 15, Force Majeure shall also be understood to include long-term illness or death of the CONTRACTOR's Staff Member.

9.1.2 The following shall also be considered to constitute Force Majeure in relation to FLUXYS: any case in which a law, decree, order, decision, recommendation or suggestion from a regulatory authority governing all or part of FLUXYS' activities or from another authority orders, imposes and/or results in the dissolution and/or amendment of the Agreement.

## **9.2 Consequences of Force Majeure**

9.2.1 A Party who invokes Force Majeure must:

- (i) immediately inform the other Party of the event or circumstances leading to Force Majeure, provide in good faith all available information on the cause of the event and estimate how much time will be required for the Force Majeure situation to be lifted; and
- (ii) immediately take all measures possible (within reason) to rectify the situation preventing it from meeting its obligations as soon as the circumstances arise and minimise the damage caused by the situation.

9.2.2 If one of the Parties is completely or partially unable to meet its obligations under the Agreement because of Force Majeure, then that Party's obligations shall be suspended until such time as and to the extent that the Force Majeure situation (no longer) influences its ability to meet its obligations.

9.2.3 Either of the Parties may terminate the Agreement by registered letter, without being required to pay any form of compensation to the Party affected by Force Majeure, if:

- (i) execution of the Agreement has become completely impossible; or
- (ii) the suspension of activities due to the Force Majeure situation continues uninterrupted for more than three (3) Months; or
- (iii) at the time when the Force Majeure situation first arises, it can reasonably be expected that the situation will make it completely impossible to execute the Agreement or that the suspension of activities due to the situation will last at least three (3) Months.

## **10. CONTRACTUAL DEADLINES**

### **10.1 Compliance with deadlines**

10.1.1 The CONTRACTOR shall deliver the Material covered by the Agreement within the deadlines set out in the Agreement.

10.1.2 The period for completion begins on the date the Agreement enters into force and the deadlines are binding. If the last Day of the deadline is a Belgian statutory public holiday, the deadline shall be extended to the end of the next working day after the public holiday.

10.1.3 Unless there are any provisions expressly stating otherwise, when contractual deadlines are exceeded, the CONTRACTOR shall be deemed to have been ordered to meet the deadlines and may not use the absence of a written order from FLUXYS as an excuse for failing to meet the deadlines set out in the Agreement.

10.1.4 The CONTRACTOR shall do all in its power to meet deadlines (which may have been extended) and catch up any delays and shall comply with FLUXYS' instructions in this respect.



## **10.2 Extension of deadlines**

- 10.2.1 Contractual deadlines can only be extended if this is justified by an event of Force Majeure or if FLUXYS has given prior written authorisation.
- 10.2.2 Where the delivery of Material requires the intervention of an authorised inspection body or the services of an expediting company, the involvement of these parties shall not be accepted as a reason for delay.

## **10.3 Failure to meet deadlines**

- 10.3.1 If the contractual deadlines are not met and a formal notice issued to the CONTRACTOR giving a final possible deadline has no effect, FLUXYS is entitled to terminate the Agreement for the non-executed part and either execute the Agreement itself or have a third party replace the CONTRACTOR, at the CONTRACTOR's expense, without any judicial intervention. FLUXYS shall not owe the CONTRACTOR any compensation in such cases.
- 10.3.2 Any delay to delivery that is not justified by a duly established case of Force Majeure shall automatically render the CONTRACTOR liable to pay the following compensation to FLUXYS:
- (i) 2.5%/Week for the first and second Weeks of delay; and,
  - (ii) 1.5%/Week for the third and fourth Weeks of delay; and,
  - (iii) 1%/Week for the fifth, sixth and any subsequent Weeks of delay.

Calculations are based on the total value of the delayed Material and compensation is limited to a maximum of 10% of the total value of the Agreement, without prejudice to any additional costs (such as for inspection or expediting, where applicable).

## **11. INTELLECTUAL PROPERTY**

### **11.1 Transfer**

- 11.1.1 Unless explicitly stated otherwise, the CONTRACTOR exclusively, irrevocably and unconditionally transfers to FLUXYS all Intellectual Property Rights created during execution of the Agreement and within the scope of the Agreement, from the time at which they arise, in the most comprehensive manner possible, i.e. covering all methods and forms of exploitation to be developed and applying worldwide for the whole duration of the right concerned.
- 11.1.2 The CONTRACTOR waives its moral rights, including the right to object to any changes made to the Intellectual Material by FLUXYS should FLUXYS deem such changes desirable for the use and further exploitation of the Intellectual Material. The CONTRACTOR also waives its right to demand that its name be mentioned when FLUXYS uses and further exploits the Intellectual Material. The CONTRACTOR likewise waives these rights in respect of any third party (hereinafter referred to as the "Authorised Third Party") authorised by FLUXYS to further use or modify the Intellectual Material without mentioning the CONTRACTOR's name.
- 11.1.3 Without prejudice to the other provisions of this Article, the CONTRACTOR therefore unconditionally and irrevocably waives all current and future claims against FLUXYS or any other third party in relation to any such Intellectual Property Right.



11.1.4 Any arrangement differing from the provisions of this Article must, as a minimum, assign FLUXYS the necessary rights of use to allow it to use the Intellectual Material for the purposes, means of exploitation and duration of its choosing.

## **11.2 Compensation**

The CONTRACTOR recognises that compensation for the transfer of Intellectual Property Rights is included in the price agreed between the Parties in accordance with Article 4.

## **11.3 Duty to provide support**

11.3.1 The CONTRACTOR shall give FLUXYS all authorisations and assistance that may be useful for the exercise of FLUXYS' rights as set forth in this Article, including the acquisition and maintenance of the transferred Intellectual Property Rights.

11.3.2. The CONTRACTOR shall refrain from taking any measures aimed at acquiring or maintaining, be it in its own name or in the name of a third party, any Intellectual Property Right in connection with any result of its activities for FLUXYS.

11.3.3 In the event of the suspension or termination of the Agreement, the CONTRACTOR shall immediately provide to FLUXYS the Intellectual Material in its possession, regardless of the manner of the suspension or termination. The CONTRACTOR shall not retain possession of any copy or other recording or sample of the Intellectual Material, unless otherwise agreed in advance in writing.

## **11.4 Indemnification**

11.4.1 The CONTRACTOR declares and warrants that all the Intellectual Material it creates is legal and legitimate and does not infringe upon the intellectual rights or any other rights of any third party, and that the CONTRACTOR has acquired the necessary authorisations for the transfer of rights or the assignment of rights of use as indicated in Article 11.1.

11.4.2 The CONTRACTOR indemnifies FLUXYS and all Authorised Third Parties against any claims, actions or complaints that may be brought against them and any direct or indirect losses or damage and costs and expenses that they may incur in the event that the use or modification of the Intellectual Material by FLUXYS or an Authorised Third Party gives rise to an alleged infringement of the Intellectual Property Rights of third parties.

The CONTRACTOR guarantees that neither the delivery of the Intellectual Material nor its use by FLUXYS or an Authorised Third Party will infringe upon the Intellectual Property Rights of a third party. Accordingly, the CONTRACTOR indemnifies FLUXYS and all Authorised Third Parties against any claims, actions or complaints that may be brought against them and any direct or indirect losses or damage and costs and expenses that they may incur in the event that the use or modification of the Intellectual Material by FLUXYS or an Authorised Third Party gives rise to an alleged infringement of the Intellectual Property Rights of third parties..

## **11.5 Other provisions**

11.5.1 This Article shall outlast the other provisions of the Agreement and will therefore remain in force after termination of the Agreement, regardless of the manner of termination.

11.5.2 FLUXYS may transfer, assign or outsource its rights and interests under Article 11 to a third party, in whole or in part, at any time and in any way.

## **12. TRANSFER OF OWNERSHIP AND RISKS**

### **12.1 Material**

12.1.1 Without prejudice to the rights and obligations of the Parties to the Agreement, the transfer of ownership of the Material (or part of it) to FLUXYS shall take place at the time of delivery or upon payment by FLUXYS (if that takes place earlier) of the total amount or of a deposit.

Notwithstanding the foregoing, the risk, including the risk of wear and tear and loss of the Material caused by transportation, storage and/or unloading and stacking, which is done under the CONTRACTOR's responsibility, shall not be transferred to FLUXYS until the Material has been delivered in accordance with the Agreement.

12.1.2 If ownership of the Material is transferred to FLUXYS before delivery has occurred, the Material shall be clearly identified by the CONTRACTOR and marked as '*Property of FLUXYS*' or in any other way requested by FLUXYS.

12.1.3 The provisions of Articles 12.1.1 and 12.1.2 do not apply to software or hardware for which FLUXYS is granted a licence.

### **12.2 N/A**

## **13. WARRANTY PROVISIONS**

### **13.1 N/A**

### **13.2 Warranty for Material supplied**

13.2.1 The CONTRACTOR warrants that it has perfect knowledge of the delivered Material and its purpose, and warrants that the Material will have no faults or hidden defects in its design, (basic) materials, operation, construction or assembly and that its performance will be satisfactory.

13.2.2 FLUXYS reserves the right to refuse to accept any delivery that is not compliant or that has the slightest defect.

13.2.3 If the Material is unsatisfactory or defective or is not compliant with the contractual specifications, the CONTRACTOR shall, at its own expense and as quickly as possible, take back the delivery and, depending on the option chosen by FLUXYS, immediately make any changes, repairs or improvements and/or provide FLUXYS with an equivalent delivery and/or perform all or part of the delivery again, so that FLUXYS has Material that meets the specifications outlined in the contract, without prejudice to any other measure set out in the Agreement, including the right to demand payment of the penalties provided for in Article 10.3 and repair of any ensuing damage.

The costs arising from any such intervention shall be borne exclusively by the CONTRACTOR, including (but not limited to) the cost of the repair and/or the supply of the new replacement Material, in compliance with the contractual provisions, the analyses carried out to ascertain the defects, and transportation of the defective or non-compliant Material and of the new replacement Material supplied.

13.2.4 If operating conditions permit and if necessary, FLUXYS shall allow the CONTRACTOR to access the site and the defective or non-compliant Material.

If the defect was caused by a design flaw, the CONTRACTOR must replace or modify all parts of the same type from that delivery, even if they have not resulted in an incident or damage.

13.2.5 If the CONTRACTOR refuses or fails to meet its warranty obligations or if urgency requires, FLUXYS may, after issuing a formal written notice that does not yield a satisfactory result after ten (10) working days, terminate the Agreement without paying any additional compensation on top of the compensation due under the Agreement for the Material accepted by FLUXYS and delivered before the date of termination. FLUXYS may then either execute the Agreement itself or have a third party replace the CONTRACTOR, at the CONTRACTOR's expense and risk, without any judicial intervention. Furthermore, FLUXYS may at any time demand full compensation from the CONTRACTOR for damages that FLUXYS has suffered because of defective deliveries or deliveries that are not suitable for FLUXYS' requirements if the defect was not evident at the time of delivery.

### **13.3 Warranty Period**

13.3.1 The Warranty Period shall extend to the earliest of the following dates:

- (i) twelve (12) Months after the Material has been successfully started up (for Material subject to inspection, the start-up date shall be stated in a specific acceptance report); or
- (ii) twenty-four (24) Months after satisfactory delivery or, in the case of multiple deliveries, after the last delivery date;

in accordance with the contractual conditions and insofar as the deadlines are not exceeded for reasons attributable to the CONTRACTOR.

13.3.2 If, during the Warranty Period, all or some of the Materials are unavailable, the Warranty Period for the entire order shall be extended by the combined length of all the periods of unavailability.

13.3.3 If, during the Warranty Period, it is necessary to replace a component of the Materials, the Warranty Period for the component in question shall only begin when risks for the replacement components are transferred. This shall be at the sole expense of the CONTRACTOR and shall include transport costs and costs for the manpower provided by FLUXYS.

## **14. LIABILITY AND INSURANCE**

### **14.1 Liability**

14.1.1 The CONTRACTOR shall be liable towards FLUXYS and third parties for any direct bodily injury or material or immaterial damage which is caused while executing the Agreement and which can be attributed to the CONTRACTOR.

14.1.2 The CONTRACTOR undertakes to indemnify FLUXYS against any claim and/or related costs or expenses invoked by third parties as a result of damage caused by the CONTRACTOR while executing the Agreement.

14.1.3 Except in the event of serious or wilful misconduct, both Parties waive any recourse against one another for bodily damage to themselves, their representative(s) or their agent(s). Each Party undertakes to indemnify the other against any recourse or complaints by a third party in relation to such damage. Furthermore, the Parties undertake to have this waiver of recourse approved by their respective insurers and to have it incorporated into their insurance policies.

14.1.4 Except in cases of serious or wilful misconduct and without prejudice to Article 13, the total liability of the CONTRACTOR shall be limited, for each event incurring the CONTRACTOR's liability, to either the value of the Agreement or the minimum amount for which the CONTRACTOR must be insured under Article 14.2.2, whichever is higher. This limitation of liability does not apply to any claims brought by third parties.

14.1.5 Without prejudice to any term to the contrary in the Agreement, the Parties are not liable to each other for consequential damage, except in cases of wilful or serious misconduct. For the purposes of this Article, "consequential damage" is defined as loss of contracts, loss of profit, loss of operating income, loss of production or loss of use and business interruptions incurred by the other Party.

## **14.2 Insurance**

14.2.1 In the light of its professional knowledge and taking account of the risks linked to its activities, the CONTRACTOR shall ensure that its contractual, extra-contractual and professional liability are all sufficiently insured. The CONTRACTOR's activities when delivering Materials, as well as after the delivery, must be covered by an insurance policy with a leading insurer.

14.2.2 The CONTRACTOR shall produce, no later than the acknowledgement of receipt of the Agreement, a certificate from its insurer stating that the insurance it holds covers its liabilities during the delivery of the Materials as a minimum, as well as risks after the delivery of the Materials (including product liability). This certificate shall also state the minimum amounts for which the CONTRACTOR must be covered (all damage combined), which are listed in the Particular Commercial Conditions. FLUXYS shall not indemnify the CONTRACTOR against recourse by third parties for amounts exceeding the amount insured, nor for risks not covered by the CONTRACTOR's insurance policy.

14.2.3 If the CONTRACTOR employs staff in Belgium for the execution of the Agreement, it must, in accordance with the Belgian Act of 10 April 1971, take out an insurance policy covering these staff in the event of work-related or commuting accidents. In this respect, FLUXYS may at any time demand to see the relevant certificate from the CONTRACTOR's statutory insurer declaring that the statutory insurer waives all recourse against FLUXYS, its authorised representatives and its agents.

14.2.4 FLUXYS draws the attention of the CONTRACTOR to the fact that performance of the activities may not begin until FLUXYS is in possession of the required insurance certificates, the presentation of which is also one of the conditions for payment of the CONTRACTOR's invoices.

## **15. THE CONTRACTOR'S STAFF**

### **15.1 General provisions**

15.1.1 This Article applies to the CONTRACTOR and all of its Staff.

15.1.2 The CONTRACTOR shall use qualified, experienced and honest Staff in the delivery of the Material.

15.1.3 With a view to work organisation and safety, the CONTRACTOR must comply with the working schedule applicable at the place of performance. The CONTRACTOR shall ask its contact person at FLUXYS about the working schedule before making the delivery or performing its activities.

15.1.4 The CONTRACTOR and its Staff shall remain completely independent of FLUXYS under all circumstances and may never be considered as being employed by FLUXYS. The CONTRACTOR shall retain full control over its own Staff and shall be responsible for them.

15.1.5 The CONTRACTOR undertakes, when executing this Agreement and, more generally, performing its activities, to comply with all the legal obligations applying to it and its activities, including, but not limited to, the obligations regarding safety and well-being at work, the allocation of a minimum wage to its employees, the payment of wages to its employees, the obligations regarding the environment and the protection thereof,

the prohibition of involvement in or acceptance of practices such as private or public corruption, the obligations relating to the employment and residence of foreign employees (Dimona, etc.), and so on. Proof of compliance with the applicable legal obligations must be presented at FLUXYS' request.

FLUXYS hereby expressly notifies the CONTRACTOR that information on the wages payable is available on the following FPS Employment, Labour and Social Dialogue website <https://www.minimumlonen.be> and on FPS Employment, Labour and Social Dialogue's own website: <https://www.employment.belgium.be/en>. The CONTRACTOR confirms that it pays and will pay its employees the wages due to them. More specifically, the CONTRACTOR will ensure the timely payment of all amounts owed to the National Social Security Office and of all taxation, including VAT, withholding tax, corporate income tax, and so on.

Furthermore, the CONTRACTOR guarantees that it neither employs nor will employ any foreign workers residing illegally in Belgium, as described in Article 3 of the Act of 11 February 2013 on sanctions and measures against employers of third-country nationals staying in Belgium illegally (Belgian Official Gazette of 22 February 2013).

Non-compliance with Article 15.1.5 by the CONTRACTOR or its subcontractors shall be considered serious misconduct, which may result in the application of Articles 8.1.1 and 8.1.2.

- 15.1.6 When executing this Agreement, the CONTRACTOR must ensure that the Staff that it appoints to execute the Agreement display the necessary integrity. The CONTRACTOR must also take the necessary measures if it is apparent that one or more of its Staff Members do not possess (or no longer possess) such integrity.
- 15.1.7 The CONTRACTOR must notify FLUXYS of any failure to comply with any of the obligations listed above, regardless of whether the instance of non-compliance was deliberate or not. Such notification must be given no later than seven (7) calendar days from the date of the instance of non-compliance.
- 15.1.8 The CONTRACTOR's Staff must be able to provide proof of their integrity. To this end, they must be able to submit an extract from the judicial record at FLUXYS' request.
- 15.1.9 For the duration of the Agreement, the CONTRACTOR shall be represented by an officer with experience and training corresponding to the Agreement and who is able to speak at least the language of the place where the Agreement is being executed.
- 15.1.10 The CONTRACTOR must allocate the assignments detailed in the order form to its own Staff unless the CONTRACTOR has received authorisation to have assignments performed by a subcontractor, in accordance with Article 1.3.2. The CONTRACTOR's Staff cannot at any time be considered employees or executive agents of FLUXYS. FLUXYS shall be in no way entitled to exercise any part of the authority normally belonging to an employer over the CONTRACTOR's Staff.

## **15.2 Obligations regarding service provision on Belgian territory**

- 15.2.1 If the CONTRACTOR is established abroad, and without prejudice to the other provisions of this Agreement, the CONTRACTOR undertakes to execute the Agreement using only Staff who:
  - are legally employed in the CONTRACTOR's country for the duration of the activity to be performed in Belgium;

- have been posted legally and possess an A1 form issued by the competent foreign authority, with the validity period of this form corresponding to the duration of the assignment as agreed in the order form as a minimum;
- possess a valid L(imosa)1 form;
- possess all the necessary documents issued by their intended place of residence in Belgium.

15.2.2 The CONTRACTOR undertakes to require the Staff that it deploys for the execution of the Agreement to have on their person at all times, even in the workplace, their identity card or passport, a valid A1 form, a valid L1 form and their residence documents.

15.2.3 The CONTRACTOR further undertakes to comply with the Act of 5 March 2002 on the working, remuneration and employment conditions of posted workers in Belgium and compliance with such conditions (Belgian Official Gazette of 13 March 2002).

15.2.4 Non-compliance with Article 15.2 by the CONTRACTOR or its subcontractors shall be considered serious misconduct, which may result in the application of Articles 8.1.1 and 8.1.2.

**15.3 N/A**

**15.4 N/A**

**15.5 N/A**

## **16. CONFIDENTIALITY**

16.1 The CONTRACTOR shall neither directly nor indirectly disclose the contents of the Agreement or of its assignment, any commercial or technical information or the contents of correspondence between the Parties without prior written agreement from FLUXYS. In general, the CONTRACTOR shall not disclose any non-public information relating to FLUXYS, FLUXYS' internal organisation or FLUXYS' relationships with third parties which the CONTRACTOR may obtain during execution of or in connection with the Agreement.

16.2 The CONTRACTOR shall have a declaration to this effect signed by its Staff or subcontractors at FLUXYS' request.

16.3 The undertaking contained in Article 16.1 applies for the entire duration of the Agreement and for a period of five (5) years following the end of the Agreement.

16.4 Non-compliance with this requirement shall be considered serious misconduct, which may result in the application of Articles 8.1.1 and 8.1.2.

16.5 Notwithstanding the above, no Party shall be responsible towards the other for any unauthorised disclosure of information if it can be established that it protected the information in the same way as it protects its own confidential information and business secrets.

16.6 FLUXYS shall respect the CONTRACTOR's manufacturing and construction secrets provided it has received prior written notification of:

- (i) the confidential nature of the information, techniques and documents shared with it or shown to it by the CONTRACTOR; and
- (ii) the period for which this information, etc. shall remain confidential.



## **17. PROVISIONS ON HEALTH, SAFETY AND THE ENVIRONMENT (WELL-BEING)**

### **17.1 General**

- 17.1.1 Before going to the place of delivery, the CONTRACTOR shall always report to the relevant FLUXYS officer and comply closely with the safety instructions issued by this person. The safety instructions applying to FLUXYS' Seveso sites must be followed particularly carefully.
- 17.1.2 The Material described in the Agreement shall comply with applicable legislation in force in Belgium regarding well-being, safety, health, the environment and decoration of workplaces. The CONTRACTOR shall be responsible for the necessary regulatory and legal inspections of its equipment and shall produce the relevant certificates if requested.
- 17.1.3 The general obligations and measures to be taken by the CONTRACTOR for carrying out deliveries of Material in accordance with the legislation are described in greater detail in the following document: *Well-being Requirements when Making Deliveries*.

### **17.2 N/A**

### **17.3 Checks by the CONTRACTOR**

The CONTRACTOR must ensure that all safety rules applying at the place of performance and the requirements arising from the risk analyses are gone over, thoroughly understood and strictly observed by its Staff and the staff of any subcontractors it may have. The CONTRACTOR shall provide FLUXYS with a signed declaration from each of its subcontractors. Any irregularity or unsafe action or situation must be reported to FLUXYS immediately.

### **17.4 Safety of subcontractors**

- 17.4.1 If the CONTRACTOR uses one or more subcontractors, in accordance with the provisions of this Agreement, it must notify FLUXYS beforehand and must ensure that these subcontractors comply with all the obligations regarding employee well-being at work and health and safety on temporary or mobile construction sites that would be incumbent upon the CONTRACTOR if the CONTRACTOR were carrying out the assignment (e.g. only using properly trained staff; complying with specific safety rules set by FLUXYS, in whose facility the work will be performed; providing information to employees and/or subcontractors).
- 17.4.2 The CONTRACTOR is also required to sign a written agreement with its subcontractors stating that:
- the relevant subcontractor undertakes to comply with all the obligations regarding employee well-being at work and health and safety on temporary or mobile construction sites that are specific to the facility where it is carrying out its activities;
  - if the relevant subcontractor fails to comply with these obligations or does not comply with them adequately, the CONTRACTOR may at any time take the necessary measures itself, at the relevant subcontractor's expense, after giving said subcontractor formal notice;
  - the relevant subcontractor must include the aforementioned clauses in written agreements with any subcontractors that it may use.

### **17.5 Actions in the event of non-compliance**

- 17.5.1 FLUXYS may carry out checks or inspections to ensure that the CONTRACTOR's Staff have received the appropriate training and instructions and that the safety arrangements are being strictly complied with.



- 17.5.2 If it is apparent that the CONTRACTOR and/or its Staff and/or its subcontractor(s) are not complying with the necessary safety requirements, FLUXYS will report this in writing. If the CONTRACTOR then fails to take effective steps to remedy this situation, or in the event of urgency, FLUXYS may take measures itself, or have the necessary measures taken, and pass on the associated costs to the CONTRACTOR. In the event of non-compliance with safety requirements, FLUXYS shall be entitled to demand a replacement of the CONTRACTOR's Staff or subcontractor(s), at no additional cost to FLUXYS.
- 17.5.3 Non-compliance with safety requirements by the CONTRACTOR or its subcontractors shall be considered serious misconduct, which may result in the application of Articles 8.1.1 and 8.1.2.

## **17.6 Work-related accidents**

- 17.6.1 If one or more of the CONTRACTOR's employees are involved in a serious work-related accident, the CONTRACTOR must notify FLUXYS immediately (i.e. on the day of the accident).
- 17.6.2 The CONTRACTOR shall ensure that the accident is immediately investigated by its competent health and safety team and that a full report on the accident is submitted to the competent officials and the persons involved (the employees involved in the accident, users, employment agencies, project supervisors in charge of execution, contractors, subcontractors and self-employed persons) within ten (10) Days following the accident. The CONTRACTOR shall cooperate with FLUXYS, its health and safety team, the competent officials and the persons involved in the accident to enable the accident to be investigated and a full report to be produced.
- 17.6.3 The CONTRACTOR shall bear any costs that may arise from the aforementioned investigation and are connected with its employees.

## **18. TRANSPORT AND DELIVERY OF MATERIALS**

### **18.1 Transport and unloading**

- 18.1.1 The CONTRACTOR shall transport the delivery to the delivery address provided by FLUXYS.
- 18.1.2 The CONTRACTOR shall be responsible for unloading, unless explicitly stated otherwise in the Particular Commercial Conditions. The CONTRACTOR may use unloading equipment belonging to FLUXYS (if available) provided it obtains prior written permission from FLUXYS.
- 18.1.3 The CONTRACTOR shall provide the necessary staff and equipment.
- 18.1.4 The CONTRACTOR shall ensure that the packaging is appropriate to the delivered Material, taking into account the means of transport used and the storage available.
- 18.1.5 If the Material is delivered on pallets, the CONTRACTOR shall ensure that these pallets are in good condition and are appropriate to the delivered Material. Moreover, these pallets must be designed in such a way that the devices used to move them can insert their lifting forks into them (e.g. forklift truck, fork hoist) or pass their lifting gear beneath them (e.g. pallets without a reinforcing bar at the bottom).
- 18.1.6 If the Material to be delivered is particularly heavy or bulky, the CONTRACTOR shall contact the relevant FLUXYS officer at least three (3) working days before the delivery.

## **18.2 Terms of delivery**

- 18.2.1 The CONTRACTOR shall give FLUXYS a delivery note at the time of delivery, regardless of whether the Agreement covers assembly upon delivery. FLUXYS' signature of the note or any other document is merely proof of delivery. It does not indicate that the delivery has been accepted.
- 18.2.2 Any instructions for assembly and/or use and/or maintenance shall be delivered to the delivery address along with the Material. In the case of staggered delivery, these instructions should be delivered with the first delivery.
- 18.2.3 If, when unpacking the delivery, FLUXYS notices visible damage, FLUXYS shall have sixty (60) Days, beginning on the delivery date, to inform the CONTRACTOR, regardless of what is stated on the delivery note.

## **19. SPARE PARTS**

- 19.1 If the Agreement concerns the supply of Material, the CONTRACTOR warrants that it will supply new spare parts for the Material purchased pursuant to the Agreement for the period set out in the Particular Commercial Conditions. This period shall begin upon delivery or at the time of the last delivery for the order.
- 19.2 Any spare parts provided shall, in turn, be subject to a warranty period in accordance with Article 13.3.
- 19.3 If, before the end of the period mentioned in Article 19.1, the CONTRACTOR becomes unable to continue supplying spare parts, it shall give FLUXYS written notification of this at least twelve (12) Months in advance so that FLUXYS can buy a stock of spare parts, if it wishes to do so.

## **20. REPAIR OF MATERIAL AT FLUXYS' REQUEST**

- 20.1 This Article applies if the Agreement relates to the repair of Materials belonging to FLUXYS.
- 20.2 The Materials that FLUXYS hands over for repair shall remain the property of FLUXYS. If the Materials must be treated, this shall be considered to have happened at FLUXYS' request. The CONTRACTOR undertakes to neither sell the Materials nor to give them to third parties as long as they remain the property of FLUXYS.
- 20.3 The CONTRACTOR shall bear the risk of transporting and delivering the Materials for repair.
- 20.4 As soon as the Materials have been delivered, the CONTRACTOR shall become responsible for risks relating to the storage and treatment of the Materials. The CONTRACTOR shall be liable for any theft, loss, damage or destruction of the Materials. The CONTRACTOR undertakes to replace or repair the Materials if necessary, within two (2) Weeks of FLUXYS' request. Treatment of the Materials shall not be viewed as damage or destruction as long as the result complies with the specifications given by FLUXYS in the order.
- 20.5 Risks are transferred back to FLUXYS when the Materials (treated or otherwise) are:
- (i) collected by FLUXYS from the CONTRACTOR's storage facility; or
  - (ii) delivered by the CONTRACTOR to FLUXYS' storage facility (it makes no difference whether the CONTRACTOR transports the Materials itself or has them transported by a third party).

## **21. OTHER PROVISIONS**

### **21.1 Processing of personal data**

- 21.1.1 Where and insofar as the Parties, under the Agreement, process personal data, they shall comply with their respective obligations under the applicable data protection legislation (including the General Data Protection Regulation 2016/679).
- 21.1.2. FLUXYS reserves the right, under the Agreement, to process personal data relating to the CONTRACTOR's Staff for the purpose of managing and executing the agreement between the CONTRACTOR and FLUXYS and for invoicing purposes, and the CONTRACTOR undertakes to (i) provide its Staff with all the information regarding this processing as required by the applicable data protection legislation and (ii) ensure that there is always a legal basis for this processing. The same obligation applies to FLUXYS where and insofar as the CONTRACTOR, under the Agreement, processes personal data relating to FLUXYS' staff.
- 21.1.3 Where and insofar as the CONTRACTOR, under the Agreement, processes personal data as the processor on FLUXYS' behalf, the Parties undertake to conclude a separate processing agreement, which is included as an annex to the Agreement.

### **21.2 Language of the Agreement**

The language of the Agreement is specified in the Particular Commercial Conditions and shall be used for all documents relating to the Agreement. In the event of inconsistency and/or ambiguity, the version of a contractual document written in the same language as the Agreement shall take priority over any other version.

All documents provided by the CONTRACTOR in connection with the Agreement must, at FLUXYS' request, be translated into French, Dutch and/or English within a reasonable deadline. This shall be at the CONTRACTOR's expense.

### **21.3 Units of measurement**

The only authorised units of measurement are the international units of measurement of the metric system.

### **21.4 Administrative authorisations and permits**

- 21.4.1 The CONTRACTOR is responsible for obtaining any prior authorisations and permits required by the relevant authorities and/or authorised approval bodies for the delivery of the Materials.
- 21.4.2 The CONTRACTOR shall supply, at FLUXYS' request, any information regarding the delivered Materials that FLUXYS may need in order to apply for permits.
- 21.4.3 The CONTRACTOR undertakes to make the necessary arrangements to ensure that the Materials are approved by the relevant authorities and/or the authorised approval bodies.
- 21.4.4 After the Date Of Conclusion Of The Agreement, the CONTRACTOR is not authorised to demand additional payment to finance these arrangements or cover adjustments to its services, studies, deliveries or works requested by the relevant authorities and/or the authorised approval bodies.

### **21.5 Relationship between the Parties**

Each of the Parties shall remain independent of the others. Neither the CONTRACTOR nor any Staff Member appointed by the CONTRACTOR to execute the Agreement shall be an employee, partner, agent, proxy or legal representative of FLUXYS.

No element of the Agreement may be interpreted as making one Party the agent or distributor of the other or creating a joint venture or any other type of relationship authorising one Party to represent the other in dealings with third parties.

## **21.6 Complaints**

21.6.1 If the CONTRACTOR wishes to make a complaint against FLUXYS, it must inform FLUXYS by registered letter of its reason for doing so within eight (8) Days of the occurrence of the event that has given rise to the complaint. FLUXYS shall confirm receipt within eight (8) Days.

21.6.2 The CONTRACTOR then has thirty (30) Days following FLUXYS' confirmation of receipt to submit a complete file detailing the reasons for the complaint and estimating the damage suffered.

If the CONTRACTOR is unable to submit a complete file within thirty (30) Days, it must notify FLUXYS, which may then issue a new deadline provided this inability stems from the Agreement and is not the fault of the CONTRACTOR.

If the CONTRACTOR has not submitted the file by the deadline mentioned above, which may have been extended, the CONTRACTOR will be considered to have dropped its complaint.

21.6.3 FLUXYS shall share its opinion with the CONTRACTOR within thirty (30) Days of receiving the complete file.

## **21.7 Rejection**

Rejection of or non-compliance with one provision in these General Terms and Conditions of Purchase may not be interpreted as overall rejection of and/or non-compliance with all provisions.

## **21.8 Divisibility in the event of one invalid clause**

If one of the provisions in the Agreement is null, invalid or unfeasible, the other provisions shall still apply in full. The Parties shall replace the null, invalid or unfeasible clause with a permissible, valid or feasible clause that conforms with their original intentions.

## **21.9 Courts/applicable law**

21.9.1 Applicable law

The Agreement is subject exclusively to Belgian law. The courts of Brussels have exclusive jurisdiction.

21.9.2 Arbitration

If the Parties have explicitly agreed to this, any disputes concerning the validity, interpretation or execution of the order may be brought before a board of arbitration from the Belgian Centre for Arbitration and Mediation (Cepani), in accordance with the rules applying to this Centre. There shall be one (1) arbitrator, the place of arbitration shall be Brussels, and the procedure shall take place in Dutch.

Any failure by either Party to perform a task mentioned in Cepani's Rules as being necessary to start, continue or conclude the arbitration procedure automatically authorises the director of Cepani or the arbitrator to perform this task. The CONTRACTOR and FLUXYS undertake to accept the result of the arbitration proceedings as final.