

# Jotun General Conditions of Purchase of Goods and Services

## **1 GENERAL PROVISIONS**

### **1.1 DEFINITIONS**

**BUYER:** The company in the Jotun group and/or network of companies identified as the buyer in the PO or its successors or permitted assignees.

**CONDITIONS:** The terms and conditions set out in this document as may be amended from time to time.

**CONTRACT:** The contract between the PARTIES for the sale and purchase of GOODS and/ or the provision of SERVICES in accordance with these Conditions, the provisions of the PO, the frame agreement (if any) and any appendices and agreed amendments and variations to said documents.

**CONTRACT PRICE:** The total price specified in the CONTRACT in each PO shall constitute full compensation to the SELLER for the delivery and performance of the WORK specified in the applicable PO, including all costs, expenses, taxes, duties, fees or charges of any kind incurred by or levied on the SELLER related to the performance of the CONTRACT and for fulfilling all of its obligations under the CONTRACT.

**DELIVERY DATE:** The date or dates specified in the PO for the delivery of the GOODS and/or the provision of SERVICES. .

**GOODS:** the goods set out in the CONTRACT.

**PO :** The BUYER's purchase order for the WORK, as set out in the BUYER's purchase order form and confirmed by SELLER by signing the PO as set out below.

**PARTY/ PARTIES:** The BUYER and the SELLER, collectively referred to as "Parties" and individually as "Party"

**SELLER:** The company or person who shall perform the WORK in accordance with the CONTRACT, including its successors or permitted assignees.

**SPECIFICATIONS:** any specifications, analysis, data sheets, calculations, certificates and any other technical documentation that is agreed in writing by the PARTIES and that is to be supplied by the SELLER to the BUYER under the CONTRACT.

**WORK:** GOODS to be delivered and/or SERVICES to be performed by SELLER pursuant to the CONTRACT, including for the avoidance of doubt the provision of SPECIFICATIONS.

**SERVICES:** the services to be performed by the SELLER under the CONTRACT as specified in the applicable PO.

- 1.2 Unless expressly agreed otherwise in the PO, these CONDITIONS shall apply to any PO in force between the SELLER and the BUYER and shall, in addition to the other terms of the CONTRACT, govern the sale and purchase of the GOODS and the provisions of SERVICES as between the PARTIES to the exclusion of any terms that the SELLER seeks to impose or incorporate or which are or may be implied by statute, law, trade, customer, practice or course of dealing.

## **2 GENERAL OBLIGATIONS OF SELLER**

- 2.1 SELLER shall ensure that the GOODS correspond with their description and all applicable CONTRACT requirements, including SPECIFICATION(S), and any applicable laws and regulations, including any applicable regulations including chemical regulations.. The GOODS shall be of agreed (Technical Data Sheet TDS, if applicable) quality, fit for purpose and free from any defects on delivery and for the guaranteed shelf life according to TDS. If none is mentioned the period shall minimum be 12 months thereafter.
- 2.2 SELLER shall ensure that the WORK shall be performed in accordance with standards of good workmanship, the CONTRACT requirements and in compliance with applicable laws and regulations, including any applicable regulations including chemical regulations. All WORK shall be new and shall be designed and manufactured in accordance with the latest issued SPECIFICATIONS or, if none are detailed, in accordance with the latest applicable standards and codes of practice of the industry concerned.
- 2.3 SELLER shall not subcontract the WORK to a third party unless this has been agreed in the PO or the BUYER thereafter provides its prior written approval. The SELLER shall remain responsible for all of the acts and omission of its subcontractors as if they were its own.
- 2.4 SELLER and its subcontractors shall
- (a) have a documented, implemented and auditable Health, Safety and Environment (HSE) management system and quality system for the WORK; and
  - (b) comply with applicable health and safety laws and regulations; and
  - (c) comply with applicable environmental laws and regulations, including any applicable regulation including chemical regulations; and
  - (d) comply with and respect the "Jotun Anti-Corruption policy" attached hereto; and
  - (e) comply with the standards identified by the International Labour organization (ILO) relating to labour and working conditions as well as applicable laws and regulations; and
  - (f) ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out the WORK and its obligations under the CONTRACT.
- 2.5 SELLER and any subcontractors accept that BUYER may carry out regular audits of SELLER's compliance with the United Nations Global Compact's ten principles in the areas of human rights, labour and anti-corruption as well as health, safety, environment and quality matters. These reviews and/or audits can be conducted by BUYER or any independent third party appointed by BUYER. SELLER will permit BUYER to carry out site visits at the SELLER's premises and will provide any information reasonably requested by BUYER in order to facilitate this process.
- 2.6 SELLER and any subcontractors shall conduct its business with respect and consideration for the environment and shall strive to minimise their environmental impact, including confirmation that they do not use Conflict Minerals (Tin, Tungsten, Tantalum and Gold from The Democratic Republic of Congo or their neighbouring Countries) in their production
- 2.7 SELLER and its subcontractors are aware of Jotun's Green Steps policy (see: <http://www.jotun.com/no/en/corporate/hse/jotun-greensteps/>) and is encouraged to support the goal of reducing VOC emissions, reducing hazardous material, reducing energy consumption, reducing carbon foot print and reducing waste.
- 2.8 SELLER and its subcontractors shall identify and document life cycle aspects (ISO 14 000) for the materials they are using and the product they are selling?
- 2.9 SELLER and its subcontractors shall commit to continuous improvement, education and training of employees in relation to 2.4 and 2.5 above and accept that BUYER may monitor and review SELLER's systems and/or improvement in these areas on a regular basis.

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## **3 PURCHASE ORDER CONFIRMATION**

The PO constitutes an offer by the BUYER to purchase the WORK in accordance with these CONDITIONS and the CONTRACT. The PO shall be deemed accepted when the SELLER signs the PO and returns it to the BUYER within 5 days of receipt. BUYER reserves the right to terminate a PO without SELLER being entitled to claim any compensation due to such termination, if the PO is not confirmed to BUYER within 5 days period.

## **4 TERMS OF PAYMENT**

BUYER shall make payment according to the terms stated in the CONTRACT following the receipt of a correct invoice, provided that SELLER's obligations under the CONTRACT have been fulfilled. BUYER may withhold any disputed or insufficiently documented amounts. No payment of or on account of the CONTRACT PRICE shall constitute any admission or acceptance by BUYER as to the performance by SELLER under the CONTRACT.

## **5 TERMS OF DELIVERY/SHIPPING INSTRUCTIONS**

5.1 The provision of Incoterms latest edition shall apply to the agreed delivery terms. In the absence of any specification of the delivery term in the CONTRACT/ PO, delivery of GOODS shall be FCA (BUYER's nominated place). Title and risk of the GOODS and SERVICES shall pass to BUYER on actual delivery. BUYER shall have the right to return GOODS not agreed to, such return to be for SELLER's account and risk. BUYER is not required to pay for services not agreed to. If SELLER delivers less than 90% of the GOODS, BUYER may reject all of the GOODS.

## **6 CONTRACT SCHEDULE, SUSPENSION AND DELAY**

6.1 The WORK shall be delivered at the place stated in the PO and at the DELIVERY DATE.

6.2 If SELLER believes, or has reason to believe, that the delivery will be delayed, SELLER shall immediately notify BUYER in writing of the delay and the cause thereof. If BUYER considers that SELLER is entitled to an extension to the DELIVERY DATE, BUYER shall grant such extension in writing as BUYER considers reasonable and shall confirm the new DELIVERY DATE to SELLER.

6.3 SELLER shall implement all necessary actions and bear all reasonable costs incurred to minimise the delay.

6.4 BUYER may temporarily suspend the WORK or parts thereof for up to a maximum of three months by written notification to SELLER. SELLER shall without delay, inform BUYER of the effect that the suspension will or is likely or reasonably anticipated to have on the performance of the WORK. SELLER shall resume the WORK immediately after notification by BUYER that the WORK is to be resumed. SELLER may claim compensation only for documented and necessary expenses caused by the suspension. Recovery of lost profits and consequential loss whether direct or indirect is excluded.

6.5 GOODS shall be inspected by BUYER upon receipt, and BUYER shall, within 30 days of receipt, notify SELLER of any defects and/or discrepancies that the BUYER discovers or ought to have discovered by a visual inspection.

## **7 TERMINATION**

7.1 BUYER may with immediate effect by written notification to SELLER terminate the CONTRACT and/or cancel any PO or any part thereof, if SELLER commits

(a) a material breach of any terms and conditions of the CONTRACT and/or

(b) any breach of the obligations at section 2.4 and/or the sub-paragraphs thereto and/or any of them and/or

(c) fails to pass the audit referred to at section 2.5 and/or

(d) SELLER becomes insolvent or takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction,

(e) SELLER suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business, or

(f) SELLER's financial position deteriorates to such an extent that in the terminating PARTY's opinion the other PARTY's capability to adequately fulfil its obligations under the CONTRACT has been placed in jeopardy.

## **8 FORCE MAJEURE**

8.1 Neither of the PARTIES shall be considered in breach of an obligation under the CONTRACT nor liable for delay in performing, or failure to perform any obligations under it if such delay or failure results from an event, circumstance or cause that the PARTY in breach or delayed could not reasonably have foreseen at the time of entering into the CONTRACT, which is beyond its reasonable control and where that PARTY could not reasonably have avoided or overcome it or its consequences.

8.2 The following shall not in any event be regarded as force majeure events:

(a) particularly difficult or onerous implementation of the CONTRACT;

(b) strikes, except national or industry wide strikes;

(c) clauses attributable to suppliers or sub-contractors or others working for SELLER unless such event itself constitutes force majeure;

(d) any defect in the WORK attributable to defective materials and/or methods used.

8.3 The PARTY invoking force majeure shall, as soon as possible, notify the other PARTY of the force majeure event, the cause of delay and the presumed duration thereof.

8.4 Either PARTY is entitled to terminate the CONTRACT if the period of delay and/or breach and/or non-performance caused by a force majeure event continues for more than 90 days.

8.5 Each PARTY shall cover its own losses and/or costs resulting from a force majeure event. If the Contract is terminated pursuant to clause 8.4, BUYER will pay to SELLER the unpaid balance for WORK delivered at the date when the force majeure event commenced but nothing further including not limited to wasted expenditure, lost profits or consequential loss will be recoverable.

## **9 NON-PERFORMANCE**

9.1 If SELLER's GOODS and/ or SERVICES are delayed (except delays en route related to transport), BUYER is entitled to compensation amounting to 0.2% of the CONTRACT PRICE per calendar day of delay. Unless otherwise stated in the PO the compensation shall not exceed 15% of the total CONTRACT PRICE stated in the applicable PO. If a delay occurs en route, SELLER shall use all reasonable efforts to minimize the delay and shall inform BUYER accordingly.

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- 9.2 Without prejudice to BUYER's rights under Article 9.3, SELLER shall without undue delay and at his own costs rectify all defects arising in the guarantee period which shall be 12 months from DELIVERY DATE, subject to proper storage by BUYER. If shelf life of the GOODS are shorter this must be stated in the PO.
- 9.3 If SELLER fails to fulfil his obligations according to the CONTRACT, hereunder in case of any defects or failure to inform according to 6.2 and 9.1 if, BUYER is entitled to:
- (a) a replacement delivery (partial or whole as requested by BUYER);
  - (b) a price refund or a reduction in price; or
  - (c) compensation for documented cost, damages and losses (including the reasonable cost BUYER may have to get GOODS from alternative sources).

### **10 INDEMNITY**

SELLER shall indemnify and hold harmless BUYER against

- (a) any claims by third parties resulting from any infringement of any patent or other intellectual/industrial property rights in connection with the WORK provided that the WORK is used as intended; and
- (b) any claim against the BUYER by a third party for death, personal injury or damage to property arising out of or in connection with defects in the WORK, to the extent that the defects are attributable to the acts or omissions of the SELLER, its employees, agents or subcontractors; and
- (c) any claims made against the BUYER by a third party arising out of or in connection with the supply of the WORK, to the extent that such claim arises out of the breach, negligence, performance or failure or delay in performance of the CONTRACT by the SELLER, its employees, agents or subcontractors.

### **11 LIABILITY AND INSURANCES**

- 11.1 Except for SELLER's obligations under Article 10, each PARTY's maximum liability arising in connection with each PO shall not exceed 200 % of the CONTRACT PRICE.
- 11.2 Neither PARTY shall be liable for any loss of profit or any indirect or consequential loss whatsoever caused or occasioned by the other PARTY arising out of or in connection with the performance of the CONTRACT.
- 11.3 The limitation of liability under the above Article 11.1 and 11.2 shall not apply in case of loss or damage arising out of fraud, fraudulent misrepresentation, wilful misconduct or the reckless or deliberate disregard of obligations under the CONTRACT.
- 11.4 SELLER shall maintain at his own expense all necessary insurances required for and adapted to his operations for the performance of the WORK including but not limited to:
- (a) insurance of the WORK to the full replacement value thereof until delivery and thereafter if required by Incoterms delivery conditions;
  - (b) general liability (including product and third party- liability) insurance with a minimum coverage of USD5 million;
  - (c) personnel insurance for illness, personal injury or death in accordance with applicable laws.
- SELLER shall ensure that the insurers of the policies described under a) and b) above waive rights of subrogation against BUYER. SELLER shall provide on BUYER's request an insurance certificate documenting that the above insurance requirements are fulfilled.

### **12 CONFIDENTIALITY**

- 12.1 The PARTIES shall keep confidential all information received from each other and all information arising out of the CONTRACT that by its nature is confidential, including the terms of the CONTRACT.

### **13 APPLICABLE LAW AND ARBITRATION**

- 13.1 Unless otherwise stated in the PO the CONTRACT and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with the laws of England and Wales.
- 13.2 Unless otherwise stated in the PO any and all disputes or claims arising out of or in connection with the CONTRACT or its subject matter or formation (including non-contractual disputes or claims) shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules in force when arbitration is commenced. The tribunal shall consist of three arbitrators. Each PARTY shall choose an arbitrator and the arbitrators so chosen shall appoint a third. If a PARTY fails and/or refuses to appoint an arbitrator within 14 days of receiving notice that the other PARTY has appointed an arbitrator, the appointing authority shall be the Chartered Institute of Arbitrators in London at either PARTY's request. The seat of the arbitration shall be London. The law governing this arbitration agreement shall be English law and the language of the arbitration shall be English. The proceedings and arbitration award are subject to strict confidentiality.