

STANDARD TERMS OF SALE

Definitions

Term	Meaning
Acceptance Certificate	an acceptance certificate that is issued when the Scope of Supply (or section thereof, if applicable) is deemed to have passed the Acceptance Tests according to these Terms.
Acceptance Tests	acceptance tests (if any) for the Scope of Supply, as stipulated in the Contract.
Base Date	the date of the Contractor's Offer.
Change Order	a written document duly signed by a representative of Client and Contractor implementing a Change Request.
Change Request	a request for a change in Contractor's Scope of Supply, including Contractor's means or methods of executing the Scope of Supply.
Changed Law	changes in or enactments of directives, laws, rules, regulations, codes or standards or new or different interpretations thereof.
Contract	the contract formed between Client and Contractor for the supply by Contractor of the Scope of Supply.
Contractor	GEA Refrigeration France – 7 rue des Orfèvres – 44840 Les Sorinières – France – RCS Nantes 855 801 825
Contractor's Offer	Contractor's quotation or offer for the Scope of Supply, including any Site Services (if and to the extent explicitly included).
Contract Price	the contract price set out in the Contractor's Offer or, in case of binding contract, in the Contract.
Costs	all costs and expenses incurred or to be incurred by Contractor, including overhead, insurance, financing costs and similar charges and a reasonable profit; when calculating Costs, the costs of the Contractor's personnel shall be based on Contractor's periodic rates as set forth in Contractor's Offer or, if not contained therein, according to its rates prevailing when the work is performed.
day	a calendar day.
Defect	a defect, including omission, at the time of delivery in the workmanship or materials of the Goods or a failure to prepare documentation or provide Site Services according to commercially reasonable skill and care.
Export Control Event	a situation where the Export Control Regulations may require an Export License or may cause additional costs, delay, prohibit Contractor's performance and/or render the Contract not reasonable to perform.
Export Control Regulations	all applicable national and international laws, regulations, orders, embargoes, administrative practices or resolutions that may prohibit or restrict the trade of the Goods.
Export License	license or an equivalent formal approval by the competent authorities for the supply of the Goods under this Contract which is required to be obtained by Contractor under the Export Control Regulations.
Force Majeure	acts of war or terrorism, riots, civil commotion, embargoes, export/import permit delays or refusals, epidemics, strikes, fires, delays in transport or customs clearance, earthquakes, floods, hurricanes, typhoons, storms, other acts of God or government or any other circumstances beyond the control of a party.
Goods	the plant, equipment, parts and materials to be delivered by or on behalf of the Contractor, as expressly listed in the Contractor's Offer or, in case of binding contract, the Contract.
including	including without limitation
Incoterm	the series of pre-defined commercial terms published under the name Incoterm® by the International Chamber of Commerce (Paris) as in force at the Base Date. Any term or expression which is defined in or given a particular meaning by the provisions of an applicable Incoterm shall have the same meaning in these Terms, but if there is any conflict between the provisions of the Incoterm and these Terms, the latter shall prevail
Process Warranties	the warranties given by the Contractor in the Contract that the Goods will meet certain requirements in respect of process, performance or functionality provided that each such warranty is expressly set out and labelled "Process Warranty" in the Contractor's Offer or, in case of binding contract, the Contract.
Client	Contractor's customer in connection with the Contract.
Client Scope	all works (including civil works, equipment, documentation and services) relevant to the Scope of Supply which are not expressly included in Contractor's Scope of Supply, including any works specified in these Terms or Contractor's Quotation as being the responsibility of Client (including third parties for whom Client is responsible).
Schedule	the time schedule for the Scope of Supply as set out in the Contractor Offer or, in case of binding contract, in the Contract, as such schedule may be modified according to Clause 6.6 of these Terms.
Scope of Supply	the Goods, documentation and services (including Site Services, if any) expressly listed as the Contractor's responsibility in the Contractor's Offer or, in case of binding contract, the Contract.
Site	the place at which the Goods is to be installed.
Site Services	the services provided by the Contractor at the Site, including to the extent applicable erection, commissioning and acceptance testing of the Goods or the supervision thereof, as expressly listed as the Contractor's responsibility in Contractor's Offer or, in case of binding contract, the Contract.
Testing Protocol	has the meaning set forth in paragraph 2 of Annex A.
Terms	these Terms of Supply and Site Services, including Annex A (where applicable).
Warranty Conditions	has the meaning set out in Clause 8.1.5.
Warranty Period	unless stated otherwise in Contractor's Offer or, as the case may be, in the Contract a fixed and non-extendable period of twelve (12) months from date of initial operation of the Goods or eighteen (18) months from readiness of delivery of the relevant Goods or service, whichever is the shorter.

General Provisions

These Terms shall apply to and form an integral part of any Contractor's Offer and any Contract.

Unless otherwise expressly agreed upon between the Parties, any provision of the Client's purchase order, offer, acceptance or other document or requirement of Client which forms a part of the Contract and is in conflict or inconsistent with these Terms or which imposes on Contractor liabilities that are additional to or different from those set forth in the Terms shall not apply to the Contract and is of no force or effect. Client's terms of purchase, if any, shall not apply to the Contract and are of no force or effect.

These Terms shall prevail over any inconsistent or conflicting provision of the Contract (including Contractor's Offer), except only where (i) the Contractor has by way of its Contractor's Offer or a duly signed document expressly amended a provision of these Terms and has referenced the specific provision of these Terms being amended or (ii) these Terms expressly provide for an option to deviate from the respective provision in Contractor's Offer or, as the case may be, in the Contract.

1. Scope of Supply:

- 1.1 Contractor's works shall be limited to the Scope of Supply. The Client shall be responsible for the Client Scope. Client acknowledges that information that was provided to him by Contractor prior to the effective date of Contract is accurate, complete and sufficient for him to enter into the Contract. Client further acknowledges that he disclosed all information of decisive importance for the consent of Contractor to enter into the Contract. Should the Client lack competence or knowledge regarding Client's Scope or should the Client need additional information from Contractor, he shall as soon as reasonably possible inform the Contractor thereof.
- 1.2 Where the Scope of Supply is required to interface with other equipment of Client or the Client's other contractors, Client shall be responsible for such interface, including its dimensions and compatibility.

2. Change Orders / Contract Execution / Documents:

- 2.1 Client may propose Change Requests. In case of a Change Request, Contractor will notify Client of how the proposed Change Request can be carried out and which modifications to the Contract (including contract price, schedules, etc.) are required. If Client wishes to proceed with a proposed Change Request, the Parties will agree to a Change Order. Contractor shall have no obligation to carry out any Change Request until a written Change Order has been signed by both parties; however, if Client requests that Contractor proceeds with the Change Request (without a written Change Order) and Contractor, in its sole and absolute discretion, does so, Contractor shall be entitled to reimbursement of its resulting Costs and to an extension of time for any resulting delay. Contractor may request Change Requests to be executed at its expense; such Change Requests will be granted by Client absent material reasons.
- 2.2 Pre-delivery inspections and tests, if any, shall be stipulated in and limited to those set out in the Contract. Any pre-delivery inspections and/or tests not provided for in the Contract shall be subject to the Change Order procedure in Clause 2.1. If not stated otherwise, such pre-delivery inspections and tests shall be performed in accordance with Contractor's standard inspection procedures.
- 2.3 Where Contractor issues documents for approval, these must be approved (with comments, if any) and returned to Contractor without undue delay but in any event no later than 7 days after their respective submittal; otherwise such documents will be deemed approved. Client may refrain from giving its approval only if and to the extent it can show that the document in question is contrary to the requirements of the Contract.
- 2.4 The Contractor reserves the right to substitute items of the Scope of Supply provided that any such substitution shall be with an item of equal or better standard. Contractor may execute the Contract pursuant to its own plans, procedures, and working methods, except to the extent they conflict with any express provision of the Contract.
- 2.5 Client shall ensure that each delivery and other activity of the Client Scope is commenced, performed and completed in a timely and sufficient manner so the Contractor is able to commence, perform and complete its Scope of Supply (including Site Services) in accordance with the Schedule and without delay, disruption, hindrance or obstruction of any kind.

3. Site Services:

- 3.1 If Site Services are included in the Scope of Supply, Client shall ensure that Contractor has safe and appropriate access to the Site at all times required by Contractor. Where the Contract provides for Acceptance Tests, Annex A shall apply.
- 3.2 In case the Scope of Supply is to be installed by Contractor or under its supervision within any building or other civil works not provided by the Contractor, the civil works (including the ceilings, walls, floors and related penetrations) shall be ready by such time and in such condition as may be required by the Contract and/or the Contractor in writing. Any failure by Client to perform this obligation will entitle Contractor to suspend its Site Services upon written notification thereof, stating which civil works are delaying, disrupting, hindering or obstructing Contractor's works.
- 3.3 For the purpose of the Contractor carrying out the Site Services, the Client shall be responsible for providing all of the following:
 - (a) civil works;
 - (b) feed and other raw materials for making product; consumables and utilities, each in strict conformity with all requirements of the Contract and the Contractor
 - (c) communications connections;
 - (d) trained and qualified labourers, operators and other personnel required by Contractor;
 - (e) safe and reliable equipment to assist in the transport of the Goods at the Site, including cranes and other lifting and transport equipment (to be operated and maintained by the Client's personnel);
 - (f) a secure lock-up dry room for keeping tools and small machine parts;

- (g) security;
 - (h) sufficient lighting;
 - (i) heating or cooling of the buildings at the Site to ensure reasonable climate and required ambient conditions for performing Site Services;
 - (j) office space and facilities and welfare, messing, changing and washing facilities;
 - (k) any drawings or information which the Contractor may require for the purposes of carrying out the Site Services;
 - (l) special tools required for commissioning of the Goods; and / or
 - (m) analyses of feed, utilities and product according to the Contractor's requirements.
- 3.4 Under no circumstances will Contractor be responsible for the acts and/or omissions of any other contractor or person provided or made available by Client or for works or any equipment supplied by them, either by way of a deemed employer or otherwise, or for their payment, welfare, provision of safety equipment or safe means of working, or for their work, productivity or workmanship. Client shall be solely responsible for any failure of such persons or contractors to strictly comply with the instructions and requirements of Contractor. Subject to applicable law, Client shall indemnify, defend and hold Contractor harmless from any resulting claims and liability for loss or damage to any property or for personal injury or death in any way arising out of the acts or omissions of any such persons and contractors, save in each case to the extent directly caused by the negligence of Contractor.
- 3.5 In the event Contractor through no fault of its own is unable to obtain, either at all or within the time required for keeping the Schedule, any required visa or work permit for the personnel to travel to the Site or to carry out the Site Services, the provisions of Clause 6.6 shall apply.

4. **Payment:**

- 4.1 Unless otherwise expressly stated in the Contractor's Offer or Contract, payment of the Contract Price by the Client shall be.:
- 30 % on the definitive conclusion of the Contract;
 - 50% upon delivery of or readiness of delivery of the Goods;
 - 15 % upon Plant Acceptance;
 - 5% upon finalization of the punch list – if any - issued with the Acceptance Certificate but in no event later than three (3) months after the date of Plant Acceptance if such finalization is postponed for reasons not attributable to Contractor.;
- 4.2 All payments are to be made by electronic transfer, net cash without any deduction, in Euros unless a different currency is stated in the Contractor's Offer and within thirty (30) days of the date of Contractor's applicable invoice delivery. Notwithstanding the foregoing, first instalment at the conclusion of Contract shall be payable upon presentation of the invoice.
- 4.3 Payment shall not be deemed effected until irrevocably available funds have been received in full by Contractor in its nominated bank account.
- 4.4 Client shall notify Contractor in writing of any reasonable objection to the validity of any invoice within five (5) days of receipt, absent which the invoice shall be deemed valid and payable.
- 4.5 Client shall have no right of set-off or right to make any form of withholding or retention against any payment of the Contract Price.
- 4.6 The Contractor shall have no obligation to commence any Scope of Supply until the first instalment of the Contract Price has been received by the Contractor according to Clause 4.3.
- 4.7 If any payment is not received by the applicable date for payment, Contractor shall be entitled to interest thereon at [a rate equal to the most recent refinancing rate of European Bank plus ten percent (10) % per year and pro rata for any part thereof, without formal demand being made. In accordance with article L.441-6 of the French Commercial Code, in the event of late payment, a lump sum of forty (40) euros will be payable for collection costs, in addition to the late penalties stipulated. The Contractor also reserves the right to request additional compensation when the costs incurred by the Contractor exceed the sum of forty (40) euros. In addition and upon 7 days' written notice to that effect, Contractor may suspend all or part of its performance under the Contract until the payment and any due interest is received in full.
- 4.8 In the event of any delay in the commencement of the Scope of Supply for reasons attributable in whole or in part to Client and/or any suspension by Contractor pursuant to Clause 4.7, Clause 6.6 shall apply. If any payment has still not been received in full by Contractor 21 days after the applicable due date, then, irrespective of whether or not Contractor has commenced any portion of the Scope of Supply and/or suspended its works, Contractor shall be entitled by written notice with immediate effect to terminate the Contract pursuant to Clause 10.3.
- 4.9 Where the achievement by the Contractor of a certain milestone or activity that is necessary for the Contractor to become entitled to all or a portion of the Contract Price is unduly delayed by the Client or third persons for whom the Client is responsible, then without prejudice to any other right or remedy which the Contractor may have, the Contractor shall for payment entitlement purposes be deemed to have achieved the milestone or activity by latest thirty (30) days after the date on which it would have been achieved had there been no delay.
- 4.10 The due date for payment of sums payable to the Contractor under the Contract other than the Contract Price shall be thirty (30) days after receipt by the Client of the applicable Contractor's invoice and the foregoing provisions of this Clause 4 shall equally apply to such sums.

5. **Taxes:**

- 5.1 The Contract Price and any other amounts to be paid to Contractor are exclusive of, and Client shall be responsible for, all duties, taxes (including without limitation value added), assessments or charges of any kind, except to the extent any taxes or other charges that are assessed on the profits of Contractor or which under the applicable Incoterm relating to delivery of the Scope of Supply are payable by the Contractor.
- 5.2 If any duties, taxes, assessments or charges are imposed on Contractor by authorities in the country where the Scope of Supply will be installed in connection with any Site Services and/or in connection with the Contract itself, Client shall reimburse Contractor all such amounts.
- 5.3 Where the Client is obliged by applicable law to make a deduction from any payment due to the Contractor in relation to any such duties, taxes, assessments or charges, the Client shall increase the payment to be made such that the net payment received by the Contractor is without any such deduction.

6. Delivery / Risk of Loss / Delays:

- 6.1 Contractor shall deliver the Goods according to the applicable Incoterms stated in the Contract by the date specified in the Schedule. If no Incoterm is stipulated, delivery shall be Ex Works manufacturer plant as specified by Contractor. If no manufacturer plant is specified, then delivery shall be Ex Works Contractor's premises. In case the respective stipulated Incoterm obliges Contractor to perform any import formalities for the import into the country of delivery, Client at its cost is obliged to support Contractor in any way reasonably required by Contractor. Any delay (other than a delay by Contractor) in completion of import formalities shall be an event entitling the Contractor to an extension of time and compensation of Costs according to Clause 6.6.
- 6.2 Transfer of risk of loss and damage to the Scope of Supply shall be in accordance with the stipulated Incoterm applicable at the date of Contractor's Offer. The inclusion of any Site Services within the Contractor's Scope of Supply shall not alter this transfer of risk of loss and damage and shall not create any assumption by Contractor of any form of care, custody and control over any Client Scope and/or the Site.
- 6.3 Statements of packing, measurements and gross weight are an approximate guide and not binding on Contractor.
- 6.4 Contractor may deliver the Scope of Supply from multiple locations, including different countries and may use different types of transport. Partial deliveries and trans-shipments are allowed.
- 6.5 Upon delivery or the provision of any Scope of Supply, Client will inspect the relevant Scope of Supply and promptly (but in no event more than 7 days) inform Contractor in writing of any Defect under Clause 8.1.1. Such inspection or the relevant Scope of Supply shall be witnessed by Contractor. Contractor will thereupon remedy any such omission or Defect. If Client fails to accept any Scope of Supply when tendered at the point of delivery, Contractor may deliver the same to a bonded warehouse, at Client's cost and risk, including insurance and storage costs, and shall be deemed to have fulfilled its delivery obligations under the Contract and be entitled to payment of any amounts contingent upon delivery. Except where an Acceptance Test is stipulated and governed by Clause 8.1 or 8.2 and where Client has given written notice pursuant to the first sentence of this Clause 6.5, the Goods and documents included in the Scope of Supply shall be deemed accepted for all purposes at their respective delivery and Site Services shall be deemed accepted for all purposes at their respective completion, provided such acceptance shall not be with prejudice to Client's warranty entitlements under Clause 8.1 or Clause 8.2.
- 6.6 In case of (i) any variation pursuant to Clause 2.1; (ii) any suspension; (iii) exceptionally adverse climatic conditions; (iv) unforeseeable shortages in the availability of personnel or goods attributable in whole or in part to Force Majeure; (v) any delay, disruption, impediment or prevention of Contractor or any breach of contract caused by or attributable in whole or in part to Client (including third parties for whom it is responsible), or (vi) any other event or circumstance for which these Terms or the Contract or applicable law gives Contractor an entitlement under this Clause, Contractor shall be entitled to payment by Client of its additional Costs and to an extension of time for any delay incurred. Contractor shall give written notice to Client of any event giving it an entitlement under this Clause within a reasonable time after becoming aware of the event so that a Change Order can be negotiated and agreed upon between the parties.
- 6.7 If Contractor is more than 2 weeks late in delivering the Goods according to the applicable Incoterms for reasons attributable to the fault of Contractor (and not for any reasons attributable in whole or in part to Client), Client shall be entitled to liquidated damages (and not a penalty) in an amount equal to 0.25% of the portion of the Contract Price attributable to the value of the delayed portion of the Goods for each full week of delay up to an overall aggregate maximum delay liquidated damages of 5% of the Contract Price. Such liquidated damages shall not be due where Contractor has failed to deliver only minor portions of the Goods that do not delay completion of the Scope of Supply or where Client has not incurred any resulting loss or damage. Subject to article 1231-5 of French Civil Code, payment of the liquidated damages shall constitute full and complete satisfaction of any claim of Client, and Client's sole and exclusive remedy, against Contractor arising from or in connection with any delay of the Contractor in connection with its Scope of Supply. Any and all other claims for delay or late performance, including any delay in meeting any intermediate or other dates or milestones, shall be excluded.
- 6.8 Each party shall be released from the performance of its obligations under the Contract to the extent such performance is delayed, disrupted, hindered or obstructed by Force Majeure. A party shall give written notice of the occurrence of any Force Majeure within 14 days of becoming aware of its occurrence. In case such Force Majeure delays should exceed 3 months in the aggregate, each party shall be entitled, to terminate the Contract by notice with immediate effect. In case of such termination, Contractor shall be entitled to all payments then due but unpaid on the date of termination and to all costs and expenses incurred in respect of the following (i) performing the Contract to date; (ii) ceasing its obligations under the Contract; (iii) in contemplation of carrying out all of its obligations under the Contract; (iv) demobilization; and (v) cancelling any related subcontract (including reasonable cancellation fees), and in each case to the extent not covered by the Contract Price as paid to Contractor on the date of termination. Save for the obligations under Clause 9 and subject to clause 1218 of French Civil Code, neither party shall have upon termination of the Contract any other or further liability or obligation to the other party under or arising out of the Contract to the maximum extent permitted by applicable law.

7. Ownership:

7.1 Title in the Scope of Supply will transfer to Client when Contractor has received payment of the Contract Price in full. This retention of title until payment in full shall not affect the passing of risk of loss or damage in the Scope of Supply pursuant to Clause 6.2. Until payment of the Contract Price is received in full, the Scope of Supply shall not be sold, pledged or otherwise encumbered or (unless otherwise specified in the payment terms) used for commercial production without Contractor's prior written consent.

8. Warranties:

8.1 Warranties regarding Goods, Documentation and Site Services:

8.1.1 Subject to the provisions of this Clause 8.1 and Clause 8.3, the Contractor warrants that the Scope of Supply shall be free of Defects. This warranty shall expire on the last day of the Warranty Period. Within the same limits, warranty for hidden defect of the Contractor is expressly excluded.

8.1.2 Contractor shall be responsible for remedying any Defect under Clause 8.1.1 provided that Client promptly gives detailed written notice to Contractor of the Defect and in any event within 7 days of discovery and before the end of the Warranty Period.

8.1.3 To the maximum extent permitted by applicable law, the Contractor shall have no liability for any form of Defect under Clause 8.1.1, latent or otherwise, for which it received written notification after the Warranty Period. For the avoidance of doubt, the warranty period of any Scope of Supply that has been rectified by the Contractor during the Warranty Period shall expire at the expiry of the Warranty Period.

8.1.4 Where Contractor is responsible for a Defect under Clause 8.1.1, Contractor shall investigate and rectify the same as soon as reasonably practicable (taking into consideration the nature of the Defect, lead-time for replacement parts, etc.). Rectification of a Defect under Clause 8.1.1 relating to Goods included in the Scope of Supply shall be by way of repair or replacement, at the Contractor's option, of the relevant part of the Goods that is defective. Rectification of a Defect under Clause 8.1.1 relating to services (including Site Services) and documentation included in the Scope of Supply shall be by way of re-performance by Contractor of the relevant part of the service or documentation that is defective. Client shall in each case give Contractor all necessary and safe access to and possession of the Site. Notwithstanding article 1221 and 1222 of French Civil Code, where Contractor fails to carry out its obligations within a reasonable time, Client shall be entitled, upon giving not less than 7 days' prior written notice to that effect, to have the Defect in question rectified by a third party at the cost of Contractor, to the extent Contractor would have been responsible for such cost under Clause 8.1, Client has reasonably mitigated its costs and Contractor has not commenced rectification within the noticed period and diligently pursued rectification thereafter. The Contractor shall have no responsibility for any such works performed by a third party. Any replacement parts shall be delivered according to the same delivery (Incoterms) terms as specified in the Contract. Client shall be responsible for all labour, equipment, costs used or incurred in the disassembly, removal, transport, installation and commissioning of repaired or replaced defective parts. Contractor shall not be deemed to have breached any of its warranty obligations where it has rectified a Defect according to the foregoing.

8.1.5 Contractor's responsibility for any Defect under Clause 8.1.1 is subject to the condition that it is not caused by one or more of the following: (a) normal wear and tear of parts; (b) use of non-original spare parts; (c) use of feed, consumables or utilities not in strict conformity with the specifications stated in the Contract or with Contractor's recommendations; (d) any failure of upstream and/or downstream equipment; (e) modifications without Contractor's express prior written consent; (f) use of corrosive or abrasive substances; (g) the storage, handling, use, operation or maintenance of any Goods which is not in strict conformity with good engineering practice, the Contract or any written requirements of the Contractor, including any failure to comply with Contractor's written manuals and instructions and Client's own quality assurance requirements; (h) information, services, personnel, equipment or other items supplied by or for Client; (i) failure to permit Contractor to perform Acceptance Tests, supervision of installation and/or installation; and/or (j) other conditions or circumstances not due to the fault of Contractor (collectively, "Warranty Conditions").

8.1.6 If the Contract provides for Acceptance Tests for purposes other than those stipulated in Clause 8.2, such tests shall be performed to verify whether the Goods is free of material Defects under the warranty stated in Clause 8.1.1. In such case, these Acceptance Tests will be subject to the provisions of paragraphs 1, 2 and 4 of Annex A. Contractor's obligations in respect of these Acceptance Tests will be discharged in full and Client shall be deemed for all purposes to have accepted the Scope of Supply upon the earliest of: (i) Client takes the Goods into use; (ii) the Acceptance Tests have not been held or passed for reasons attributable in whole or in part to Client within 1 month from completion of commissioning, 3 months from completion of installation or 4 months from readiness of delivery of the main Goods, whichever is earliest; or (iii) a material Defect is identified during the tests and Contractor has rectified the Defect according to the provisions of Clause 8.1.4.

8.2 Process Warranties:

8.2.1 Subject to the provisions of this Clause 8.2, Clause 8.3 and Annex A, the Contractor warrants that the Goods will meet the Process Warranties (if any). This warranty expires when the Process Warranties are discharged according to paragraph 3 of Annex A.

8.2.2 Technical figures, data and other descriptions of any kind concerning or relating to the process, performance or functionality of the Scope of Supply, including its individual parts, which are not expressly and specifically labelled "Process Warranty" shall not constitute a Process Warranty as that term is used in these Terms. Such figures, data and descriptions shall be indicative only and non-binding.

8.2.3 All Process Warranties, if any, are subject to: i) a steady and constant stream of feed, materials and utilities in strict conformity with the specifications stated in the Contract; ii) the furnishing by Client of trained, qualified and sufficient personnel as required by Contractor during the Acceptance Tests; iii) Contractor is given access to all operating and maintenance records and data and Client undertakes all analyses of product, utilities and feed as required by Contractor in writing; iv) Contractor performs or technically directs the performance of the Acceptance Tests; v) any Warranty Conditions to the extent not stated in the foregoing; and vi) the conditions and other provisions of Annex A.

8.3 Disclaimer and Limitations:

To the fullest extent permitted by applicable law, (i) Contractor hereby excludes and disclaims all conditions, warranties, guarantees and representations that are not expressly set out in Clauses 8.1 and 8.2 above or which are implied, or otherwise and which, but for this exclusion and

disclaimer, would or might subsist in favour of Client, (ii) Contractor shall not be liable for any loss or damage, including any loss or damages described in Clause 10.4 below, caused by or resulting from any breach of warranty or any defect, including any Defect covered by Clause 8.1 or any failure to achieve any Process Warranty covered by Clause 8.2.

9. Confidentiality and IP:

- 9.1 Each party shall treat all information, drawings and data of any kind made available or provided by the other party under the Contract whether orally, electronically, in writing, visually (such as through site visits, tests or audits) or otherwise and regardless of whether marked "confidential" ("Confidential Information") as private and confidential. The receiving party shall not publish or disclose Confidential Information or any particulars thereof (except as may be necessary for the purposes of the Contract, including disclosure to its and its affiliates' officers, directors and employees, and/or as required by the rules of a public stock exchange or by applicable law), without the previous written consent of the disclosing party. Nothing in this Clause 9 shall prevent the publication or disclosure of any Confidential Information which either has come within the public domain otherwise than by breach of this provision or was already in the possession of the receiving party with a right to disclose and use such information.
- 9.2 Any disclosure for the purposes of the Contract shall be made against an undertaking of non-use and confidentiality from the receiving party on terms at least as stringent as set out in this Clause 9. In respect of any disclosure required by a stock exchange or by applicable law, the receiving party shall disclose only that portion of the Confidential Information it is legally required to disclose and to exercise all reasonable efforts to obtain confidential treatment for such Confidential Information.
- 9.3 The intellectual property rights in any Goods, document or other information given or made available (by visual inspection or otherwise) to Client under the Contract or applied to and embodied in the Scope of Supply and the Site Services shall remain the exclusive property of Contractor (or its subcontractors).
- 9.4 Subject to payment in full by Client of the Contract Price, Client shall have a non-exclusive, non-transferable and royalty free license to use the intellectual property rights in the Scope of Supply and any Confidential Information provided by Contractor for the sole purpose of operating and maintaining the Goods provided under the Contract and strictly for the application and use set out in the Contract, subject at all times to subsisting third party rights and the obligation of confidentiality and the Contractor's receipt of payment in full of the Contract Price. The Client may transfer the intellectual property rights in the Scope of Supply only together with the title in the Scope of Supply.
- 9.5 Contractor shall not be liable to Client for the infringement of any intellectual property rights unless Contractor's design of the Goods is found by final court decision against Contractor to infringe an apparatus patent claim of a third party, provided that Contractor shall have no such obligation if the claim is based on or relates to: (i) the interconnection, combination or use of the Goods with equipment, services, systems or software not supplied by Contractor; (ii) specifications, including designs and instructions, prepared by the Client or third parties on its behalf; (iii) modification of the Scope of Supply without Contractor's prior written consent; (iv) any process, method, product or by product process patent claim; (v) the use of the Scope of Supply as part of a Client process, including any product thereby produced or processed; (vi) any patent issued outside the country where Contractor has its registered offices; or (vii) any patents owned or acquired by Client or by any holding company and subsidiary of Client. In case an exception applies, Client shall be fully responsible for such claim and pay any costs incurred by Contractor.

10. Remedies and Limitations of Liability:

10.1 Reasons for Termination:

- 10.1.1 Unless otherwise permitted by law particularly but not limited to cases of emergency, a party may terminate the Contract by giving written notice thereof to the other party if: (i) a provision of these Terms gives the party an express entitlement to terminate the Contract, (ii) the other party fails to perform any material obligation under the Contract and has not commenced a cure of the failure within 30 days of receipt of written notice of such failure from the non-defaulting party and does not diligently pursue the cure thereafter, (iii) subject to applicable law, the other party becomes the subject of liquidation, bankruptcy or other insolvency proceedings, has a receiver appointed over any of its assets or undertakings, makes any arrangement or composition with its creditors, (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction) or is the subject of any similar arrangement, event or proceedings. Such notification of termination shall clearly indicate the willingness of the party issuing the notice to terminate the Contract.

10.2 Termination by Client:

- 10.2.1 Where Client has a right to terminate the Contract pursuant to Clause 10.1.1 and Client has terminated the Contract by giving timely written notice thereof, the liability of Contractor to Client upon such termination shall be to pay either the reasonable additional costs in excess of the Contract Price that are required to complete the Scope of Supply or the difference between the fair market value of the Scope of Supply as delivered and the Contract Price, whichever is less. To the maximum extent permitted by applicable law, but without prejudice of article 1223 of French Civil Code, such rights of Client upon termination shall be to the exclusion of any other remedies that may be available to Client in case of termination or rescission / withdrawal.
- 10.2.2 Contractor shall have no liability for any other cost and expense, loss or damages howsoever incurred by Client and, save for the obligations under Clause 9 and Clause 10.2.1 above, neither party shall have any further liability or obligation to the other party under or arising out of the Contract, to the maximum extent permitted by applicable law.
- 10.2.3 In case expressly stated in Contractor's Offer or, as the case may be, in the Contract that Client may be entitled to terminate the Contract for convenience or in case the Client may be entitled to such right under the applicable statutory law and where Client exercises such right the Contractor shall be entitled to compensation as if the Contract had been terminated due to an event of Force Majeure according to Clause 6.8 above save that Contractor shall also be entitled to payment of the full profit that the Contractor expected under the Contract.

10.3 Termination by Contractor:

Where Contractor has a right to terminate the Contract pursuant to Clause 10.1.1 and Contractor terminates the Contract by giving timely written notice thereof, the Contractor shall be entitled to compensation as if the Contract had been terminated due to an event of Force Majeure according to Clause 6.8 above save that Contractor shall also be entitled to payment in full of the profit that the Contractor expected under the Contract.

10.4 Exclusion of Certain Damages:

EXCEPT TO THE EXTENT PROHIBITED BY LAW, THE PARTIES EXPRESSLY AGREE THAT NON MATERIAL (intangible) DAMAGES AND LOSSES SHALL BE EXCLUDED, INCLUDING BUT NOT LIMITED LOSS OF REVENUES OR PROFITS; LOSS OF OPPORTUNITY, PRODUCTION OR CONTRACTS; LOSS OF USE; STANDBY COSTS; LOSS OF OR DAMAGE TO FEED, RAW MATERIALS, UTILITIES OR PRODUCT; PLANT DOWNTIME OR DELAYS; LOSS OF GOODWILL; LIQUIDATED DAMAGES OR PENALTIES IMPOSED ON PURCHASER BY ITS CUSTOMERS OR THIRD PARTIES; PURCHASER'S CONTRACTUAL LIABILITY TOWARDS ANY THIRD PARTY; RECALL COSTS; ANY DAMAGES FINES OR PENALTIES PAYABLE BY PURCHASER; OR OTHERWISE FOR ANY FINANCIAL OR ECONOMIC LOSSES OR DAMAGES, AND IN EACH CASE IRRESPECTIVE WHETHER THE LOSSES OR DAMAGES IN QUESTION ARE DEEMED TO BE DIRECT, CONSEQUENTIAL, INDIRECT OR OTHERWISE.

10.5 Maximum Aggregate Liability:

CONTRACTOR'S MAXIMUM AGGREGATE LIABILITY TO PURCHASER UNDER OR IN CONNECTION WITH THE CONTRACT SHALL IN NO CASE EXCEED IN THE AGGREGATE 100% OF THE CONTRACT PRICE AS RECEIVED BY THE CONTRACTOR, IRRESPECTIVE WHETHER SUCH LIABILITY ARISES BY WAY OF BREACH OF CONTRACT (INCLUDING TERMINATION) OR OF STATUTORY DUTY, CONTRACTUAL LIABILITY, INDEMNITY, CONTRACT PRICE REDUCTION OR REPAYMENT, TERMINATION, RESCISSION/WITHDRAWAL, MAKE GOOD OR REMEDIATION OR OTHERWISE. THIS LIMITATION DOES NOT APPLY TO DAMAGES CAUSED BY CONTRACTOR'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OR FOR PERSONAL INJURIES.

THE PARTIES AGREE THAT (I) PRICES AND UNDERTAKINGS UNDER THIS AGREEMENT TAKE INTO ACCOUNT THIS LIMITATION OF LIABILITY AND (II) SUCH LIMITATION OF LIABILITY DOES NOT IMPAIR ANY ESSENTIAL OBLIGATION OF EITHER PARTY UNDER THIS CONTRACT.

- 10.6 The expiry of the Warranty Period shall, to the maximum extent permitted by applicable law and save only as set out in the last sentence below, constitute conclusive evidence for all purposes and in all proceedings whatsoever between the parties that Contractor has completed its obligations under or arising out of the Contract and performed the Scope of Supply and made good all Defects therein in accordance with its obligations under the Contract. After the expiry of the Warranty Period, all claims of any nature whatsoever the Client may have against Contractor, whether known or not, under or arising out of the Contract and the use of the Scope of Supply, and any right, cause of action and or remedy shall be deemed to be barred and extinguished. Provided always that this provision shall not apply in case of fraud or to the extent any proceedings were commenced and served in writing on the Contractor within the Warranty Period.

11. Directives / Changed Laws / Permits / Safety:

- 11.1 The Goods shall comply with governmental directives, laws, rules, regulations, codes and standards, if any, that are expressly stated in Contractor's Offer, as the same are in effect on the Base Date. If after the Base Date any Changed Law affects the Scope of Supply and/or the Contractor's means or manner of executing its works and which the Contractor is required by such Changed Law to comply with and implement, Contractor shall be entitled to an equitable adjustment, including the remedies set out in Clause 6.6. Contractor shall have no responsibility for compliance with any emission, discharge or other environmental requirements, except to the extent set out in any Process Warranties. The Contractor shall have no responsibility for any other Changed Law.
- 11.2 Client shall be responsible for (i) all permissions, consents and permits in connection with the Site, and with owning, erecting, testing, commissioning, operating and maintaining the Goods and any related equipment, plant, facilities or utilities, and for the performance of the Site Services (if applicable); (ii) maintaining the Site in a safe working condition and as a safe place of work for all personnel at the Site at any time, providing safe means of access to the Scope of Supply at all times, conducting all activities on the Site in a safe manner and as prescribed by applicable directives, laws, rules, regulations, codes and standards and as set forth in the operating and maintenance manuals and instruction sheets furnished by Contractor; (iii) not removing or modifying any safety device, guard or warning sign provided as part of the Scope of Supply. If the Client fails to strictly observe any of the obligations in this Clause, Client shall indemnify, defend and hold Contractor harmless from any resulting claims and liability arising out of loss or damage to any property or out of personal injury or death, save to the extent directly caused by the negligence of Contractor.

12. Amendment to the Contract:

- 12.1 No change in, addition to, or waiver of the provisions of the Contract shall be binding upon Contractor or Client, unless contained within an identified written formal amendment to the Contract and signed by both parties.

13. Export Control:

- 13.1 Client acknowledges that the Goods to be provided by Contractor are or may be controlled by Export Control Regulations which may result in an Export Control Event. In case of an Export Control Event Contractor shall be entitled to all additional costs and expenses which may be needed for Contractor to fulfil its obligations under the Contractor's Offer or, in case of binding contract, the Contract, including costs and expenses needed to obtain an Export License. Client agrees to provide to Contractor with undue delay all necessary information that may be requested to obtain an Export Licence, such as end-user certificates. Contractor will inform Client about material delay to obtain an Export License, a revoked license or any prohibition to execute the contract with undue delay.

- 13.2 If an Export License is denied or revoked or if an embargo prohibits the execution of the Contract or if any other Export Control Event will hinder Contractor to fulfil one or more of its contractual obligations Contractor shall be excused from the performance of its obligations under the Contractor's Offer or, in case of binding contract, the Contract, with immediate effect. This shall, without limitation, also apply in case that Contractor may be hindered to fulfil its contractual obligations due to the fact that any of Contractor's suppliers or subcontractors are hindered by an Export Control Event to supply the Goods all or in part. In any case Contractor shall not be liable or accountable to Client for any claims for delay, loss or damage in connection with an Export Control Event.
- 13.3 Subject to Clause 13.2, if Contractor gives notice to Client that its performance of the Contractor's Offer or, in case of binding contract, the Contract will be hindered by Export Control Regulations and/or Export License or embargos, each party shall be entitled to revoke the Contractor's Offer or, in case of binding contract, terminate the Contract, by giving one week prior written notice. In the event of such termination Contractor shall be entitled to all costs and expenses for all work in progress under the contract or for which Contractor is liable to pay to any supplier or subcontractor due to the termination, as well as to all losses and damages arising from or related to the termination.
- 13.4 Client shall implement and follow all necessary procedures to comply with Export Control Regulations related to the Goods to be provided by Contractor, and guarantees not to engage in any activity which it or Contractor reasonably believes could be subject to civil, criminal or administrative liability, including but not limited to the sale, lease, transfer, or sublicensing of any Goods without appropriate authorization. Client shall indemnify and hold harmless Contractor from and against any claim, proceeding action, fine, cost, loss and damage arising from or related to the breach of this warranty.

14. Data Processing:

- 14.1 Client agrees that Contractor will collect, process and use personal data and other data disclosed by Client in the course of the business relation with Contractor for the purpose of (1) managing and performing the Contract with Client (which includes the creation and processing of invoices), (2) advertising and/or offering further goods and services to the Client and/or (3) managing the business relationship with Client through e.g. a customer relationship management system. Such data may include the following data categories of persons being employed or retained by Client *inter alia* name, title, company, function within the company, business contact details (phone- and fax-number, email-address, mail address), history of orders, history of issues (e.g. warranty claims or disputes). Within the limitation of the above described purpose, Contractor can collect, process and use the above described data (i) by itself and/or through the use of affiliates or other external subcontractors and (ii) from countries within and/or outside the European Union or European Economic Area. Client will ensure (e.g., if necessary, through consent declaration of the data subjects or other appropriate means available under the law) that Contractor can use the above described data for the above described purposes.

15. Miscellaneous:

- 15.1 If any provision of the Contract is determined to be invalid or unenforceable, this shall not affect the validity or enforceability of the remaining provisions and the parties will substitute the invalid or unenforceable provision by a valid provision that achieves as closely as possible the same economic effect.
- 15.2 Silence does not count as acceptance except where so provided by the Contract.
- 15.3 Any Clause or paragraph headings or other headings appearing in the Terms are for reference only and shall not affect the construction of those Clauses or paragraphs. Words importing the singular shall include the plural and vice versa where the context requires.
- 15.4 Any reference to a statute or to regulations (whether or not specifically named herein) shall, but without prejudice to Clause 11 above, include any amendment or re-enactment thereof for the time being in force and shall include all instruments, orders, plans, regulations, bye-laws, permissions and directions for the time being made, issued or given thereunder or deriving validity therefrom.
- 15.5 All communications, verbal or written, notices, documents and drawings given by one party to the other or exchanged or made available between the parties, and including in the course of any Site related activities where applicable, shall be in French in a fluent, correct and intelligible manner, and if applicable and required by circumstances, in English.
- 15.6 The Contract shall not be construed or interpreted against or to the disadvantage of either Client or Contractor whether on the grounds that the Contract represents Client's or Contractor's standard or customary terms and conditions of business and /or that the Contract and or any particular recital, article, clause and or annex or appendix thereof may have originated from Client or Contractor or other similar grounds.
- 15.7 The Contract sets forth the entire agreement between Contractor and Client with respect to the subject matter thereof and supersedes any previous agreement or arrangement between the parties. Except to the extent expressly and specifically set forth in the Contract, all oral representations, warranties, undertakings and other statements of any kind and all documents given or exchanged on or prior to the date of Contract (including any brochures or sales material of Contractor) are expressly excluded and disclaimed by Contractor. Client acknowledges that it has not relied on and is not relying on any such representations, warranties, undertakings, statements or documents when entering into the Contract.
- 15.8 The Contract may not be assigned in any manner by either party without the other party's prior written consent, but this shall not require Contractor to obtain any consent, or otherwise limit its entitlement, to subcontract any part or parts of its obligations under the Contract as it may see fit.
- 15.9 Client shall ensure that Contractor and its subcontractors carrying out the Site Services (if applicable) are covered under an all-risk insurance policy applicable to the Scope of Supply and the Site. Such cover shall be primary and name Contractor as an additional insured. Contractor shall be entitled upon request to a copy of the policy in question. The deductible, if any, shall be at Client's cost.

16. Disputes:

- 16.1 ANY DISPUTE ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT, INCLUDING ANY QUESTION REGARDING ITS EXISTENCE, VALIDITY OR TERMINATION, SHALL EXCLUSIVELY BE REFERRED TO AND FINALLY RESOLVED BY THE COMPETENT COURTS WHERE THE

CONTRACTOR'S COMPANY IS SEATED . THE GOVERNING LAW OF THE CONTRACT SHALL BE THE SUBSTANTIVE LAWS OF FRANCE;
HOWEVER, THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS SHALL NOT APPLY.

ANNEX A ACCEPTANCE TESTS AND PROCESS WARRANTIES

1. **Acceptance Tests / Conditions:** If not otherwise stated in the Contract, Acceptance Tests will be conducted promptly after the Goods have been commissioned (except for measures that the Contractor determines do not impede the performance of the Acceptance Tests) and the Goods has, in the reasonable opinion of Contractor, achieved stable operation. Acceptance Tests shall be conducted with such trained and qualified personnel of Client as are required by Contractor. In addition to any other obligations it has under the Contract, Client shall ensure during the Acceptance Tests that (i) all feed and utilities conform strictly to the specifications of the Contract (or if no such specifications are stated, according to the Testing Protocol provided by Contractor pursuant to paragraph 2 below), (ii) all analyses of the feed, utilities and product are timely provided as required by the Contractor and (iii) that all upstream and downstream equipment from the Goods operates properly. Unless otherwise specified in the Contract or the Testing Protocol, the party that will be responsible for conducting the Acceptance Tests will give at least 14 days' advance written notice to the other of the period in which the Acceptance Tests shall commence. Where the Acceptance Tests are not supervised or conducted by Contractor, Client shall allow Contractor to attend and witness the Acceptance Tests and Contractor shall be entitled to a copy of all related inspection reports and records.

2. **Testing Protocol:** Except to the extent detailed in the Contract, the procedures and requirements for the Acceptance Tests shall be in accordance with Contractor's standard test procedures and requirements. These procedures and requirements, as adapted to the Scope of Supply and the Contract, shall be provided by Contractor to Client in the form of a "Testing Protocol" latest 30 days prior to the expected start of any Acceptance Tests. The Testing Protocol will specify, among other things, any pre-conditions, any Process Warranties not previously discharged and the subject of the Acceptance Tests, length of the relevant Acceptance Tests, measurement tolerances and the procedures and methods for conducting the Acceptance Tests.

3. **Plant Acceptance:** The Process Warranties and Contractor's obligations in respect of any Acceptance Tests shall be discharged in full and Client shall be deemed for all purposes to have accepted the Scope of Supply if any one or more of the following applies:

- (i) the Goods has on average performed in accordance with the Process Warranties or, if no Process Warranties have been given, no material Defects in the Goods have been identified during the Acceptance Tests; or
- (ii) any part of the Goods is taken into use by Client prior to completion of the Acceptance Tests (provided that sale by Client of product produced under Contractor's supervision according to the Testing Protocol shall not constitute such use for purposes of this provision); or
- (iii) the Goods have not passed the Acceptance Tests for reasons attributable in whole or in part to Client within 1 month from completion of commissioning, 3 months from completion of installation or 4 months from readiness of delivery of the main Goods, whichever is the earliest; or
- (iv) Contractor has paid any liquidated damages or price reduction as may be applicable to the Process Warranties under paragraph 5 below of this Annex.

4. **Acceptance Certificate:** When the Scope of Supply (or section thereof, if applicable) is deemed to have passed the Acceptance Tests according to paragraph 3 above, Contractor shall submit to Client and Client shall immediately sign an acceptance certificate for the Scope of Supply ("Acceptance Certificate"). The Acceptance Certificate shall state the date when the Performance Tests were deemed to have been passed.

Client shall not be entitled to delay or refuse to issue the Acceptance Certificate due to the existence of Defects that do not adversely and materially affect the operation of the Goods; such Defects shall be noted by Client on the Acceptance Certificate and are to be completed by Contractor as soon as reasonably practical, but without in any way affecting the validity or effect of the Acceptance Certificate.

If Client fails to issue the Acceptance Certificate within 14 days of when Client is obliged to do so under this paragraph 4, Client shall be nonetheless deemed to have issued the Acceptance Certificate effective as of the date when the Scope of Supply is deemed to have passed the Performance Tests under paragraph 3 above without any conditions or qualifications.

Client may take the Scope of Supply (or relevant section) into use only after issuance of an Acceptance Certificate. On the issuance or deemed issuance of the Acceptance Certificate, Client shall perform all its obligations, including payment, which then become due.

5. **Failure to pass the Acceptance Tests:** If during the Acceptance Tests the Goods fail to achieve the Process Warranties, Contractor shall as soon as possible investigate the reasons for such failure and inform Client of the results of its investigation. Client shall, at its cost, fully co-operate with Contractor in such investigation and shall provide Contractor with all access, resources, information and documentation required by Contractor to determine the cause of the failure. If it is determined that the cause of such failure is due to reasons attributable to the fault of the Contractor (and not to any fault attributable in whole or in part to the Client), Contractor shall without delay and at its own cost undertake all reasonable actions to remedy the cause of the failure and, unless the failure was insignificant, the relevant part of the Acceptance Tests shall be repeated.

If, notwithstanding such efforts, the Goods still fail to pass one or more repeats of the relevant part of the Acceptance Tests, for reasons attributable to the fault of the Contractor (and not to any fault attributable in whole or in part to the Client), Contractor may, after consultation with Client and after at least three attempts to remedy the failure, elect either to carry out further remedial actions or to pay as liquidated damages (and not as a penalty) the applicable Process Warranty liquidated damages as may be specified in the Contract (provided that if no liquidated damages are specified, the parties shall agree on a reduction in the Contract Price). The price reduction shall reflect the difference between the fair market value of the Goods as sold and the fair market value of the Goods as delivered, installed and commissioned. The payment of liquidated damages or, as the case may be, an agreed price reduction shall be Client's sole and exclusive remedy for any failure of the Goods to achieve the Process Warranties and other criteria applicable to the Acceptance Tests. The amount of all payments or price reductions shall not, in any event, exceed in the aggregate 5% of the Contract Price (or in case the Scope of Supply is comprised of different sections, the portion of the Contract Price attributable to the section failing the test).

If the Contractor is prevented, for more than 14 days, from carrying out an Acceptance Test or an Acceptance Test fails to pass in each case for reasons attributable in whole or in part to the Client, the Acceptance Tests shall be deemed passed and Contractor shall be entitled to payment by Client for its additional Contractor costs.

6. **Delay in Acceptance:** If the Acceptance Tests are delayed or prolonged due to reasons not attributable in whole or in part to Contractor, Contractor shall be entitled to payment by Client for its additional Costs.

7. **Sections.** Where stipulated in the Contract or as reasonably requested by Contractor, the Scope of Supply will be tested in sections, in which case the provisions of this Annex A shall apply to each section.