

## COMBUSTION AND ENERGY SRL – GENERAL PURCHASE CONDITIONS

### 1. DEFINITIONS

As used in these General Purchase Conditions "Order" or "Contract" means the original purchase order together with its attachments and exhibits and any other documents incorporated therein, as such original purchase order may be amended from time to time; "Materials" means collectively any materials, machinery, equipment, articles, parts, items, or service provided for in the Order, "Vendor" means the person, firm or corporation to whom the Order is issued; "Purchaser" means COMBUSTION AND ENERGY SRL; "Price" means the total price to be paid by Purchaser to the Vendor under the Order; "Owner/Main Contractor" means the person, firm, corporation or company owning and/or purchasing the plant or facilities for which the Materials are purchased under this Order.

### 2. COMPLETE AGREEMENT

The Order (of which these General Purchase Conditions are an integral part) constitutes the sole and entire agreement between the Purchaser and the Vendor. The terms of the Vendor's proposal are incorporated into and made a part of the Order only to extent of specifying the nature and description of Materials ordered and then only to the extent that such terms are consistent with the other terms of the Order.

No other terms or conditions of the Vendor's proposal shall be binding upon the Purchaser unless accepted by the Purchaser in writing.

A legal and binding contract shall be deemed to have been entered into between the Vendor and the Purchaser at the time the Purchaser issues the order in writing to the Vendor.

### 3. PRICE

The Price is the consideration specified in the Order to be paid by Purchaser to the Vendor for the complete delivery of the Materials and performance of all obligations of the Vendor under the Order and, subject to the provisions hereof, is not to be subject to any escalation in respect of costs of the Materials or any other factor whatever. Terms of payment of the Price shall be as specified in the Order.

### 4. CHANGES

The Purchaser reserves the right, at any time, to make changes in quantity, drawings and specifications, methods of shipment and packaging, schedules and the place of delivery in respect of any of the Materials under the Order. In such event, an equitable adjustment in price and time of performance mutually satisfactory to the Purchaser and the Vendor only if agreed to in writing by the Purchaser, and no agreement or understanding modifying the conditions or terms of the Order shall be binding upon the Purchaser unless made in writing and signed by the purchaser's authorized representative.

### 5. ASSIGNMENT AND SUBLETTING

The Vendor shall not assign the Order or any part hereof or any amounts due hereunder or sublet the Order or any part thereof without the prior written consent of the Purchaser.

### 6. TRANSFER OF CREDIT

The credit relevant to the supply of the order is not transferable to others unless prior written consent of the Purchaser.

### 7. DELIVERY TIME(S) AND DELAYS

The delivery time(s) stipulated in the Order is of essence for avoidance of substantial loss to the Purchaser, Main Contractor and the Owner. In the event of the Vendor's failure to deliver the Materials by the delivery time(s) specified in the Order, the Vendor shall pay the Purchaser, by way of liquidated damages, 1% of the Price of each week of delay after the relevant delivery time(s) up to a maximum of 10% of the Price. However, the Vendor, shall not be liable for delays in delivery due to any event of force majeure which is unforeseeable and beyond its reasonable control, such as acts of God, acts as governmental authorities, fire, floods, earthquakes, explosion, riots or war, provided the Vendor shall have notified the Purchaser, in writing of the event the Vendor believes constitutes force majeure within 3 (three) days of its occurrence and the Purchaser accepts the same writing; the event will be considered finished only after Purchaser check following a written information of the Vendor. In this case, the time(s) of delivery of the Materials shall be extended for the period equal to the time actually lost by reason of the delay due to force majeure.

### 8. PATENTS AND PROPRIETARY RIGHTS

The Vendor warrants that none of the Materials furnished pursuant to the Order, not the use thereof by the Purchaser, Main Contractor or the Owner, will infringe any patent or other proprietary rights of any third party and the Vendor agrees, at its sole cost and expense, to indemnify, defend and save harmless the Purchaser, Main Contractor and the Owner from and against all losses costs, expenses or damages arising or incurred as a result of any such infringement or alleged infringement in the use or sale of the Materials, except such of the Materials as are manufactured to the Purchaser's own specific design unless such design originated from or was proposed or advised by the Vendor.

### 9. INSPECTION

The Purchaser, its nominee, Main Contractor and the Owner shall have the right to inspect and test the Materials at any time during manufacture and prior to shipment thereof, and to carry out a final inspection within a reasonable time after arrival of the materials at the ultimate destination. The Vendor at its own cost and expenses shall promptly rectify any defects in the Materials discovered during such inspections and tests and shall comply with all other requests of the Purchaser in relation thereto.

The Materials shall not be deemed to be accepted by the Purchaser, its nominee, Main Contractor or the Owner until determined satisfactory after the said final inspection. The making or failure to make any inspection or payment for or acceptance of the Materials shall in no way impair the Purchaser's right to reject the Materials as being unsatisfactory within any warranty period stipulated in Article 11 below, or to avail itself of any other remedies to which the Purchaser may be entitled hereunder or under applicable law.

### 10. EXPEDITING

Whenever any actual or potential cause delays or threatens to delay the performance of any of the work under the Order, the Vendor shall immediately so notify the Purchaser in writing giving full details thereof and shall take such measures as the Purchaser may approve to minimize or eliminate the delay. The Purchaser shall have the right to take whatever action it feels necessary, shall be allowed reasonable access to the Vendor's plant, and those of its suppliers, for such expediting purpose.

The Vendor shall supply schedules and progress reports for the Purchaser's use in expediting as required by the Purchaser, and shall render all other assistance deemed necessary by the Purchaser.

### 11. WARRANTIES

All the Materials furnished pursuant to the Order are guaranteed to be new, unused and of the best quality obtainable ( unless otherwise authorized in writing by the Purchaser), to conform in all respects to the Order, to be free from faulty design, workmanship or materials, to comply with all applicable legal requirements or other regulations commonly accepted in the industry, and to be of sufficient size and capacity so as to fulfill in all respects any operating conditions specified in the Order. The " Make Good" principle will govern this contract. If any trouble or defect in the commercial operation but not later than twenty-four (24) months from the relevant time of delivery thereof, and the Vendor is notified thereof, the Vendor shall, at its own cost and expense and as promptly as possible thereafter, make all alterations, repairs and replacement as may be necessary to permit the Materials to function in accordance with the Order and to fulfill the foregoing warranties. Should the Vendor fail to correct the defective Materials within a reasonable time of being called upon to do so, the Purchaser may, at its option, remove and correct ( whether by repair or replacement) such defective Materials at the Vendor's expense. The Purchaser may, however, at its option, elect to accept the defective Materials, the provisions of this Article shall then apply to such altered, repaired or replacement Materials for a period one (1) year from the date of recommencement of commercial operation of such Materials. The foregoing provisions of this Article ( including the warranties herein) shall also inure to the benefit of the Owner.

### 12. INDEMNITY

The Vendor shall indemnify and save harmless the Purchaser, Main Contractor and/or the Owner from and against all liability to any other party ( including without limitation employees, subcontractors or agents of the Purchaser or the Owner) for personal injury (including death) or property or other damage arising out of acts or omissions of the Vendor or its employees, suppliers, or agents or arising out of any defects in the Materials supplied by the Vendor pursuant to the Order.

### 13. TAXES

Unless a contrary intention appears in the Order, the Price includes all taxes, transportation charges, insurance premiums, fees, import and export duties, and all order costs and expenses ( hereinafter collectively called " Charges" ) and the Vendor shall accordingly accept full and exclusive liability for payment of all the Charges, whether and wheresoever now or hereafter imposed.

### 14. ERRONEOUS OR EXCESS EQUIPMENT

Any Materials delivered in error or in excess of the quantity specified in the Order may at the Purchaser's option be returned to the Vendor's expense.

VENDOR'S STAMP AND SIGNATURE  
( Signature by a Legal representative of the Vendor's Company)

**15. TITLE**

The Vendor warrants to the Purchaser full, complete and unrestricted title to all the Materials or any part thereof furnished by the Vendor under the Order. Without prejudice to any related payment obligations by Purchaser to Vendor, all such items shall become the propriety of Purchaser through Vendor as soon as such are ordered by Vendor or its subcontractors and become identified as being related to the Purchaser Order, notwithstanding the phase of progress (such as in the course of manufacturing, fabrication, transportation, installation) and notwithstanding any payment consideration (such as non-payment, late payment, disputes on chargeable or invoiced sums or amounts of retention made by Purchaser under the Purchaser Order. The Vendor shall waive and cause to be waived, all liens, charges, restrictions, reservations, security interests, encumbrances, retention of a title arrangements and any other like interests of the Vendor or any third party ( howsoever such interest may arise or have arisen) for work done, services rendered or the Materials or any part thereof furnished under the Order. At the Purchaser's requests, the Vendor shall provide evidence that the Materials or any part thereof are free and clear of such interest as aforesaid.

**16. THE VENDOR'S DOCUMENTS**

The Vendor shall, at its own cost and expense and by hand or by courier, furnish the Purchaser with all documents and data relating to the Materials, including specifications, drawings, designs, reports on fabrication, delivery and inspection, mill certificates, instructions for handling, assembly, operations and maintenance manuals, and like at the times and in the type and number of copies stipulated in the Order or as requested by the Purchaser from time to time.

**17. CANCELLATION FOR DEFAULT**

In the event the Vendor shall (a) be adjudged bankrupt or insolvent or go into liquidation, or (b) make a general assignment for the benefit of its creditors, or (c) have a receiver appointed to manage its affairs, or (d) fail to correct any default of the Vendor in complying with any of the provisions or requirements of the Order within a reasonable period as may be determined by the Purchaser after being notified in writing of such default by the Purchaser, then, and in each such case, the Purchaser may forthwith, by written notice to the Vendor and without prejudice to any other rights or remedies which the Purchaser may have hereunder or at law, terminate further performance by the Vendor of its work under the Order. In the event of such termination, the Purchaser may complete or have completed performance of the work under the Order by such means as the Purchaser selects, and the Vendor shall be responsible for any additional costs incurred by the Purchaser in so doing. Any amounts due to Vendor for any of the Materials delivered by the Vendor in full compliance with the terms of the Order prior to such termination shall be subjected to setoff of the Purchaser's additional costs of completing the Order as aforementioned and other damages, costs or expenses incurred by the Purchaser arising from the occurrence of any of the events specified herein.

**18. PURCHASER'S RIGHT OF CANCELLATION**

The Purchaser shall have the right to cancel further performance of all any separated part of the Order at any time by giving written notice to the Vendor. On the date of cancellation stated in said notice, the Vendor shall:

- (a) discontinue all work pertaining to the Order;
- (b) place no additional orders with any third party;
- (c) use its best efforts to effect the immediate cancellation of orders which it may have placed with any third party in relation to the Order if so requested by the Purchaser;
- (d) preserve and protect the Materials or any part thereof on hand purchased for or committed to the Order;
- (e) preserve and protect both work in progress and all completed work whether in the Vendor's plant or that of its suppliers, pending the Purchaser's instructions concerning disposition;
- (f) dispose of the said work in accordance with the Purchaser's instructions.

Payment to the Vendor, or refund to the Purchaser, as the case may be, shall be based on the portion of the work performed to the Purchaser's satisfaction to the date of cancellation. Vendor shall not be entitled to any loss of prospective profits, contribution to overhead or incidental, consequential or other damages because of such cancellation... The above items of reimbursement and payment for work performed shall constitute the entire liability of the Purchaser under the Order.

**19. NON – WAIVER**

Nothing herein shall be construed as limiting the Purchaser's rights otherwise provided by law. The Purchaser's delay of failure to enforce any of its rights hereunder shall not be considered a waiver of such rights by the Purchaser whether as to that occasion or any subsequent occasion unless the Purchaser expressly stipulates such in writing.

**20. SECRECY**

All specifications, design, drawings, data and other information ( collectively called the " Information") furnished by the Purchaser and/or Main Contractor shall be used by the Vendor only for the purposes or fulfilling obligations under the Order and for no other purpose. The information shall be kept confidential save where the Vendor proves, to the Purchaser's satisfaction, that any such information is available to the public or was already in its lawful possession at the such information was furnished to the Vendor or was rightfully received from a third party subject to no secrecy obligation. This obligation of secrecy shall survive any termination of the Order.

**21. PUBLICITY**

The Vendor shall not make news releases or issues other advertising pertaining to the Order without first obtaining the written approval of the Purchaser.

**22. LANGUAGE**

English is the language which govern this contract .All communications and documents, unless otherwise specified or agreed by Purchaser, shall be in the English language.

**23. INTERPRETATION OF TRADE TERMS**

The interpretation of trade terms in the Order shall be accordance with INCOTERMS (International Rules for the Interpretation of Trade Terms) published by the International Chamber of Commerce in 1990 ( Incoterm 1990 Edition, ICC Publication no. 460) and any supplements or new edition thereto in existence at the date of issuance of the Order.

**24. GOVERNING LAW**

In the event of dispute relating to inter aila ( but without limitation) the formation, validity, construction and performance of the Order, the Order shall be governed by and construed in accordance with the laws of Italy.

**25. ARBITRATION**

All disputes, controversies or differences with may arise between the parties, out of or in relation to or in connection with the Order, or any breach, validity or cancellation thereof, shall be finally settled by arbitration in Milano, Italy in accordance with the latest Rules of Conciliation and Arbitration of the International Chamber of Commerce. The award rendered by such arbitration shall be final binding upon the parties thereto, without any right of appeal therefrom.

**26. DESPATCH OF VENDOR SPECIALIST**

In the event the Order covers despatch of Vendor(s), the Purchaser " General Conditions of Vendor Specialists" shall also apply.

**27. ADDITIONS**

When and so requested in the Order, the Vendor shall submit such bank guarantees as performance bond and/or refundment bond in respect of the down payment, issued by a first-class international bank acceptable to the Purchaser. Such bank guarantees shall conform to the form attached hereto.

Acknowledgement copy to be returned signed and stamped. Departed 5 days it will be consider accepted in all its parts.

These General Purchasing Conditions are attached to the below order

Order n° \_\_\_\_\_ dated \_\_\_\_\_

VENDOR'S STAMP AND SIGNATURE  
( Signature by a legal representative of the Vendor's Company)

The Vendor hereby certifies, according to the provisions of Art. 1342 C.C., his specific acceptance of the clauses contained in the following paragraphs:

2. Complete Agreement; 3. Price; 4. Changes; 6. Transfer of Credit; 7. Delivery Time and Delays; 9. Inspections; 11. Warranties; 12. Indemnity; 13. Taxes; 15. Title; 17. Cancellation for Default; 18. Purchaser's Right of Cancellation; 19. Non Waiver; 20. Secrecy; 22. Language; 25. Arbitration; 27. Bonds.