

## – Addendum ENGINEERING

Version: March 2020

Unless otherwise agreed in writing between the parties hereto, the GENERAL TERMS AND CONDITIONS FOR THE PURCHASE OF SUPPLIES AND SERVICES - Moravskoslezské Cukrovary s.r.o., latest version, together with the following Addendum ENGINEERING, shall apply:

### 1. Scope of application

- 1.1 The Customer stipulates that all inquiries, orders, purchases as well as any other legal transactions and services conducted with the Contractor for the procurement of deliveries and services shall be subject to the Terms and Conditions of Purchase for the procurement of deliveries and services (GENERAL TERMS AND CONDITIONS FOR THE PURCHASE OF SUPPLIES AND SERVICES - Moravskoslezské Cukrovary s.r.o., latest version) and the following addendum ENGINEERING.
- 1.2 The Contractor acknowledges that the Customer rejects, already at this stage, any and all deviating Terms and Conditions of the Contractor that might be stipulated in order confirmations or in other business documents, for example. In particular, the acceptance of deliveries or the acceptance of services or payment for these shall not be construed as acceptance of any such terms and conditions that deviate from the GENERAL TERMS AND CONDITIONS FOR THE PURCHASE OF SUPPLIES AND SERVICES - Moravskoslezské Cukrovary s.r.o., latest version, and the Addendum ENGINEERING.
- 1.3 The agreement of any terms and conditions that deviate from the GENERAL TERMS AND CONDITIONS FOR THE PURCHASE OF SUPPLIES AND SERVICES - Moravskoslezské Cukrovary s.r.o., latest version, and the Addendum ENGINEERING, shall require the written confirmation of the Customer to be valid.
- 1.4 In the event of any inconsistencies between the individual components of the contract agreed between the Customer and the Contractor, the following precedence shall apply: (i) the order; (ii) the documents integrated into the order, such as negotiation records, for example; (iii) the GENERAL TERMS AND CONDITIONS FOR THE PURCHASE OF SUPPLIES AND SERVICES - Moravskoslezské Cukrovary s.r.o., latest version, and the Addendum ENGINEERING.
- 1.5 Neither the order nor the GENERAL TERMS AND CONDITIONS FOR THE PURCHASE OF SUPPLIES AND SERVICES - Moravskoslezské Cukrovary s.r.o., latest version, and the Addendum ENGINEERING shall restrict any further legal claims of the Customer.

### 2. Severance clause

Should individual provisions of these GENERAL TERMS AND CONDITIONS FOR THE PURCHASE OF SUPPLIES AND SERVICES - Moravskoslezské Cukrovary s.r.o., latest version, and the Addendum ENGINEERING be ineffective, either entirely or in part, this shall not affect the effectiveness of the remaining provisions. In such case, the Contractor and the Customer shall be obliged to replace the invalid clause with a clause that is closest to the economic purpose of the respective clause.

### 3. Insurance

#### 3.1 Insurance obligation

##### Design liability insurance

- (a) The Contractor shall take out, in its own name and on its own account, a design liability insurance covering its entire scope of services, which shall cover any losses suffered by the Customer (excluding consequential and financial losses) due to faults caused by the Contractor during the fulfilment of this PLANNING CONTRACT.
- (b) The insurance sum shall amount to at least **EURO 4 million**, regardless of the value of the contract.

##### General liability insurance

The Contractor shall, in its own name and on its own account, take out liability insurance covering its scope of services with the following minimum insurance sums, regardless of the value of the contract:

- (a) Personal injury and property damage: minimum **EURO 4 million**.
- (b) The insured liability in the event of a claim is expressly excluded for all consequential and financial losses incurred by the Customer (e.g. lost profits, lost interests, loss of production).

##### General

To the extent to that any losses are not covered by the insurance (e.g. due to excess amounts), any such losses shall be replaced by the person responsible for covering these according to statutory or contractual principles.

#### 3.2 Claims against the Customer and its bodies (representatives)

- (a) The Contractor undertakes to indemnify the Customer and its representatives in this capacity within the scope of the liability insurance to be taken out by the Contractor in the event of any third party claims brought against the Customer on the grounds of personal injury, property damage or financial losses caused by the Contractor or its subcontractors/suppliers.
- (b) In addition, any claims of the Customer beyond this, in particular those resulting from damage to property held by the Customer that does not form part of the contractual plant, shall not be limited by the provisions of this contract.

#### 3.3 Declarations

- (a) Without special request, the Contractor shall provide proof to the Customer of the insurance to be taken out by it before the commencement of the Contractor's services by submitting adequate insurance certificates (copies of the insurance policy).
- (b) In addition to the confirmation of the insurance cover and scope, the certificates shall include the insurer's declarations of commitment below, as well as, where applicable, the acceptance of decisions made by agreed courts of arbitration.
- (c) Any payments to be made under the contract to the Contractor (e.g. down payment) shall only be effected once adequate insurance certificates have been received.
- (d) With regard to the insurance to be taken out by the Contractor, the Contractor undertakes to provide the Customer with the following written declarations:

(d1) A declaration by the insurer by that the latter undertakes to notify the Customer of any default of payment of a premium by the due date.

(d2) A declaration granting the Customer the right to make effective payment of premiums in place of the Contractor.

(d3) A declaration by the Contractor, in which the latter undertakes only to agree any material, relevant changes that might affect this contract if the Customer has expressly authorized such changes.

(d4) A declaration that the Customer will be notified in good time if there is a risk that the insurance cover might become void due to a delay in payment or any other reasons or if the insurance might be cancelled for any other reasons.

### 4. Liability

All services shall be provided by the Contractor with the due care of a prudent merchant and expert, as are typically required from a designer for projects in the industrial environment, especially of our scale.

#### 4.1 Liability of the Contractor

- (a) If the Contractor culpably violates any of its primary or secondary obligations under this contract, the Contractor shall be liable (under tort legislation) for any and all damages resulting therefrom in accordance with the agreed applicable law.
- (b) The Contractor shall also be liable for any and all losses caused by its vicarious agents in accordance with the agreed applicable law.
- (c) With regard to the SCOPE OF SERVICES, the Contractor shall be liable within the scope of its services to be provided by it in a planning capacity to ensure that the specific delivery units can be operated properly for the intended purpose and the intended use and that the performance values are achieved and demonstrated by the proof of performance; in this regard, the Contractor shall provide a fault-dependent warranty.
- (d) In addition, the Contractor shall be liable for the correctness and completeness of the tender documents, mass calculations, as well as the permanent deadline tracking and forecasts derived therefrom.
- (e) Sub-project contractors and manufacturing order contractors shall be considered vicarious agents of the Contractor in respect of their relationship with the Contractor.
- (f) If a retention for liability claims is agreed, it shall also cover any claims arising from the title of liability (damages).

#### 4.2 Indemnification

The Contractor shall indemnify and hold the Customer harmless in respect of any and all claims of authorities or other third parties due to the failure to comply with any government regulations or any other culpable wrongdoing of the Contractor, its employees and/or its subcontractors or their employees, in particular administrative penalties and claims for damages.

#### 4.3 Property rights

- (a) The Contractor shall be liable for the infringement of any property rights within its SCOPE OF DELIVERY according to the contract.
- (b) The Contractor shall indemnify the Client against any and all claims by the owner or beneficiary of property rights due to infringement of their rights.

#### 4.4 Disclaimer and insurance

- (a) In cases of slight negligence, the Contractor shall not be liable for plant downtimes, loss of production and loss of profits.
- (b) Insofar as the liability is excluded or limited, this shall also apply to the personal liability of the employees of the Contractor, other employees, representatives and vicarious agents.
- (c) Any and all liability exclusions as well as limitations of liability, both in terms of their principle and their amount, shall not be valid – even in cases of slight negligence – if and insofar as insurance cover to be taken out by the Contractor in accordance with this contract is provided without the exclusion of liability or the limitation of liability or if the Contractor has failed to take out effective cover in violation of the contractually agreed insurance.
- (d) If the cover is not provided by the insurance to be taken out, the amount of the order shall apply as liability limit for the respective project, however, at least EUR 100,000.
- (e) The Contractor's liability in the event of a claim shall be expressly excluded for all consequential and financial losses incurred by the Customer (e.g. loss of profits, loss of production, interest losses).

*Content approved in full:*

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*Date, Contractor's signature*