



GENERAL PURCHASE CONDITIONS

I. GENERAL PROVISIONS

1. Definitions

In these General Terms and Conditions the following concepts shall have the following meanings:

- a. **ENGIE**
ENGIE Services Nederland N.V. and all legal persons and companies affiliated to it;
- b. **Installation**
The fitting and/or connecting of a Product or a composition of Products and activities aimed at making this Product or composition of Products ready for use, so that the Product or composition of Products works in accordance with the agreed Specifications;
- c. **Employee**
All persons, with or without a contract, working for and engaged by the Contractor for the performance of the Agreement;
- d. **Offer**
All statements made by the Contractor to ENGIE either verbally or in writing relating to Performances, prices and/or terms;
- e. **Sub-contractor**
Any person or legal person with whom the Contractor enters into a legal relationship for the performance of the Agreement pursuant to which this person or legal person agrees to perform all of the Agreement or part of the Agreement;
- f. **Contractor**
Any person or legal person who concludes an Agreement with ENGIE and/or who makes ENGIE an Offer or with whom ENGIE has some sort of legal relationship or vis-a-vis whom ENGIE performs any form of (legal) action;
- g. **Contract**
Any order given by ENGIE for the delivery of a Performance by the Contractor. A Contract can be awarded under a Framework Agreement, or an independent Contract can be awarded in combination with these purchase conditions;
- h. **Agreement**
Any agreement created between ENGIE and the Contractor, any amendment thereof or supplement thereto and all (legal) actions relating to the preparation or performance of this agreement;
- i. **Performance**
The Products, Installations, services or work offered by the Contractor;
- j. **Products**
The goods supplied by the Contractor, including software, and the unencumbered ownership of these goods and anything related or connected thereto;
- k. **Framework Agreement**
The agreement setting out the terms and conditions under which ENGIE can award Contracts to the Contractor;
- l. **Specifications**
The (technical) specifications or descriptions of the Performance, as stipulated in the Contract or in the documents referred to in the Contract or other relevant documents provided by ENGIE;
- m. **Work**
All work specified in the Contract/Agreement and all work and supplies reasonably related or connected thereto, including (where appropriate) all accompanying obligations and requirements, to be performed by ENGIE and the Contractor pursuant to the agreement concluded by ENGIE with its customer.

2. Applicability

- 2.1 These General Terms and Conditions shall apply to all Offers, all Orders, all Agreements, all legal relationships and all (other) (legal) actions between ENGIE and the Contractor, including negotiations and other pre-contractual situations.
- 2.2 If a new version of ENGIE's General Terms and Conditions is created, this newer version will apply between the parties in the way stated in paragraph 1 with effect from the day on which it is filed with the Chamber of Commerce.
- 2.3 Insofar as parties refer to the delivery conditions that are established and customary in the trade, the Incoterms of the International Chamber of Commerce in Paris valid at that time shall apply.

3. Offers, Orders and the conclusion of Agreements

- 3.1 Requests for an Offer shall not be binding for ENGIE and are merely an invitation to make an Offer.
- 3.2 Verbal offers must be confirmed in writing as soon as possible.
- 3.3 On making an Offer the Contractor undertakes to deliver a Performance to ENGIE, if ENGIE has awarded a contract, at a fixed total price or a fixed standard price within the term specified for the delivery. The Offer shall be valid for a period of ninety calendar days. Any costs associated with the making of an Offer shall not be reimbursed by ENGIE.
- 3.4 If there are obvious mistakes in the request for an Offer or if the sections of the request for an Offer are incompatible, the Contractor must consult with ENGIE before making an Offer. If the Contractor fails to disclose this information, it shall be liable for the harmful consequences of its failure. If the Contractor does not explicitly state that the request contains mistakes or inconsistencies between its sections then, in the event of any conflict between the request and the offer, the specifications of the request will prevail.
- 3.5 ENGIE is not obliged to provide any information to the Contractor regarding the placing or non-placing of an Order.
- 3.6 If the Contractor commences work without having received a written Order or written Agreement from ENGIE, it does so at its own risk and for its own account.

4. Amendments or supplements

- 4.1 Amendments of or supplements to any clause in an Agreement or the General Terms and Conditions shall only apply if these have been agreed in writing. Agreed price amendments shall only become effective 30 (thirty) days after the written acceptance of them by ENGIE.
- 4.2 When an amendment or supplement as provided for in article 4.1 is agreed, this shall only apply to the Agreement concerned.
- 4.3 In the case of obvious mistakes in or incompatibilities between sections of the Agreement and/or Order, the Contractor must consult with ENGIE before commencing performance of the Agreement and/or Order, with a view to amending the Order where necessary.
- 4.4 ENGIE is entitled to make an amendment, including but not confined to contract variations (additional or less work). The Contractor must then state in writing all relevant consequences, including but not confined to pricing and planning consequences, within the agreed term or, where no term has been agreed, within 10 (ten) working days. The amendment shall only be ordered if the amendment and associated consequences have been explicitly accepted in writing by ENGIE.
- 4.5 Only if ENGIE deems that due to the nature of the work it is not possible in all reasonableness to determine the pricing of the amendment in good time will the pricing, contrary to the provisions in article 4.4 and with the written consent of ENGIE, be determined by the parties in mutual consultation on completion of the amendment.

- 4.6 If ENGIE deems the consequences for the price or delivery term of the additional or less work to be unreasonable in proportion to the scope of the amendment, ENGIE may partly or wholly dissolve the Agreement, unless, given the circumstances, this would be unreasonable. Dissolution on the basis of this article does not entitle the Contractor to compensation.
- 4.7 Less work will always be settled. In situations where additional work has to be settled on the basis of the Agreement, the price fixed by the Contractor for the relevant settlement will not exceed the price fixed in the Agreement in respect of the work in question.
- 5. Quality and description of the Performance**
- 5.1 The Performance must always:
- conform to what is specified or may reasonably be deemed to be intended in the Order, including but not confined to quantity, description, quality, aesthetic aspects, high professional standard, etc.;
 - conform to and satisfy all aspects of the applicable Specifications;
 - include the required instructions for ENGIE or its personnel, so that ENGIE or its personnel can make independent use of the Performance;
 - include all licences required for the performance of the Agreement;
 - include all the drawings and other preparatory work and/or design work carried out for the performance of the Agreement; and
 - as regards the design, the composition and the quality, satisfy all aspects of the relevant applicable statutory requirements and/or applicable regulations and/or standards and instructions.
- 5.2 The following supplement applies to article 5.1 insofar as the Performance consists of Products:
- the Products will be manufactured from reliable new materials and be properly designed;
 - the Products will be suitable for the purpose for which they are intended;
 - the Products will be manufactured from parts and raw materials with a traceable origin;
 - the Contractor is obliged to deliver to ENGIE, at ENGIE's first request, (spare) parts and/or components and/or special tools and/or special measuring equipment of the same quality for at least ten (10) years after the Products concerned have been delivered;
 - the Products will not contain asbestos or other cancer inducing substances or otherwise be a health hazard;
 - the necessary documents, for instance packing lists, (warranty or quality) certificates, attestations, drawings, instruction manuals, lists of spare parts and maintenance instructions will be provided to ENGIE together with the Performance. Unless agreed otherwise in writing these documents shall be drawn up in Dutch;
 - The Products will be labelled with a type, series and equipment number and adequately marked by the manufacturer or importer to indicate the place of origin, or, if this is not possible the Product packaging will be so marked;
 - The invoices will be submitted singularly to ENGIE when the Performance is delivered.
- 5.3 If it is reasonably impossible for the Contractor to deliver the agreed Performances, substitute Performances will be delivered. The Contractor shall demonstrate that the substitute Performances are technically at least the equivalent of the agreed Performances. Furthermore, the price of the substitute Performance will be equal to or less than the price of the agreed Performances.
- 5.4 If the Performance does not match the specifications set out in the Agreement, ENGIE will carry out an investigation in order to discover the cause.
- 6. Inspection prior to delivery**
- 6.1 Prior to the delivery the Contractor will make a careful inspection of the Performance, without this incurring any extra costs for ENGIE, to confirm that the Performance fulfils the agreed requirements. If ENGIE requires this, the Contractor will send ENGIE timely notice of this inspection. ENGIE and any third parties appointed by it may attend the inspection. At ENGIE's request the Contractor will provide ENGIE with a copy of the inspection report(s) free of charge.
- 6.2 ENGIE and any third parties appointed by it are authorised to monitor the manufacture and manufacturing progress of the Performance, regardless of where the Performance is manufactured.
- 6.3 The Contractor must file objections to the inspection carried out by the third parties provided for in articles 6.1 and 6.2 in writing to ENGIE. If these objections are reasonable, ENGIE will not have the inspections carried out by these third parties.
- 6.4 If ENGIE exercises its right to carry out an inspection, the Contractor will ensure that the facilities reasonably needed by ENGIE to perform the inspection are available at no extra charge.
- 6.5 If, after carrying out an inspection, ENGIE concludes that the Performance partly or wholly fails to meet the requirements specified in the Order or that it is unlikely to do so on completion of the processing or manufacture, ENGIE will notify the Contractor of this in writing. In this case the Contractor must immediately take all necessary steps at its own expense to ensure that the provisions and conditions of the Order are complied with. The costs of any necessary follow-up inspection by ENGIE will be borne by the Contractor.
- 6.6 Inspections as provided for in this article carried out by ENGIE shall not release the Contractor from any liability.
- 7. Packaging, transportation, storage and installation**
- 7.1 The Products must be properly packed, secured and transported in an environmentally friendly manner and in such a way that they reach their final destination in good condition. The products must be carefully and properly packed in conformity with the prevailing Packaging Covenant.
- 7.2 All packaging, transportation, storage (other than that provided for in article 8) and installation costs associated with the Agreement or the performance thereof and the costs of the equipment made available by ENGIE as provided for in article 23 as well as costs relating to insurance (actual value) during transportation, storage and installation of the Performance shall be borne by the Contractor. The Contractor will reimburse these costs to ENGIE forthwith insofar as ENGIE has incurred these costs.
- 7.3 Delivery will be made on the basis of DDP, as specified in the version of the Incoterms of the International Chamber of Commerce in Paris (ICC) that is valid at the time of delivery.
- 8. Storage on behalf of ENGIE**
- 8.1 If the Performance is ready to be delivered, and yet ENGIE is not reasonably able to accept the Performance at the agreed time, the Contractor will keep the Performance on behalf of ENGIE. The Performance will be stored separately and securely and be marked as being destined for ENGIE. The Contractor will also take any measures necessary to prevent deterioration in quality, until the Performance is delivered. ENGIE will reimburse any costs reasonably incurred by the Contractor in this connection.
- 9. Transfer of ownership and risk**
- 9.1 Ownership shall pass to ENGIE on delivery. The risk for the Performance remains with the Contractor until the moment of delivery or, if the Performance also includes installation work, until the moment of completion and handover.
- 9.2 Contrary to the provisions in article 9.1, in the case referred to in article 8, the ownership of the Performance is transferred to ENGIE at the time the Performance is stored by the Contractor on ENGIE's behalf; however, the risk relating to the Performance remains with the Contractor, until the Performance has been delivered or, if the Performance also includes installation work, until completion and handover of the Performance.
- 9.3 The risks relating to Products submitted by ENGIE to the Contractor for repairs, adaptation or processing shall remain with the Contractor for the duration of these repairs, adaptations or processing, although the Products shall remain the property of ENGIE.

- 9.4 If, contrary to the provisions in article 13, it has been agreed that ENGIE shall pay that which is payable by it under the Agreement in advance, all materials, raw materials and semi-manufactured articles used by the Contractor for the performance of the Agreement or which were intended for such use, as well as all Products being processed, will be legally delivered and transferred by the Contractor to ENGIE in full and unencumbered ownership.
- 9.5 Insofar as is necessary the Contractor shall undertake (in advance) to deliver all those items specified in article 9.4 and to transfer the ownership thereof to ENGIE on receipt by the Contractor of the advance payment.
- 9.6 As of the moment the Contractor has received the advance payment, all items specified in article 9.4 shall be kept by the Contractor on behalf of ENGIE and the Contractor is obliged to identify these items satisfactorily and to store them separately for ENGIE.
- 9.7 If the Contractor makes items available to ENGIE as part of the performance, the risk for such items shall remain with the Contractor. The Contractor shall be obliged to keep such items in a good state of repair at its own expense.
- 10. Time of delivery**
- 10.1 The Contractor will deliver the Performance on the date and at the location specified in the Order. If the Order specifies a period rather than a date, this period shall commence on the day the Contractor received the Order or, if this is later, on the day the Contractor obtained the use of the information, drawings, models, materials or tools to be provided by ENGIE and which the Contractor requires to enable it to commence its performance of the Agreement.
- 10.2 The delivery date or delivery period is binding. As soon as the Contractor knows or suspects that the Performance will not be delivered on time, it will notify ENGIE forthwith in writing stating the reasons.
- 10.3 All penalties agreed between the Contractor and ENGIE shall not affect any obligation of the Contractor in relation to payment of compensation. The penalty is not subject to mitigation. ENGIE may require compliance with the Agreement in addition to the penalty.
- 11. Inspection on delivery and acceptance**
- 11.1 If it is found on delivery that the Performance does not comply wholly or partly with the provisions stipulated in the Order, ENGIE will send the Contractor notice of rejection. In this case the Contractor will ensure that the Performance does conform to the provisions and conditions specified in the Order within a period of time to be specified by ENGIE.
- 11.2 Insofar as the Performance is accepted, this shall only be a provisional acceptance based on visual inspection.
- 11.3 If an acceptance test has been agreed, the procedure provided for in the Order will be followed and ENGIE will accept the Performance provided the results of such a test indicate that the stipulated requirements have been fulfilled and without prejudicing ENGIE's rights in the case of hidden defects or a negative result emerging from the functional test to be carried out thereafter.
- 11.4 Acceptance as provided for in this article shall not preclude a later appeal by ENGIE relating to the Contractor's failure to fulfil its obligations.
- 12. Price**
- 12.1 The agreed price is binding and can never be amended as a result of changes in the rate of exchange, purchase prices, freight rates, import or export duties, excise duties, levies, taxes, raw material or semi-manufactured articles, wages and other sums payable by the Contractor to third parties.
- 12.2 The price shall always include:
- all costs provided for in article 7;
 - import duties, excise duties, levies and taxes (excepting turnover tax);
 - fees and all other levies or costs relating to applications for licences required for the completion of the Performance;
 - the costs of the instructions to be given by the Contractor to ENGIE or its personnel;
 - the payments for the use of the intellectual property rights as provided for in article 22;
 - all costs relating to or arising from the completion of the Performance, as provided for in article 5;
 - all other costs borne by the Contractor pursuant to or on the basis of the Agreement or these General Terms and Conditions; and everything required to ensure the proper performance of the Agreement with due observance of the applicable standards, instructions and the requirements of good workmanship, even though this may not be explicitly stipulated in the Order.
- 12.3 The Contractor warrants that it will deliver the Performances for the duration of the Agreement to ENGIE at the lowest price reasonably possible. This price will not exceed the price charged by the Contractor to parties with a comparable purchase volume to that of ENGIE in respect of Performances of comparable quality and quantity.
- 13. Payment and invoices**
- 13.1 The Contractor will not invoice ENGIE for sums payable by it prior to the delivery of the Performance or, if payment in instalments has been agreed, upon fulfilment of the requirements specified in the Agreement/Order for each payment instalment concerned. On the complete and correct performance of the Agreement, ENGIE shall pay a sum invoiced in respect of a performance under the Agreement within sixty days of the invoice date, after the invoice has been approved.
- 13.2 The invoice must include the details required in the Agreement, and in any event: date, invoice number, product description, quantity, price, VAT (number), delivery information, delivery address, purchase order number and invoice number as well as the name of the manufacturer and importer, the type, series and equipment number.
- 13.3 If not all the required details are specified, the invoice concerned shall not constitute an approved invoice as referred to in the preceding paragraph and ENGIE shall not be liable for payment. On submission of a new, correct invoice, the payment term, as provided for in article 13.1, shall commence anew.
- 13.4 ENGIE is authorised at all times to set off sums owed by ENGIE to the Contractor against all sums which ENGIE can claim or will be able to claim at any time from the Contractor or any legal entity or company belonging to the same group as the Contractor, whether or not this is immediately payable.
- 13.5 Payment of the invoice never infers recognition of the claim.
- 13.6 Invoices sent to ENGIE after one year to be calculated from the delivery date of the Performance shall not be accepted, and at the end of this period the Contractor's right to payment of these invoices shall lapse.
- 13.7 Prior to payment and in addition to or instead of the transfer of ownership, ENGIE is authorised to request the Contractor to provide an unconditional and irrevocable bank guarantee, the costs of which shall be borne by the Contractor.
- 13.8 In the case of late payment by ENGIE without sound reasons for this, ENGIE shall, after having been sent proper notice of default by the Contractor, be liable to pay the statutory interest in accordance with Section 6:119 of the Dutch Civil Code with effect from the end of the term specified in the notice of default.
- 13.9 In the case of late payment by ENGIE's customer due to circumstances not attributable to ENGIE, ENGIE shall be entitled to suspend payment of the invoices relating to the corresponding work performed by the Contractor accordingly.
- 14. Warranty obligation**
- 14.1 The Contractor warrants that the Performance complies in all respects with the provisions in article 5.
- 14.2 If, after accepting the Performance and within the warranty period stipulated in the Order, ENGIE notifies the Contractor in writing of any defect in the Performance, the Contractor is obliged to repair such a defect forthwith free of charge and to compensate any additional loss and/or damage, including investigation costs, unless the Contractor can prove that the defect was caused by incorrect or improper use. If ENGIE reasonably believes that in order to repair the defect properly, it is necessary to replace parts of the Performance or Products, the Contractor is obliged to do so and to bear the cost thereof.
- 14.3 In the case of a defect, ENGIE is entitled to return the Performance concerned or a part thereof to the Contractor at the Contractor's risk and expense, or to request that repair or repairs be carried out at the work location concerned.



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- 14.4 In urgent cases or if the Contractor continues in its failure to fulfil its obligations as provided for in article 14, ENGIE is entitled to carry out the replacement or repairs, or to have these carried out, at the Contractor's expense with no further warning being required.
- 14.5 The agreed warranty period will commence again in respect of the replaced or repaired Performance when this performance is accepted by ENGIE.
- 14.6 If the Order contains no warranty clause, the Contractor shall warrant that in terms of quantity, external characteristics and quality the services and products delivered conform to the Agreement and in particular with the description, specifications and requirements stipulated by ENGIE and contained in the Order and/or supplementary documents for at least two (2) years following delivery. If the Performance is intended to be used by ENGIE in installations or systems, the warranty period shall commence on delivery of those installations or systems by ENGIE to its customer. If the manufacturer's warranty is longer, the warranty term will match this longer term. This provision shall not affect the provisions in paragraph 1 of this article.

15. Liability of and indemnification by the Contractor

- 15.1 The Contractor will fully compensate any direct or indirect loss/or damage sustained or that will be sustained by ENGIE or by third parties as a result of or in connection with the performance of the Agreement (including, but not limited to operating damage, damage to the environment, damage to materials, material and other damage, loss resulting from an injury, judicial and extrajudicial costs), regardless of whether this damage is caused by the Contractor, an Employee or another (legal) person for whom the Contractor is responsible.
- 15.2 During the performance of the Work the risk in respect of the Contractor's goods of theft, damage, fire or vandalism shall be borne by the Contractor. This also covers the personal possessions of Employees, other personnel affiliated to the Contractor or the personnel at any third party engaged by the Contractor for the performance of the Work. If the Contractor believes it should take out insurance against said risk, with due observance of provisions in the C.A.R. policy, the costs associated with this shall be borne by the Contractor. ENGIE will never be liable in respect of the Contractor or in respect of any third parties engaged by the Contractor for the performance of the Work.
- 15.3 The provisions in article 15.1 can also be read as a clause as provided for in Section 6:253 of the Dutch Civil Code. The clause cannot be revoked by the Contractor and shall be drawn up for no consideration vis-a-vis all third parties.
- 15.4 The Contractor will indemnify ENGIE in respect of and against all claims, demands, rights and legal actions that third parties allege to have against ENGIE or which can be exercised at any time against ENGIE with regard to the Agreement or the performance thereof and consequently the Contractor will fully compensate ENGIE in this respect.

16. Liability of ENGIE

- 16.1 ENGIE is not liable for any loss and/or damage sustained by the Contractor or its Employees, except in cases involving intent or gross negligence on the part of ENGIE or its personnel.

17. Suspension

- 17.1 ENGIE is authorised at all times to wholly or partly suspend the Agreement and to oblige the Contractor to interrupt the performance of the Agreement for the duration of a term to be determined by ENGIE.
- 17.2 The Contractor is obliged to limit the damage caused by this suspension as much as possible by taking appropriate measures.
- 17.3 Provisions taken by the Contractor as a result of the suspension and in respect of which it was demonstrably necessary for it to incur costs shall be reimbursed in accordance with the same procedure as that laid down in respect of additional and less work, unless the suspension is due to any failure or shortcoming on the part of the Contractor or a third party.

18. Force Majeure

- 18.1 Parties are not in default and have no claims to compensation from each other, if and insofar as compliance with contractual obligations is delayed, impeded or hindered due to a situation of force majeure including, but not limited to, war or hostilities, riots or civil commotion, floods or other natural disasters, nuclear disasters and similar external calamities insofar as these are not attributable to the party concerned. Force majeure shall explicitly not include strikes or work stoppages by employees and the non-performance of the Contractor's suppliers and/or other third parties engaged by the Contractor.
- 18.2 Parties will notify each other as soon as possible regarding a (potential) situation of force majeure.
- 18.3 Parties can suspend the obligations pursuant to the Agreement for the duration of the period in which the force majeure persists. If this period continues for longer than three (3) months, each party will be entitled to dissolve the Agreement without being required to compensate damage incurred by the other party.

19. Default/dissolution

- 19.1 Each term specified in an Agreement and/or an Order during which the Contractor must fulfil an obligation constitutes a deadline and on exceeding it the Contractor is in default; requests for the Contractor to fulfil such an obligation despite being in default shall not affect the above provisions.
- 19.2 In each of the following cases ENGIE is authorised to dissolve the Agreement forthwith (without a notice of default being required):
- if the Contractor fails to comply fully and in a timely manner with any fundamental obligation under the Agreement or fails to comply with some other obligation;
 - if the Contractor or the party guaranteeing the Contractor's obligations or furnishing security applies for temporary suspension of payment, is declared bankrupt, is forced to wind up its business or does so voluntarily, ceases its business activities or takes a decision to wind up or applies for bankruptcy or suspension of payments;
 - if a change takes place among the shareholders of the Contractor, insofar as ENGIE believes this change constitutes a serious risk increase;
 - if an attachment is made against the Contractor or the Contractor's assets are threatened with seizure or other legal measure;
 - if ENGIE must necessarily conclude from a statement by the Contractor that the latter will default on its obligation to comply or if ENGIE has good reason to believe that the Contractor will default on its obligation to comply and the Contractor fails to comply with a written demand, which demand shall include a statement of said good reason, to declare its readiness to fulfil its obligations within a reasonable term stipulated in the demand.
- 19.3 In each of the cases stated in article 19.2 the Contractor is obliged to notify ENGIE of the occurrence forthwith in writing. Furthermore, ENGIE is entitled and is authorised to suspend the performance of the Agreement until compliance with it is sufficiently assured and to suspend all its obligations, on whatever grounds, towards the Contractor.
- 19.4 In each of the cases stated in article 19.2 all ENGIE's claims against the Contractor will be immediately callable in full.
- 19.5 The provisions in the above sections in article 19 shall not prejudice the (other) rights of ENGIE on grounds of the law and the Agreement, including but not limited to ENGIE's right to demand compliance, full or partial dissolution and the obligation of the Contractor to compensate ENGIE in respect of all damage and costs that will be incurred by ENGIE as a consequence.

20. Transfer of rights and obligations and contracting out

- 20.1 Without the written consent of ENGIE the Contractor is prohibited from transferring, assigning or pledging the Order or any part thereof or rights or claims pursuant to the Order or the Agreement to third parties. This prohibition has legal effect under property law as defined in Section 3:83 (2) of the Dutch Civil Code.
- 20.2 The consent as provided for in article 20.1 and 20.2 will not release the Contractor from any obligation pursuant to the Agreement. A subcontract concluded by the Contractor for the performance of the Agreement will not be binding for ENGIE.



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21. Authorised representatives

21.1 During the performance of the Agreement ENGIE and the Contractor will be represented by one or more authorised persons who will be expressly appointed and authorised to represent and to bind ENGIE and the Contractor in all matters relating to the performance of the Agreement. ENGIE and the Contractor will notify each other prior to commencing the performance of the Agreement as to who will be acting as their authorised representative or representatives. Parties will notify each other in writing with regard to all changes to or withdrawal of the authorisation.

22. Intellectual property, software

- 22.1 Any intellectual property rights to a Performance designed specifically for ENGIE by the Contractor shall be vested in ENGIE or will be transferred to ENGIE.
- 22.2 If the Performance is not designed specifically for ENGIE, the Contractor shall grant ENGIE a non-exclusive licence to any intellectual property rights relating to the Performance. Payment for this licensing shall be included in the price of the Performance.
- 22.3 Insofar as a special deed is required for the transfer of intellectual property rights as provided for in article 22.1 or the granting of a licence as provided for in article 22.2, the Contractor hereby declares its willingness to cooperate in the drawing up of such a deed.
- 22.4 The Contractor warrants that the Performance does not breach third party intellectual property rights. The Contractor will indemnify ENGIE against all third party claims based on a (alleged) breach of such rights. If the delivery (also) includes software, any updates will be provided to ENGIE for nil consideration and the Contractor will deposit the source code at its own expense with an escrow agent.

23. Materials, material parts, attestations, drawings and similar items made available by ENGIE

- 23.1 Materials, material parts, attestations, drawings and similar items made available to the Contractor by ENGIE for the performance of the Agreement shall remain the property of ENGIE and must be returned in good condition when the Agreement has been performed.
- 23.2 Until the items specified in article 23.1 have been returned to ENGIE, the risk relating to these items shall be borne by the Contractor. The Contractor is obliged to maintain these items properly.
- 23.3 The Contractor will insure all the items provided to it by ENGIE under the Agreement on customary terms and for the benefit of ENGIE against the risks of partial or total loss or damage caused by fire, theft and destruction.
- 23.4 On receipt of the items provided for in this article the Contractor must check that these are correct and sound.

24. Documents related to design belonging to Contractor

- 24.1 All drawings under the Agreement must be completed electronically and in such a way that making good reproductions of them is possible.
- 24.2 Drawings must contain all the data relevant for the Performance and must be supported where necessary with calculations in accordance with generally practiced methods.
- 24.3 All documents related to design required for assessing the Performance must be submitted to ENGIE by the Contractor at ENGIE's first request or at the time specified in the Order for assessment. ENGIE will communicate whether it approves the design documents as soon as possible after receiving the documents.
- 24.4 The involvement of ENGIE in the assessment of the design documents does not release the Contractor from any liability in this matter.
- 24.5 The Contractor will adhere to ENGIE's design methodology for the execution of the design activities. Details of this methodology and requirements shall be provided to the Contractor on request.

25. Confidentiality

- 25.1 The Contractor will treat all data and/or information obtained within the scope of performing the Agreement confidentially and will not disclose such data and/or information to third parties without the written consent of ENGIE, excepting third parties engaged by the Contractor for the performance of the Agreement. The Contractor will require these third parties to observe the same confidentiality and warrants that these third parties will comply with this confidentiality obligation. The Contractor will ensure that the data/information provided by ENGIE will only be shared with persons who need to take cognizance of them in order to enable the proper performance of the Agreement.
- 25.2 In the event of the provisions stipulated in article 25.1 being breached the Contractor shall forfeit an immediately due and payable penalty to ENGIE of EUR 50,000.00 for each violation, which penalty shall not affect any obligations of the Contractor relating to compensation and without prejudice to ENGIE's right to demand compensation of the actual loss or damage sustained as well as performance of the Agreement.

26. Insurance

- 26.1 The Contractor shall, to cover its liability in the most general sense (including, but not limited to professional liability, product liability, design liability, personal liability) insure itself and remain insured vis-a-vis ENGIE and vis-a-vis third parties at the amount of EUR 2,500,000.00 (in words: two million five hundred thousand euros) for each occurrence. The costs of such insurance shall be borne by the Contractor.
- 26.2 At ENGIE's request the Contractor is obliged to submit the insurance policy or policies and proof that the insurance premiums have been paid. The policy excess shall not exceed EUR 15,000 per occurrence.

27. Choice of law and competent court

- 27.1 These General Terms and Conditions and the Agreement shall be governed by Dutch law.
- 27.2 The applicability of the Vienna Sales Convention 1980 (CISG) is excluded.
- 27.3 All disputes between the parties will, insofar as not required otherwise by law, be heard by the competent court at Utrecht, on the understanding that ENGIE will be entitled to have claims against the Contractor heard at other judicial tribunals or arbitration bodies, whether or not simultaneously.

28. Termination of the Agreement

- 28.1 ENGIE is authorised to prematurely terminate the Agreement at any time. On premature termination by ENGIE, ENGIE will pay for all the Performances delivered by the Contractor and accepted by ENGIE, increased by a reasonable compensation in respect of the costs to be incurred by the Contractor as a consequence of the non-completion of the Agreement. This compensation shall always be subject to a maximum amount which is equal to the contract price. The Contractor is obliged to limit the damage arising from this termination as much as possible.
- 28.2 ENGIE will give reasons for terminating the Agreement as provided for in article 28.1.
- 28.3 In the cases provided for in article 19, only the arrangement specified in article 19 shall apply.

29. Socially responsible business

- 29.1 The Contractor warrants that it will observe all applicable legislation and regulations relating to the environment, the welfare of its employees and the protection of children. The Contractor also warrants that it will not practice any form of discrimination or corruption whatsoever.



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30. Language

- 30.1 The Contractor declares it has sufficient knowledge of the Dutch language to enable it to fully understand the Agreement, its conditions and annexes and that all future documents, drawings and correspondence will be drawn up in Dutch. Other languages will only be used, if required by authorities authorised to do so or as explicitly stated elsewhere in the Agreement.
- 30.2 These General Terms and Conditions were originally drawn up in Dutch..

II. Special provisions relating to the contracting out of work, contracting for work and temporary labour

In addition to the General Provisions (I) the provisions in this chapter (II) also apply to the contracting out of work, the contracting for work and temporary labour. If the Special Provisions for the contracting out of work, the contracting for work and/or temporary labour deviate from the General Provisions, the Special Provisions shall prevail.

31. Giving the Order

- 31.1 ENGIE may require a Contractor that is not certified in accordance with the quality system accepted by ENGIE to subject itself to a quality audit before the Order is given.
- 31.2 Acceptance test/quality audit. If an acceptance test or a quality audit has been agreed, the procedure agreed in respect of this must also be imposed by the Contractor on its Subcontractors.

32. Performance schedule

- 32.1 The Contractor shall submit a performance schedule to ENGIE for approval. This schedule shall include, among other things, the commencement and completion dates of the consecutive parts of the work and the staffing. If ENGIE does not agree with the planning, it will communicate this as soon as possible after receipt of the schedule after which the Contractor will adjust its planning in line with ENGIE's wishes. In that case the Contractor will adjust its performance schedule in line with ENGIE's wishes.
- 32.2 ENGIE may make amendments to the performance schedule during the performance. Any consequences of these amendments will be communicated to ENGIE by the Contractor within five (5) working days.
- 32.3 The Contractor shall report periodically, in accordance with ENGIE's wishes, on the progress of the work and any related aspects.
- 32.4 The Contractor shall do everything that is reasonably possible to avoid waiting periods. The Contractor is responsible for the timely scheduling and coordinating of the Performance to be completed in consultation with the employees at ENGIE authorised in this matter. The Contractor can derive no rights to any compensation regarding waiting periods, unless such compensation is approved by an ENGIE employee authorised in this matter.

33. Quality and quantity of Employees

- 33.1 The day-to-day management and the supervision of the performance of the work is the responsibility of the Contractor. The number of authorised and qualified supervisors deployed by the Contractor must reflect the scope and nature of the work and comply with the requirements stipulated by ENGIE relating to this matter.
- 33.2 The Contractor warrants to ENGIE that the services to be provided by the Employees will be performed skilfully, in a professional manner and will be uninterrupted and that the Employees fulfil and will continue to fulfil the agreed requirements relating to the quality of their education, expertise and experience.
- 33.3 Employers will be provided with tools, work clothing and personal protective equipment by the Contractor.
- 33.4 The Contractor will only replace Employees on an occasional basis and will not temporarily or definitely replace Employees without obtaining the approval of ENGIE beforehand. ENGIE will not withhold its approval without reasonable grounds. ENGIE may make its approval subject to conditions.
- 33.5 If it is concluded that Employees are not capable of performing the Agreement to ENGIE's satisfaction, the Contractor undertakes toward ENGIE to replace these Employees forthwith without requiring any extra payment from ENGIE. If ENGIE incurs damage as a result, the resulting costs will be compensated to ENGIE by the Contractor.
- 33.6 The work will be performed in accordance with the working times and rules of conduct applicable at that time at ENGIE. The Contractor will instruct Employees to adhere to the applicable working times and rules of conduct when performing the work.
- 33.7 ENGIE is authorised to make a regular count of Employees at work, the Contractor will cooperate with this. The Contractor is also obliged to cooperate with all (other) reasonable administrative arrangements made or to be made by ENGIE relating to the control of staffing for the work; for instance the submission by the Contractor of a day's overview of the staffing at the work-site, split up according to the various activities in progress.
- 33.8 ENGIE is authorised to inspect whether the Employees fulfil the requirements stipulated by ENGIE. The Contractor shall cooperate with this inspection. If the Employees fail to fulfil the requirements stipulated by ENGIE, ENGIE can make this subject to what it considers to be appropriate consequences, including, but not limited to, denying the Employee concerned access to the Location.

34. Required documents and/or permits

- 34.1 When deploying employees who are nationals of an EU Member State the Contractor must ensure that it submits all the relevant required documents to ENGIE on time, unless the Employees concerned are in possession of a valid work and residence permit. The relevant documents and/or permits must be in the possession of ENGIE two (2) weeks before the work on the Performance commences.
- 34.2 When deploying Employees who are nationals of a non-EU Member State the Employees concerned must make sure they have the required documents and/or permits allowing them to work in the Netherlands. The relevant documents and/or permits must be in the possession of ENGIE two (2) weeks before the work on the Performance commences.

35. Employment conditions and safety

- 35.1 The Contractor has joint responsibility for the employment conditions and safety at work. The Contractor must adhere to all the applicable statutory regulations, regulations issued by the Health and Safety Inspectorate and the safety instructions and/or other regulations applying on-site.
- 35.2 The materials, material and tools used by the Contractor (including but not limited to, lifting and hoisting devices and climbing and scaffolding equipment) must be annually approved, fulfil the requirements stipulated by the Health and Safety Inspectorate and be well maintained, all this also to be judged by ENGIE.
- 35.3 The Contractor must carry out a monthly safety inspection of the project work. The results of this inspection must be reported to ENGIE. The Contractor must participate in the mandatory Toolbox meetings.
- 35.4 Employees who, in ENGIE's opinion, do not observe safety at work must be removed from the work-site on the first notification made by ENGIE. The Contractor must ensure that these Employees are replaced forthwith. If ENGIE incurs damage as a result of this the costs arising from this will be compensated by the Contractor to ENGIE.
- 35.5 The Contractor is obliged to report unsafe situations to ENGIE. If ENGIE incurs damage as a result, the resulting costs will be compensated to ENGIE by the Contractor.

36. Licences and statutory regulations

- 36.1 The Contractor is assumed to be familiar with and in its Offer to have taken into account the regulations pertaining to the performance of the Agreement issued by the national, provincial and/or municipal government, utility companies and recognised classification agencies.



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- 36.2 The Contractor will ensure that Subcontractors are familiar with the regulations provided for in article 36.1 and with all the other conditions which the Contractor must fulfil on the basis of the Agreement. The Contractor warrants to ENGIE that its Subcontractors will comply with and observe all these regulations, conditions and provisions insofar as they pertain to the work to be performed by them.
- 36.3 The Contractor will ensure it has timely possession of all the licences and rulings required for the work.
- 37. Intervening in the work**
- 37.1 If the progress of the work is such that the fixed duration for the completion of the Performance or a part thereof will be exceeded or if the work is not performed or has not been performed in accordance with the provisions in the Order and/or in accordance with the requirements of good workmanship, all this to be judged by ENGIE, ENGIE will notify the Contractor of this in writing.
- 37.2 If the Contractor has failed to take measures within two weeks of receiving the notification provided for in article 37.1 which, in ENGIE's opinion, will guarantee that the backlog will be caught up with or the aforementioned provisions will be complied with within a short period of time, without prejudicing its other rights and without the mediation of the court being required, ENGIE is authorised to take any measures it considers necessary, including the refusal to allow the Contractor to perform the work and the transference of the work to ENGIE or to third parties working on ENGIE's instructions. In such a case the Contractor will cooperate fully with ENGIE and these third parties.
- 37.3 All internal and external costs incurred by ENGIE in connection with the provisions in article 37.2 shall be for the Contractor's account. These costs shall always include a payment to ENGIE in respect of monitoring and so-called 'overhead' expenses. The Contractor will compensate these costs to ENGIE forthwith.
- 37.4 ENGIE is also entitled to intervene directly in the work in situations not provided for in articles 37.1 and 37.2 without this releasing the Contractor from its liability, if ENGIE believes this is necessary in view of business circumstances, safety and/or statutory regulations. ENGIE will notify the Contractor as soon as possible of such an intervention.
- 38. Wages and Salaries Tax and Social Security Contributions (Liability of Subcontractors) Act, Labour Market Fraud (Bogus Schemes) Act, Payment of contributions and tax**
- 38.1 The Contractor warrants that Employees will receive correct payment of wages and other emoluments with due regard for the provisions in the applicable collective labour agreement (CLA) and also that the statutory obligations will be fulfilled with regard to the payment of social insurance contributions and wage tax.
- 38.2 The Contractor indemnifies ENGIE against all claims made by the Industrial Association for Social Insurance and the Dutch Tax and Customs Administration for contributions and tax payable as well as penalties due in respect of Employees.
- 38.3 The Contractor undertakes to submit the declaration from the Tax and Customs Administration and the relevant Industrial Association for Social Insurance to ENGIE on receiving the order and every three months thereafter. This declaration shall attest, to ENGIE's satisfaction:
- that the Contractor has made timely, full and correct payment of the social insurance contributions and wage tax payable in respect of Employees during the period in which the Contractor has made Employees available to ENGIE;
 - that the Contractor has always informed the social insurance institution charged with collecting the contributions or tax or the Tax and Customs Administration correctly and fully with regard to the aforementioned levying of contributions and/or wage tax.
- 38.4 The Contractor will impose similar obligations on all parties with whom it enters into agreements concerning the execution of the Order involving the contracting out of work.
- 38.5 The Contractor will enable ENGIE to examine the accounts kept by the Contractor in order to allow it to determine whether the obligations and requirements referred to above have been met.
- 39. Wages and Salaries Tax and Social Security Contributions (Liability of Subcontractors) Act and the Allocation of Workers via Intermediaries Act**
- 39.1 Without prejudice to the provisions in article 38, the Contractor will keep the accounts in such a way that the actual wage costs per project can be determined. ENGIE is entitled to check these accounts at all times. The Contractor will state the actual wage costs on each invoice.
- 39.2 With due observance of the provisions in article 13.1, 50% of the actual wage costs will be transferred to the Contractor's G-account by ENGIE.
- 39.3 If the 'VAT reverse charge mechanism' (*verleggingsregeling B.T.W.*) applies to the Agreement, the Contractor will state this on each invoice.
- 39.4 Each time at ENGIE's request as well as periodically the Contractor will submit a copy of a recent Declaration of Payment History from the Industrial Association for Social Insurance and the Tax and Customs Administration. This declaration shall not have been issued more than three months previously.
- 40. Delivery**
- 40.1 The Performance shall be deemed to have been delivered, when the Contractor has notified ENGIE in writing that the Performance has been completed and ENGIE has approved or accepted the Performance. The approval or the acceptance shall take place by means of a delivery report.
- 40.2 Minor defects which can be repaired during the warranty period and which do not affect the working of the Performance will not hinder or interfere with delivery.
- 40.3 Delivery does not release the Contractor from liability in respect of defects to the Performance which could not reasonably have been detected at the time of delivery.
- 40.4 The risk associated with the Performance shall not pass to ENGIE until delivery has been completed.
- 41. Non-recruitment of personnel**
- 41.1 The Contractor and ENGIE will not actively recruit personnel from each other for the duration of the Agreement and for one (1) calendar year after the Agreement has terminated.
- 41.2 Paragraph 1 may only be deviated from if agreed between the parties in writing.