



## **1 GENERAL**

### **1.1 Definitions**

"Works" means any design and/or material and/or equipment and/or service which the Seller shall provide according to the Contract and/or any part or component included in the above-defined items.

"Seller" means D'HONDT FRITERM THERMAL SOLUTIONS

"Purchaser" means the natural or legal person identified in the Contract as the Purchaser of the Works.

1.2 The Contract between Seller and Purchaser will be performed according to all terms and specifications as mentioned therein (hereinafter referred to as the "General Conditions"), with the exclusion of all other conditions written elsewhere, in particular but not limited to the purchase conditions of the Purchaser, such as in requisitions and any other correspondence written before or after this contract. All modifications will be subject to a change order agreed upon in writing by both parties.

1.3 Terms additional to or different from those in these General Conditions, including but not limited to terms contained in Purchaser's Contract or any other document, are not considered unless otherwise accepted by Seller in writing. Seller's commencement of performance shall not constitute acceptance of any of Purchaser's terms and conditions. The contract is only valid and enforceable if and when Purchaser's accepts Seller's offer in writing. Seller's offer is only valid for a period of 90 days from the date the offer is submitted by Seller to Purchaser.

## **2 DRAWINGS AND DESCRIPTIVE DOCUMENTS**

2.1 Any drawing of technical document intended for use in the design, construction or erection of the Works or of part thereof and submitted to Purchaser by Seller prior or subsequent to the formation of the Contract remain the exclusive property of Seller. They may not, without Seller's consent, be utilised by Purchaser or copied, reproduced, transmitted or communicated to a third party save for the sole purpose of operation and maintenance of the Works. However, the said plans and documents shall be the property of Purchaser:

- (a) if it is expressly so agreed; or
- (b) if they are referable to a separate preliminary development contract on which no actual construction was to be performed and in which the property of Seller in the said plans and documents was not reserved.

2.2 Any drawings or technical documents intended for use in the design, construction or erection of the Works or of part thereof and submitted to Seller by Purchaser prior or subsequent to the formation of the Contract remain the exclusive property of Purchaser. They may not, without his consent, be utilised by Seller or copied, reproduced, transmitted or communicated to a third party.

## **3 DELIVERY, TRANSFER OF RISKS, TRANSFER OF PROPERTY**

3.1 Any agreed trade term shall be construed in accordance with the INCOTERMS in force at the formation of the

contract. If no trade term is specifically agreed, the delivery shall be EXW (Incoterms ICC 2020).

3.2 Partial shipment shall be permitted unless otherwise agreed.

3.3 Seller has the right of property of the Works as long as all payments in relation to the contract are not totally and irrevocably fulfilled. After the last payment, the property is transferred by Seller to Purchaser.

3.4 Transfer of risks shall intervene as provided for by applicable Incoterm.

## **4 TIME FOR DELIVERY, DELAY, LIQUIDATED DAMAGES FOR DELAY**

4.1 If the parties, instead of specifying the date for delivery, have specified a period of time on the expiry of which delivery shall take place, such period shall start to run as soon as the contract is signed by both Seller and Purchaser, payments due at the formation of the contract have been made and any other preconditions have been fulfilled.

4.2 If Seller anticipates that he will not be able to deliver the Works at the time for delivery, he shall forthwith notify Purchaser thereof in writing, stating the reason, and, if possible, the time when delivery can be expected.

4.3 If delay in delivery is caused by circumstances external to Seller and/or by an act or omission on the part of Purchaser (including but not limited to delay in approval of Contract documentation), the time for delivery shall automatically be extended by a period of time equivalent to the initial delay. This provision applies regardless of whether the reason for the delay occurs before or after the agreed time for delivery.

If Purchaser fails to accept delivery at the delivery time, he shall nevertheless pay any part of the purchase price which becomes due on delivery, as if delivery had taken place. Seller shall arrange for storage of the Works at the expense of Purchaser. Seller shall also, if Purchaser so requires, insure the Works at Purchaser's expense.

4.4 If the Works are not delivered at the time for delivery for reasons attributable to Seller, Purchaser may apply liquidated damages. The liquidated damages shall be payable at a rate of zero point five (0.5) per cent of the delayed Work price excluding taxes for each complete week of delay. The liquidated damages shall not exceed five (5) per cent of the Contract price excluding taxes. Liquidated damages shall be sole and exclusive remedies for delay in delivery.

Purchaser shall forfeit his right to liquidated damages if he has not lodged a claim in writing for such damages within two weeks after the time when delivery should have taken place.

4.5 If the delay in delivery is such that Purchaser is entitled to maximum liquidated damages under Clause 4.4 and if the Works are still not delivered, Purchaser may in writing demand delivery within a final reasonable period which shall not be less than one week. If Seller does not deliver within such final period for reasons exclusively attributable to Seller, then Purchaser may by notice in writing to Seller terminate the contract in respect of such part of the Works that cannot in consequence of Seller's failure to deliver be used as intended by the parties. If Purchaser terminates the Contract, he shall be entitled to compensation for the loss he has suffered as a result of Seller's delay. The total compensation, including the liquidated damages which are payable under 4.4, shall not exceed ten (10) per cent the Contract price.



4.6 Liquidated damages under clause 4.4 and termination of the contract with limited compensation under 4.5 (if applicable) are the sole and exclusive remedies available to Purchaser in case of delay on the part of Seller. All other claims against Seller based on such delay shall be excluded.

4.7 If Purchaser anticipates that he will be unable to accept delivery of the Works at the delivery time, he shall forthwith notify Seller in writing thereof, stating the reason and, if possible, the time when he will be able to accept delivery. Any cost incurred by Seller in relation thereto will be reimbursed by Purchaser to Seller.

## **5 PRICE / PAYMENT**

5.1 The Contract Price does not include VAT or any other taxes.

5.2 Unless otherwise agreed, Seller's invoices shall be paid by Purchaser within 30 days from the date of invoicing. Whatever the means of payment used, payment shall not be deemed to have been made before Seller's account has been fully and irrevocably credited.

5.3 If Purchaser delays in making any payment, Seller may suspend the performance of his own obligations until such payment is made, unless the failure of Purchaser is due to an act or omission of Seller and may request accordingly an adjustment of the performance schedule and/or compensation for the extra-costs resulting therefrom.

5.4 If Purchaser delays in making any payment, Seller shall on giving to Purchaser a 10 days notice in writing be entitled to the payment of interest on the sum due from the date on which such sum became due at a rate of 7 points above the EURIBOR rate in effect at the date of the invoice. If at the end of the period of 10 calendar days, Purchaser has failed to pay the sum due, Seller shall be entitled by notice in writing to Purchaser to terminate the Contract and thereupon to recover from Purchaser the amount of his losses without requiring the consent of any Court.

## **6 ASSEMBLY SUPERVISION/ ASSEMBLY**

6.1 Assembly

6.1.1 Should the Contract envisage assembly or installation of the Works by Seller itself, the terms upon which the said services shall be performed are provided for in the present General Conditions and/or in any other document signed by Seller and Purchaser for the said purpose.

6.1.2 In the event that assembly is to be charged at a fixed amount at Seller's responsibility and performed by Seller's subcontractor, all extra costs arising from the loss of time owing to force majeure events or from expenses not attributable to Seller, such as delays in completing set-up or insufficient technical resources, material and staff made available by Purchaser, inter alia, shall be invoiced to Purchaser additionally to the set price.

6.2 Assembly supervision

6.2.1 In situ assembly of Works may be done under the supervision of one of Seller's assembly supervisors, Purchaser being required to supply in a timely manner the technical resources and staff necessary for assembly.

6.2.2 Seller's liability shall be limited to the value of the onsite supervision services.

## **7 ACCEPTANCE AND TESTING**

7.1 In the event that tests are contractually required before acceptance of the Works or for its delivery the aforesaid tests shall be performed within sixty (60) days following completion of assembly. Where the aforesaid tests are not conducted within the said period for reasons beyond Seller's control and without fault on its part, the Works shall be deemed to have been accepted by Purchaser. Purchaser shall notify Seller in writing the date and place at which the tests may be carried out. Costs pertaining to the said tests, including accommodation, transport and remuneration of the representative or Seller, shall be reimbursed by Purchaser to Seller within thirty (30) days of invoicing, based on the current rates. Tests shall be carried out under the supervision of Seller's representative, and any necessary assistance shall be given by Purchaser at Purchaser's expenses. The acceptance report shall be made in the presence of and signed by both parties.

7.2 Should Purchaser proceed with operation of the Works before final acceptance or before the testing, Purchaser shall be deemed to have accepted and approved the aforesaid Works unreservedly and unconditionally.

## **8 WARRANTY/ STANDARD PERFORMANCE GUARANTEE**

### **WARRANTY**

8.1 Seller's warranty shall only be valid if Works are operated under normal conditions and in accordance with instructions issued by Seller.

8.2 The Works are under a one-year Warranty against any manufacturing or material defect, as of the date of acceptance of the Works, provided that the said Warranty shall not exceed eighteen (18) months from the date of delivery as per applicable Incoterm. The Warranty applies only to defects appearing in normal operating conditions and excludes normal wear and tear and corrosion. A new Warranty Period of 12 months shall apply to parts supplied in replacement of the defective parts or to parts renewed in pursuance of this Clause. In any case, whether initial or extended, the Warranty period shall not be extended beyond a period of thirty (30) months from the date of delivery.

8.3 The Warranty is strictly limited either to repair or replacement at Seller's discretion of parts found to be defective for reasons attributable to Seller.

8.4 Purchaser shall notify Seller in writing within 3 working days from the date of discovery of any defect and shall give him every opportunity of inspecting and remedying them.

8.5 For any Works made by other manufacturers included in the Works supplied by Seller, Seller shall only be obliged to warrant the same to the extent of the warranty given by the said manufacturers to Seller.

### **PERFORMANCE GUARANTEE**

8.6 In the event performance guarantees are expressly granted by Seller, such guarantees shall be based on information given to Seller as to conditions of use of the Works



exclusively. Purchaser shall be entirely responsible for any error in the information provided to Seller.

8.7 Seller's performance guarantee shall be given only if assembly and commissioning was carried out by Seller. Purchaser may conduct any preliminary performance test(s) desired or necessary to measure Works performance. If preliminary test results are satisfactory, the Works shall be accepted. If Purchaser should defer acceptance because of supposed deficiency, Seller shall be notified and a date set for official acceptance test(s).

Any test(s) required to set performance of the Works shall be made during the first year of operation and within eighteen months after date of shipment at the latest.

8.8 If Seller is unable to rectify the observed lack of performance within the grace period above mentioned, Purchaser may apply liquidated damages as agreed in writing with Seller. Such cumulative penalties shall reach a maximum of 5% of the Contract Price. In any case, liquidated damages for performance are the sole and exclusive remedy applicable.

8.9 No other direct or indirect liability shall be held against Seller, in particular for Works downtime or for any other indirect and/or immaterial loss or damage including but not limited to loss of profits, production stoppages or litigation or claims brought by third parties against Seller, unless it be established otherwise than by presumption that there was gross negligence on its part or that it had effective knowledge of a defect at the time of acceptance. Ignorance of the defect shall only be treated as gross negligence if it is established that the said ignorance arose from manifestly abnormal inattention of an exceptional nature.

## **9 LIABILITY**

9.1 Seller's total liability based on contract, tort or otherwise at law towards Purchaser— whether due to damages, penalties, warranties, guarantees, or in any other circumstances – will not exceed fifty percent (50%) the value of the Contract itself. That global limitation does not apply to specific limitation related to bodily injuries, gross negligence and wilful misconduct, or otherwise as provided for by the applicable law.

9.2 Seller shall in any case and notwithstanding any provision to the contrary not be liable for any loss of production, loss of profit, loss of use, loss of margin, loss of contracts, loss of cooling liquid (primary refrigerant / refrigerating medium) -the list is not exhaustive- or punitive damages or for any other immaterial, consequential and/ or indirect loss and damages .

## **10 SUSPENSION/TERMINATION**

10.1 Suspension  
If Purchaser suspends the work for no fault of Seller, by giving written notice to Purchaser, Seller shall be entitled to (a) extension of time for completion of work (b) extra cost involved including any loss incurred by Seller, such as increase in the cost of material, design, drawings, etc....

10.2 Termination for convenience  
If Purchaser terminates this contract without cause, Seller shall be paid for all incurred costs including any cancellation charges by Seller's suppliers, plus a fee of 15

percent of the total of incurred cost, less the total of any Partial Payments already made. In addition, Seller shall be paid liquidated damages in the amount of 15 percent of the unpaid balance of Contract Price.

### **10.3 Termination for cause by Seller**

Fifteen (15) days after expiration of a written notice to cure, all or any part of the Contract may be terminated, without prejudice of the penalties and indemnification which may be required from the Purchaser in compensation for the prejudice sustained by the Seller, and without any liability to the Purchaser, if:

- the Purchaser fails to comply with any of its obligations under the Contract;
- the Purchaser is insolvent, is party to a compromise settlement or files for bankruptcy;
- the Seller has good reasons to believe that the Purchaser will be unable to execute its obligations;
- a force majeure event occurs which may delay performance of the Contract for more than three (3) months;

### **10.4 Termination for cause by Purchaser**

Fifteen (15) days after expiration of a written notice to cure, all or any part of the Contract may be terminated, if:

- the Seller fails to start to comply with any of its obligations under the Contract;
- the Seller is insolvent, is party to a compromise settlement or files for bankruptcy;
- a force majeure event occurs which may delay performance of the Contract for more than three (3) months.

Purchaser shall only be entitled to compensation of the prejudice incurred within the contractually agreed limitations of liability.

## **11 FORCE MAJEURE**

The parties shall not be held liable for any breach of the Contract terms and conditions when such breach results from a Force Majeure event. Force Majeure shall mean any event beyond the control of the affected party, which could not be anticipated upon formation of the contract, and the effects of which are compelling and unforeseeable such as, this list not being limitative, acts of god, wars, riots, fires, floods, earthquakes and other exceptional natural events, epidemics, lock outs, national and trade strikes, impediments due to specific legislative provisions, government restrictions (including the denial or cancellation of any export or other necessary licence) other similarly serious impediments beyond the control of the party whose performance is affected (including mechanical, electronic, or communication failure).

11.1 For any interpretation of these notions, the applicable law as defined in article 14 will be used.

11.2 In the event that performance under the Contract is rendered impossible for more than three (3) months, either party may terminate or rescind such Contract by written notification to the other party, unless the parties decide to amend the Contract to take into account the new circumstances arising from such Force Majeure event. A Force Majeure event may not give rise to a claim for damages. The Purchaser will only be liable to the Seller for such part of the Contract which was

performed before the Force Majeure event arose. Any pre-paid amount shall be refunded to the Purchaser

## **12 LOCAL LAWS AND REGULATIONS**

- 12.1 Purchaser shall, at the request of Seller and to the best of his ability, assist Seller to obtain the necessary information concerning the local laws and regulations applicable to the Works and to taxes and dues connected therewith.
- 12.2 If, by reason of any change in such laws and regulations occurring after the date of the tender, the costs of the Works are increased, the amount of such increase shall be added to the price, as the case may be.
- 12.3 In any case, Seller does not warrant compliance of the Works to any code or regulation issued by any authorities or government bodies, and Seller does not and will not assume any obligation with respect to obtaining permits, licences, or approvals from the aforesaid authorities or government bodies for the said Works. Purchaser has the duty to inform the Seller about the content and modification of any applicable code, regulation, norm or other.

## **13 SAFETY - ENVIRONMENT- SUSTAINABLE DEVELOPMENT**

- 13.1 The Purchaser will (i) provide the Seller with all necessary advice and information relating to the Works, (ii) inform the Seller on standard customs, hazardous risks, rules and standards applicable to the Works.
- 13.2 The Seller is committed to the protection and improvement of safety, health, social dialogue, sustainable development and environment. The Purchaser shall inform the Seller of any necessary information in the areas of security, safety, or environment that relates to the Goods and/or their processing, handling and use. To this end, the Purchaser shall give information to the Seller regarding all uses of the Works and all special features (sites applicable rules, activities, transportation...) of the agreed place of delivery. Any information provided by the Purchaser to the Seller shall in no way limit Purchaser's liability. Should the Purchaser commit a breach relating to safety, health, or environmental obligation, the Seller will be entitled to terminate the Contract and the Purchaser will bear any liability arising from the breach and/or from the termination of the Contract.
- 13.3 The Purchaser accepts any liability with respect to any adverse effect arising from his action or inaction in respect of safety, security and environment, the Purchaser acknowledging his full liability in event of the exercise of the Seller's right to cancel the Contract.

## **14 ETHICAL BUSINESS STANDARDS**

In connection with the Purchase Order, Purchaser and Seller represent and warrant to comply with (and to have given and implemented instructions to their directors, employees and/or agents to comply with) all applicable anti-bribery, anti-corruption and anti-money laundering laws, rules, and regulations including, but not limited to, Bribery Act 2010 of the United Kingdom, Foreign Corrupt Practices Act of 1977 of the United States of America, French Law No. 2016- 1691, known as "Sapin II" Law (the

"Anti-Corruption Laws"), as well as with the principles of the relevant international treaties and conventions, including the "OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 1997" and the "United Nations Convention against Corruption of 2003".

Seller, on its behalf and on behalf of its Principals (Principal means: each owner (partner or shareholder) of the Supplier, each member of the board of directors of the Supplier, each officer or managing director of the Supplier, each individual who is a beneficial owner of the Supplier or each individual who is able to exercise control over the Supplier through any arrangement, and each individual (employees and consultants) working for the Supplier who is principally responsible for operations and/or activities under the Purchase Order), represents, warrants, covenants, agrees and undertakes:

a. that neither the Seller nor any of its Principals in the course of supplying the Goods under the Purchase Order:

i. have directly or indirectly made, offered, promised, authorized or will make, offer, promise or authorize any improper or illegal payment, gift or other advantage, be it monetary or otherwise to any third party, or any person in a private or public function, including any PUBLIC OFFICIAL, for the purpose of illegally influencing actions or decisions or securing any improper advantage;

ii. have directly or indirectly made, offered, promised, authorized or will make, offer, promise, or authorize any improper or illegal payment, gift, or other advantage, be it monetary or otherwise, to Purchaser (including Purchaser's Principals and employees) or third party representing the Purchaser in order to influence the award of any purchase order (including the present Purchase Order) by the Purchaser;

iii. have in any other way violated the laws, rules or regulations of any country having jurisdiction over the Parties or the subject matter of the Purchase Order or over the Goods, including the country in which the Goods are to be delivered or payments to the Seller are to be made;

b. that no PUBLIC OFFICIAL who is directly or indirectly related with the activities to be carried out under this Purchase Order, or their FAMILY MEMBERS, will be appointed as Principals of the Seller or hired by the same as employee, consultant, intermediary or agent;

c. that in connection with the performance of the Purchase Order, will not purchase or sell (or agree to purchase or sell) goods or services from any individual or entity, the payment for which will go, directly or indirectly, to a PUBLIC OFFICIAL or any relative or designee of any such individual without previously disclosing and obtaining the Purchaser's written approval for such purchase or sale;

d. that in connection with the performance of the Purchase Order has not paid and will not pay any FACILITATION PAYMENTS which are expressly prohibited by Purchaser.

Each of Seller and Purchaser further agrees and undertakes that, in connection with the Purchase Order and any other business transactions

a. it has in place appropriate compliance, anti-bribery and anti-corruption controls on third parties in order to ensure, guarantee and be responsible that they are duly qualified to perform the tasks for which they have been engaged, that they are of good reputation, and that they present no bribery and/or corruption-related or other compliance risk

b. it shall cause all such third parties to agree in writing with any applicable laws and anti-corruption obligations

c. it shall regularly audit and/or monitor such third party providers to confirm their compliance with applicable laws and anti-corruption obligations.

## **15 GOVERNING LAW AND JURISDICTION**

All disputes arising out or in connection with the contract shall be settled by the competent courts of the country of registration of the

Seller. The laws of the country of registration of the Seller are applicable.

## **16 DATA PROTECTION**

---

Seller is committed to collecting and processing personal data responsibly and in compliance with the applicable data protection laws, in particular GDPR. Respecting privacy is fundamental to Seller's relations with existing and potential Purchasers.

Seller is also committed to maintaining the confidentiality, integrity, security and resilience of Purchaser's personal data. To this effect, Seller has implemented appropriate technical and organizational measures to prevent personal data processed by or on behalf of Seller from accidental or unlawful destruction, loss, alteration, disclosure or access.