

# PROCUREMENT

## Connected Wind Services Danmark A/S (CWS) Terms and Conditions

### §1 General provisions

- (1) Ordering is exclusively on the basis of the present Terms and Conditions (hereinafter referred to as "TC"). Any opposing, additional or deviating conditions of the Supplier do not form part of the TC, even if such conditions are not expressly contradicted. The TC apply even if CWS, in the knowledge of opposing or additional conditions of the Supplier, or in the knowledge of conditions of the Supplier which deviate from the purchaser's purchasing conditions, accepts the delivery of the Supplier without reservation, or if the Supplier declares that it will only supply under the Supplier's own conditions.
- (2) The present TC apply also in respect of all future purchase transactions with the Supplier, irrespective of whether or not express reference is made thereto at the time of the conclusion of any such TC.

### §2 Conclusion of TC; assignment

- (1) Ordering and acceptance, and any amendments and additions thereto, require the written form. This applies also in respect of any amendments made after the conclusion of the TC, and in respect of the cancellation of the requirement as to the written form. Verbal side TC at the time when the TC is concluded is only valid if confirmed by the purchaser in writing. In the event of any amendment to the TC, the most recent version of the purchaser applies in each case.
- (2) Orders can only be accepted within a period of 1 weeks following receipt, by written confirmation of order by the Supplier.
- (3) The Supplier is not entitled to assign or pledge its rights and obligations arising from the TC, or to have its claims against the purchaser collected by third parties, without the written agreement of the purchaser. This does not apply in respect of the extended reservation of ownership.

### §3 Prices; payment

- (1) The prices are binding. These prices include packaging costs. Prices are understood as being DDP in accordance with INCOTERMS 2010.
- (2) Invoices are to be sent in duplicate, separately for each complete delivery, stating the order data, to the address of the purchaser. Any amount of the invoice referable to tooling or equipment or other items paid for by CWS shall be specified.
- (3) CWS will effect all payments 60 days starting at the end of the month of receipt of the Supplier's invoice or delivery date, whichever is the latest.
- (4) In the event of acceptance of premature performance, the due date for payment is based on the originally agreed delivery date.
- (5) Payment does not signify acknowledgement of any delivery as being in conformity with the TC.
- (6) The purchaser is entitled to offsetting and retention rights in the statutory extent. Insofar as the Supplier has to provide guarantees, the purchaser is entitled to withhold all payments until the guarantees have been provided in the agreed form.

#### **§4 Delivery; date; delay**

- (1) The agreed delivery dates and delivery times are binding.
- (2) Partial or preliminary deliveries are only permissible with the agreement of the purchaser. Not later than with the delivery, the Supplier will hand over free of charge all documents and records relating to quality which are necessary for approval by the end customer and/or any official or other agencies. Likewise each batch delivery must contain a Material Certificate for each item.
- (3) If the agreed dates and delivery periods cannot be observed, for a reason which is attributable to the Supplier, the purchaser is entitled to Liquidated Damages of 10 % of the order value to be delivered for each commenced week or part week of delay, not exceeding 25 % of the total scope of delivery. Any entitlement to damages over and above this is not affected, although the TCual penalty is set off against any actual loss. Even in the absence of any express reservation of claim at the time of delivery, the purchaser can claim the full amount at any time up to the final payment.
- (4) The Supplier must inform the purchaser immediately in writing if it envisages any difficulties in completion for any reason whatsoever, including Force Majeure.

#### **§5 Quality**

- (1) The Supplier shall make sure that its production and the products and services to be delivered under this TC must be in line with and/or maintain a quality management system in accordance with DIN ISO 9000 or any equivalent agreed quality standard and the same requirement is to be agreed with the Supplier's subcontractors.
- (2) Amendments to the specification, and changes in production which may affect the condition, suitability or other quality of the delivered item, require the written agreement of the purchaser.
- (3) CWS shall be entitled to request sample testing and perform audits at the Supplier's premises for the verification of the Supplier's undertakings under this clause following appropriate prior notice. The Supplier shall also to the extent possible arrange for CWS to have corresponding access to its sub suppliers.
- (4) The Supplier must inform the purchaser about any possible unsuitability of the items delivered for the intended purposes as notified or otherwise known to the Supplier, and about all possibilities for improvement, insofar as it is possible for the Supplier to be aware of any such without major effort or expense.

#### **§6 Warranty**

- (1) Acceptance of the delivery is subject to the reservation of an examination for completeness and correctness. The purchaser may, within an appropriate period, meaning minimum 4 weeks, examine the goods for any possible deviations in terms of quality or quantity. Evident and not evident ("hidden") defects are notified to the Supplier immediately after they have been discovered. To that extent the Supplier waives the objection of delayed notification of defects.
- (2) In the context of this examination for defects, subject to any evidence indicating otherwise, the values determined by the purchaser at the time of incoming goods control, if any, are authoritative in respect of numbers of items delivered and the weights and dimensions thereof.

- (3) The Supplier guarantees that its goods and services are free from defects for a period of 48 months from the date of the transfer of the risk.
- (4) The warranty period is 48 month from the (re-)commissioning of the wind turbine and at latest 60 month from the delivery. CWS undertakes to put the Product into operation at the latest 12 month after delivery.  
The purchaser is entitled to its statutory defect guarantee rights without any restriction. In each case, the purchaser can demand repair of the defect or delivery of a new item by the Supplier, at its choice. All costs arising thereby are charged to the Supplier. This applies also in respect of those costs which have arisen because the goods and services have been provided at a place other than the place of performance.
- (5) In cases where delay would give rise to risk, or where there is a special need, the purchaser can, following notification of the Supplier, undertake the repair of defects or replacement delivery itself, or have these undertaken by third parties, at the Supplier's cost and risk.
- (6) In the case of minor defects, repair of which is not envisaged by the purchaser as costing more than € 1,000 (trivial damage), the purchaser is entitled to undertake repair of the defect itself, at the cost of the Supplier. Additional statutory warranty rights are not affected.
- (7) All obligations under warranty are to be fulfilled immediately, meaning within 24 hours (DDP) from written notes.
- (8) If the Supplier does not immediately fulfil any demands under warranty made by the purchaser, or if repairs or replacement deliveries repeatedly fail, or if a defect only becomes known at the premises of the purchaser after the start of production, the purchaser may, at its own choice, demand a reduction in the amount of the remuneration or the cancellation of the TC. The purchaser can regard the repair of any defect as failed if the first attempt at repair is fruitless.
- (9) If an epidemic defect occurs during a period of five (5) years commencing with the warranty period, the Supplier shall remedy the cause of the defects by means of modified designs or production methods, or by the use of other materials. At the request of the purchaser, in the event of any such epidemic defect, all parts of the affected delivery series are to be replaced at the cost of the Supplier. Costs arising as a result of the replacement of delivered goods shall be borne by the Supplier. An epidemic defect has occurred if the same defect occurs in at least 5 % of the delivered parts of the same delivery series, and this defect is to be attributed to defects of design, production, materials or execution, or to assembly defects of the Supplier.

## **§7 Liability**

- (1) The Supplier is liable towards the purchaser without restriction in respect of any damage or loss for which the Supplier or its agents are responsible.
- (2) Responsibility in respect of product damage covers the obligation of the Supplier to release the purchaser upon first request from any entitlement to compensation of third parties which may be asserted against the purchaser as a result of defects in a product delivered by the Supplier. This applies even if ordering parties and Suppliers are jointly and severally, or solely, liable towards third parties.
- (3) However, the total liability of the Supplier to CWS in respect of liabilities under the TC shall not exceed an amount equal to the accumulated total TC price. This limitation on liability shall not apply to
  - a) **liability in respect of which the Supplier is entitled to recovery under the terms of any insurance policy**
  - b) **liability in respect of death of, or personal injury to, any person;**

- c) **liability in respect of the infringement of any intellectual property rights;**
  - d) **liability for fraud or wilful default;**
  - e) **liability under warranty;**
- (4) For the entire duration of the TC, including all warranty periods, the Supplier undertakes to maintain product liability insurance with a sum of cover of DKK 10 million for each case of personal injury or damage to property, maximum amount for this is DKK 10 million per year – on a lump sum basis, and to provide evidence of this to the purchaser upon request.

### **§8 Intellectual property rights, secrecy**

- (1) The Supplier is liable in respect of claims arising from the violation of intellectual property rights (including applications) (“IPRs”) of third parties where the delivered items are used as envisaged in the TC.
- (2) If a claim is asserted by a third party against the purchaser, the Supplier must, upon first written request, hold the purchaser harmless from all claims arising from the violation of IPRs. The purchaser may not reach any kind of agreement with the third party, and in particular may not conclude any settlement, without the agreement of the Supplier.
- (3) The Supplier’s obligation to hold the purchaser harmless relates to all expenses necessarily arising for the purchaser from or in connection with the third party claim.
- (4) The period of limitations for these claims is ten years, starting from the date of conclusion of the TC.
- (5) The Supplier undertakes to inform the purchaser immediately of any infringement, actual or potential, which become known to it and to give the purchaser the opportunity to defend any corresponding claims.
- (6) The parties undertake to not disclose to any third party any information of confidential nature exchanged between the parties.
- (7) Any drawings, specifications or other documents, samples, tools and equipment and other items handed over to the Supplier, or paid for or otherwise made available for the Supplier by CWS, are CWS’s property and shall be handled in strict secrecy and may not be made accessible to third parties without CWS’s written approval. They are to be used exclusively for the provision of the goods and services ordered by CWS and may not be used, copied or reproduced for any other purpose except as required by mandatory law. These obligations of secrecy apply also after completion of this TC.
- (8) An obligation corresponding to these provisions is to be imposed on sub suppliers.

### **§9 Labeling and branding**

- (1) Except as provided for in this TC, the Supplier may not use or refer to CWS’s company name or trademark without CWS’s prior written approval.
- (2) All products must be labelled in accordance with any agreed technical requirements and any legal requirements prevailing in the country of destination and use, including but not limited to CE markings.

- (3) In addition to the above, CWS's part number and branding as provided to the Supplier and maybe updated from time to time must be exhibited on the products, and included in/on respective drawings, the packaging and the labels.

### **§10 Reservation of ownership; provision of items; secrecy**

- (1) The purchaser reserves its rights of ownership, authorial rights and other rights in respect of all illustrations, drawings, models, templates, samples, matrices, calculations, tools and similar items which are paid for or otherwise made available by CWS to the Supplier.
- (2) After the order has been processed, all items and documents shall be returned to the purchaser without any request to that effect being necessary. Insofar as the Supplier prepares or reproduces these items at the cost of the purchaser, it transfers ownership thereof as of now to the purchaser and conserves these items up to the date of handover following completion of the corresponding deliveries. The purchaser accepts the transfer of ownership. The Supplier may not, without express written approval, make items belonging to the purchaser available to third parties, or transfer them or pledge them to third parties.
- (3) If the items provided to the Supplier by the purchaser are processed or transformed into a new moveable item, the purchaser is regarded as the manufacturer. In the event of any combination or inseparable intermixing with other items not belonging to the purchaser, the purchaser acquires the co-ownership of the new item in the ratio of the value of its own item (purchase price plus VAT) to the other processed items at the time of processing. If the combination or intermixing occurs in such a way that the items of the Supplier are to be regarded as the main item, it is regarded as agreed that the Supplier transfers co-ownership to the purchaser on a proportional basis; the Supplier safeguards the sole ownership or co-ownership for the purchaser.
- (4) If the security rights to which the purchaser is entitled in accordance with § 10 (3) exceed by more than 10 % the purchase price of all reservation goods not yet paid for, the purchaser must, at the request of the Supplier, release the security rights, at its choice.
- (5) The Supplier must, at its own cost, adequately insure the items provided by, paid for or otherwise made available for the Supplier by the purchaser, at their new value, against fire, water and theft damage, and provide evidence of this to the purchaser on request. The Supplier must also, at its own cost, carry out any necessary maintenance and inspection works, and any upkeep and repair works, at the proper time. Any malfunctions are to be notified to the purchaser by the Supplier immediately. If the Supplier culpably fails to do this, claims for compensation are not affected.

### **§11 Force Majeure**

- (1) Either party shall be entitled to suspend performance of the whole or part of its obligations under the TC to the extent that such performance is impeded or made unreasonably onerous by any event of Force Majeure. There shall be no entitlement to any costs whatsoever arising as a result of an event of Force Majeure. The extension of time shall only be for the actual delay necessarily resulting from one or more causes. The term "Force Majeure" includes any event which cause arose after the signature of the TC and which is beyond the control, and without the fault or negligence, of either party. It shall include, war or war conditions, riots, sabotage, fire, flood, typhoons, earthquakes, hurricanes, explosions, epidemics quarantine restrictions and strike other than at the Supplier's premises.

## **§12 Termination**

- (1) Upon the occurrence of a default or if the Supplier becomes insolvent, CWS may give the Supplier notice in writing to remedy the Default within seven (7) Days (or any other time specified by CWS). Should the Default be incapable of remedy within such specified period, and the Supplier can demonstrate that it has taken reasonable steps to remedy the Default, CWS may at its discretion agree to grant the Supplier further remedial time. If the Supplier fails to comply with a notice of default under this clause, CWS may, by further written notice to the Supplier, terminate the TC in whole or in part. Notice of termination shall be effective upon its delivery. Upon termination for Default, the Supplier shall indemnify CWS for all damages and any cost or expense incurred by CWS because of the Default.
- (2) CWS may terminate the TC or any portion thereof at any time without cause, in its sole discretion, by providing a notice to the Supplier (termination for convenience). Such notice will state the date when the termination is to be effective. CWS shall pay the Supplier as a result of termination for convenience its actual cost for the portion of the Works completed in accordance with the TC up to the date of termination; and the reasonable costs incurred by Supplier resulting from such termination for convenience, including costs of materials purchased specifically for the TC as well as its demobilization and closing costs.

## **§13 Non validity of individual provisions**

- (1) If individual provisions of these TC are or become invalid, this does not affect the validity of the TC in other respects. The partners undertake to replace the invalid provision with a provision which approximates as closely as possible to the commercial aim.

## **§14 Deterioration in financial position; changes in the Supplier's company**

- (1) If an insolvency proceeding is instituted in respect of the Supplier or its assets, or if an application is made for extrajudicial composition proceedings, the purchaser is entitled to withdraw from the TC in respect of the unfulfilled portion thereof. The purchaser has a right of termination without notice in the event that the Supplier's company is sold to a third party or undergoes a conversion of its legal or commercial form, and it is no longer reasonable under these circumstances for the purchaser to continue to adhere to this TC and any individual subordinate TC concluded. Termination must be in writing.

## **§15 Arbitration; place of performance; applicable law**

- (1) Any dispute arising out of or in connection with the TC shall be finally settled under the Rules of Arbitration of Denmark at Sø- og Handelsretten in Copenhagen. The TC shall be construed and shall operate according to the laws and regulations of Denmark.