

VTTI general purchase conditions

1. DEFINITIONS

<i>Confidential Information</i>	shall mean the information described in Clause 6.1
<i>Defects Liability Period</i>	shall mean the information described in Clause 9.2
<i>Goods and Services</i>	shall mean the goods and/ or services as described in the Purchase Agreement including remedying of defects therein and any services which are necessary to complete the goods and services to the satisfaction of the Purchaser and all other things to be done by the Vendor as agreed in the Purchase Agreement. Goods and services also to be used as separate definitions.
<i>Location</i>	the Purchaser's terminal site or any other location as agreed by the Parties in the Purchase Agreement;
<i>Offer</i>	means the offer from the Vendor in relation to the Goods and Services;
<i>Price</i>	shall mean the price and/or fees for the Goods and Services as described in Clause 5 and more detailed in the Purchase Order to the Purchase Agreement;
<i>Purchase Agreement</i>	the purchase agreement, purchase order, acceptance of the Offer or any other agreement in relation to the Goods and Services between the Vendor and the Purchaser that is subject to these General Purchase Conditions, including any attachments thereto;
<i>Party</i>	means either the Vendor or the Purchaser and " Parties" shall mean both of them;
<i>Purchaser</i>	the Party purchasing the Goods and Services on the basis of the Purchase Agreement;
<i>Rely Upon Information</i>	means the information which is selected and categorized by the Purchaser as rely upon information in accordance with Clause 7
<i>Vendor</i>	the Party providing the Goods and Services on the basis of the Purchase Agreement.

2. APPLICABILITY

- 2.1. The Purchase Agreement constitutes the entire agreement between the Vendor and the Purchaser and shall supersede any written, oral communication representation and/or agreement.
- 2.2. These General Purchase Conditions shall apply to all Goods and Services delivered to the Purchaser by the Vendor pursuant to the Purchase Agreement.
- 2.3. The general terms and conditions of the Vendor, regardless how such terms and conditions are called, shall in no event be applicable to the Purchase Agreement.
- 2.4. The Offer shall be valid for a period of at least two (2) months from the date mentioned in the Offer.

3. TIME IS OF THE ESSENCE

- 3.1. The Vendor possesses the business capacity and the personnel to perform all obligations under the Purchase Agreement in a timely, professional and appropriate manner. Delivery of the Goods and Services shall be made in accordance with the delivery schedule specified in the Purchase Agreement and at the Location(s) set out in the (attachment to) the Purchase Agreement. Delivery dates are of the essence. Early delivery of Goods and Services shall require prior written approval of the Purchaser.
- 3.2. In the event the Vendor is in breach of the agreed time and/or delivery schedule, the Vendor shall be automatically in default, without notice being required from the Purchaser to the Vendor.
- 3.3. In the event of delay of delivery, the Vendor shall as soon as any delay becomes apparent, inform the Purchaser thereof in writing specifying (i) the actual date of delivery, and (ii) how the late delivery shall be made up for in the overall delivery schedule, always in close consultation with the Purchaser and with the purpose of remedying incurred damages.

4. NO ASSIGNMENT AND SUB-CONTRACTING

The Vendor shall not be permitted to assign and/or novate the Purchase Agreement or sub-contract the Goods and Services wholly or partly to a third party, without the prior written consent of the Purchaser. Any approval as described above does not release the Vendor from any responsibility under the Purchase Agreement.

5. PRICE, INVOICING AND PAYMENT

- 5.1. The Price shall be firm, not subject to revision and shall include any and all costs, including but not limited to transport, storage, inspection and packing costs.
- 5.2. The Price shall include all taxes, duties, social security contributions and pay-roll taxes related to the Goods and Services, including those related to sub vendor's, if any. The Vendor shall indemnify the Purchaser in the event the Purchaser is held liable for the payment of any such taxes, duties and/ or contributions. Applicable VAT or other sales tax shall be specified and shall not be considered part of the Price.
- 5.3. Invoices of the Vendor shall contain the following information: proper reference to the Purchase Agreement including the relevant part of the payment schedule, (where relevant) timesheets/ materials sheets approved by the Purchaser, any statutory requirements and any format requirements by the Purchaser or other information set out in the Purchase Agreement. Invoices that do not meet the aforementioned will not qualify for the payment term and will need to be re-issued by the Vendor in accordance with the provisions hereof.
- 5.4. The payment term for undisputed invoices issued in accordance with Clause 5.3 shall be 60 days. In the event the Purchaser has not paid in time, the Vendor shall send a written notice of such late payment.
- 5.5. The Purchaser may deduct any monies which are or may be payable by the Purchaser to the Vendor in connection with the Purchase Agreement from the invoices. Nothing in this Clause affects the right of the Purchaser to recover from the Vendor the whole of the debt or any balances that remain after such deduction.

6. CONFIDENTIALITY

- 6.1. The Vendor shall keep confidential all visual, written or other proprietary information in whatever form or medium provided by the Purchaser in connection with the Purchase Agreement, including but not limited to commercial, business, financial, sales, assets, technical, operational, strategic, promotional or customer information, information relating to discussions with, or any matter relating to, any Governmental or statutory body and, where relevant, processes, maps, models, concepts, interpretations and other know-how, and all notes, analyses, compilations, engineering and feasibility studies or other documents prepared by Purchaser as well as plans, prices, drawings that the Vendor has obtained from the Purchaser in the course of concluding the Purchase Agreement and in the performance thereof (jointly "Confidential Information"), unless the Vendor has a legal duty to make (part of) the Confidential Information public or (part of) the Confidential Information has come into the public domain other than through the default of the Vendor.

- 6.2. The Vendor shall impose the same obligation as set out in Clause 6.1 on its employees and any third parties called upon by the Vendor and guarantees that such parties comply therewith.
- 6.3. The Vendor shall not use the name or logo of the Purchaser as a reference or for any other purpose whatsoever.

7. RELY UPON INFORMATION

- 7.1. The Vendor shall be responsible and liable for the correctness and accuracy and completeness of all information received from the Purchaser in relation to the Goods and Services except for Rely Upon Information for which the Vendor shall use reasonable endeavours to review Rely Upon Information without an increase of the Price.
- 7.2. The Vendor, in its capacity as a professional party with extensive knowledge and experience shall inform the Purchaser about manifest errors, interpretation issues which could lead to incorrect information, ambiguity, omission contemplated in the Rely Upon Information. If the Vendor informs the Purchaser of such error, the Vendor shall request for a written clarification by the Purchaser.

8. LIABILITY AND INSURANCE

- 8.1. The Vendor shall be liable for any and all damages, losses, costs, expenses, injury, harmful effects ("Losses") caused by breach of its obligations under the Purchase Agreement or caused by the negligence or default of the Vendor and/ or its sub-vendor's or any other party under its control in respect of the Goods and Services and shall indemnify the Purchaser for any and all such Losses. Vendor's liability under this Clause 8.1 shall be limited to an amount of EUR 10 million per event.
- 8.2. The Vendor shall at its cost have and maintain the following insurance coverage:
 - a) a comprehensive general liability insurance up to at least EUR 5 million per event;
 - b) a professional indemnity insurance up to at least EUR 5 million per event;
 - c) Motor Vehicle Insurance up to at least EUR 5 million;
 - d) CAR insurance up to at least EUR 5 million; and
 - e) Goods Insurance policy, including coverage for transportation and goods in transit and furthermore mandatory local insurance.
- 8.3. On request of the Purchaser, the Vendor shall provide the relevant insurance certificates and in case of expiration renewed certificates.

9. REPRESENTATIONS AND WARRANTIES

- 9.1. The Vendor represents and warrants that:
- a) The Goods and Services shall be in accordance with the scope of work described in the Purchase Agreement, the terms and conditions of the Purchase Agreement, best industry practice and applicable law as well as with the standards and the specifications as prescribed by the Purchaser;
 - b) the Goods and Services are fit for purpose and free from any encumbrances and/or inherent or latent defects in design, workmanship, materials, method of assembly or otherwise;
 - c) that the ownership and title to any materials, deliverables and works related to the Goods and Services are vested in the Purchaser free from any lien, retention of title, charge or any other security interest and that no person other than the Purchaser shall have any claim to title thereto;
 - d) the Goods and Services shall be delivered within the agreed delivery schedule;
 - e) the Goods and Services shall be executed in such a manner that the Purchaser is able to get the full, efficient and safe commercial operation of the Goods and Services with the minimum interruption for maintenance or repair;
 - f) it is adequately and properly financed to meet all the financial obligations that it may be required to assume under the Purchase Agreement, and it has at all times such resources, experience, qualifications and capability at its disposal as may be required to enable it to perform its obligations under the Purchase Agreement; and
 - g) it shall procure, where feasible, warranties in favour of both the Purchaser and the Vendor from the appropriate sub-vendors. Such warranties shall be freely assignable and shall be for the respective durations indicated therein, commencing from the commencement of the relevant Defects Liability Period.
- 9.2. The Vendor shall promptly remedy/substitute the Goods and Services for a period of two (2) years after delivery and acceptance or the implementation/ commissioning of the Goods and Services whichever is latest ("Defects Liability Period"). The Vendor shall at its cost promptly remedy any defect. If pursuant to this Clause 9.2 (part of) the Goods and Services are remedied or substituted, the full defects liability period shall apply as of the time these Goods and Services respectively have been delivered.
- 9.3. The Vendor shall obtain without delay and at its own cost such authorizations, rights of way, approvals, permits, consents and licenses which are necessary for it to deliver the Goods and Services, with the exception only of those which Purchaser will obtain as specified in the Purchase Agreement. The Vendor shall provide the Purchaser with all necessary assistance, data, information and documents as required by the relevant authorities, until such date that the Purchaser has confirmed that the application documentation to obtain such authorizations, approvals, Permits, consents and licenses is complete.
- 9.4. The Vendor has and shall at all times maintain sufficient competent, experienced and fully qualified personnel to deliver the Goods and Services in a safe, efficient, environmentally sound, and professional manner and in accordance with the Purchase Agreement. Vendor may not withdraw its personnel from the Location, except with prior consent from Purchaser.

- 9.5. The Vendor represents and warrants that:
- a) neither Vendor, its sub-vendors nor any of its directors, officers or employees is or will become an officer or employee of any government or governmental department, agency or instrumentality in any jurisdiction;
 - b) no official of any government or governmental department, agency or instrumentality in any jurisdiction is or will become associated with, or presently owns or will own an interest, whether direct or indirect, in Vendor or has or will have any legal or beneficial interest in the Purchase Agreement or in the payments made by the Purchaser hereunder;
 - c) Vendor has not and will not directly or indirectly make or authorize any payments, gifts or offers or promises to pay or to give anything of value to a foreign or political party official, political party or candidate in any jurisdiction to assist in obtaining or retaining business or directing business to others which, if done by Purchaser or its affiliates, would violate any Applicable Law;
 - d) Vendor shall include in its contracts with any sub-Vendors a similar provision, restricting its sub-vendors from engaging in conduct which if engaged in would violate applicable anti bribery laws including, but not limited to, the FCPA, to the extent applicable. The Purchaser may audit any records of Vendor to determine compliance with this Clause. The Vendor shall immediately notify the Purchaser of any violation of this Clause 9.5.
- 9.6. The Vendor shall, and shall procure that their directors, officers, employees and agents shall, comply with all applicable Anti-Corruption Laws in connection with the performance of the Purchase Agreement, including (without limitation) not giving, offering to give, authorizing the giving of or soliciting, accepting or agreeing to accept anything of value, whether directly or indirectly, for any improper purpose, if to do so would breach any applicable Anti-Corruption Laws.
- 9.7. The Goods and Services shall be delivered in accordance with the standards of the latest version of the VTTI Health Safety and Environmental (VTTI HSE policy) as provided by the Purchaser. Any accidents, (near) misses and spills related to the Goods and Services shall be promptly reported to the Purchaser in writing.
- 9.8. The Vendor shall on or before delivery of the Goods and Services assign and or novate all warranties or guarantees provided by the manufacturers of the Goods or sub vendor's of the Services.
- 9.9. The Vendor guarantees the availability of critical spare parts for any Goods and Services for at least a period equal to the lifetime of the Goods and Services, as described in the Purchase Agreement and, if not described, for the lifetime generally expected in the industry for those Goods and Services.

10. INTELLECTUAL PROPERTY

All intellectual property rights with respect to the Goods and the Services are vested in the Purchaser and – where relevant - transferred to the Purchaser. The Vendor guarantees that the use of the Goods and Services (or parts thereof) do not infringe any intellectual property right of third parties and the Vendor shall indemnify and hold the Purchaser harmless against any claim from third parties in this respect and any damage, loss and/costs suffered by the Purchaser.

11. SUSPENSION AND TERMINATION

- 11.1. The Purchaser may suspend its obligations under the Purchase Agreement by providing written notice thereof to the Vendor, as and when the Vendor is in breach of its obligations under the Purchase Agreement.
- 11.2. The Purchaser may terminate the Purchase Agreement by providing written notice to the Vendor, stating the nature of the breach, if the Vendor commits a breach:
- a) which is not capable of being remedied; or
 - b) the Vendor has not commenced reasonable steps to remedy such breach within 7 days and/or not remedied such breach within 14 days after written notice of the breach has been given by the Purchaser.
- 11.3. The Purchaser may terminate the Purchase Agreement with immediate effect by providing written notice thereof to the Vendor in the event the Vendor:
- a) enters into or proposes to enter into any composition or other arrangement for the creditors generally or any class of creditors;
 - b) becomes subject to any action or any legal procedure with a view to:
 - i. it being adjudicated or found insolvent;
 - ii. its winding-up or dissolution;
 - iii. the appointment of a trustee, receiver, an administrative receiver, administrator or similar officer in respect of any of its assets, who is not discharged within 30 days of such appointment;
 - c) ceases to carry on its business;
 - d) goes into liquidation; or
 - e) receives formal notice of any event or proceedings (by whatever name known) under the laws of any applicable jurisdiction which has an effect equivalent or similar to any of the events described in this Clause 11.3.

PURCHASE OF GOODS

12. FABRICATION AND SUPPLY OF THE GOODS

- 12.1. The Vendor shall fabricate the Goods in accordance with the specifications set out in the Purchase Agreement and procure the agreed certificates from the certifying authorities, if applicable.

13. DELIVERY OF THE GOODS

- 13.1. Unless otherwise agreed in writing, delivery of the Goods shall be made Delivery Duty Paid (DDP) and excluding VAT in accordance with the ICC Incoterms in effect at the time of concluding the Purchase Agreement.
- 13.2. Any Goods to be delivered shall be properly packed and the packing shall be undamaged upon delivery at the Location, unless otherwise agreed. The Vendor shall promote re-use of (packing) materials and shall keep the Location clean and remove waste as soon as reasonably possible.
- 13.3. Delivery of Goods to the Location shall be checked and signed off for acceptance by the Vendor. In the event any Goods are rejected by the Purchaser, the Vendor shall take back those Goods until they have been modified and have been re-checked and re-signed off and accepted by the Purchaser as set out above. Risk of loss or damage to the Goods shall pass from the Vendor to the Purchaser upon acceptance by the Purchaser.
- 13.4. Delivery of the Goods to the Purchaser shall not be deemed to be completed before all Goods, spare parts included, the related Services have been provided to the Purchaser and a complete set of the agreed documentation in twofold in hard copy and one soft copy has been delivered to Purchaser as well as all agreed certificates. The title to the Goods is transferred upon delivery to and acceptance by the Purchaser in accordance with the provisions of this Clause 12.

14. DELIVERY OF THE SERVICES

- 14.1. The Vendor shall at its own cost carry out and supervise the Services and procure availability of qualified, properly trained and experienced personnel and the required permits, approvals and exemptions.
- 14.2. The Vendor shall not replace any personnel providing the Services, without the prior approval of the Purchaser. The Purchaser can request the replacement of Vendor's personnel, where the Purchaser is of the opinion that this is in the interest of the performance of the Purchase Agreement.
- 14.3. Replacement of any person shall in any case not result in an increase of the Price or a delay in the delivery schedule.
- 14.4. The Services shall be rendered in accordance in accordance with the terms and conditions of the Purchase Agreement, including inspections, testing and verification procedures and within or at the agreed time(s). Completion of the Services shall not be deemed to have occurred before (i) the Services have been provided on or at the Location(s), (ii) such have been accepted by the Purchaser, and (iii) a complete set of the agreed documentation including inspection reports, test data, certificates by the relevant authorities and/or notifying bodies has been delivered to Purchaser in twofold in hard copy and one soft copy .

Inspection, review, testing, approval or payment by or on behalf of the Purchaser shall not release the Vendor from any obligation, warranty, guarantee, liability or indemnity under the Purchase Agreement.

15. VARIATIONS

- 15.1. The Purchaser has the right to make changes, substitutions, increases and reductions to the Goods and Services (“Variations”). Variations shall be carried out and completed under the terms and conditions of the Purchase Agreement. Variations shall not lead to an increase of the Price or extension of time unless and to the extent reasonable and always subject to the Purchaser having received a written proposal within 7 days before the issue of the Variation. If the Variation would reasonably result in a reduction of the Goods and Services, a proportional reduction in Price shall be applicable.
- 15.2. Variations may be initiated by the Purchaser by issue of a Variation notice at any time prior to completion of the Goods and Services. The Purchaser may request the Vendor to submit a proposal in respect of a proposed Variation. If the proposal is accepted by the Purchaser then the Variation shall be confirmed by the Purchaser by issue of a Variation notice. Any such Variation shall not substantially change the extent of the nature of the Services.
- 15.3. A Variation to the Goods and Services may be issued in respect of any:
- a) amendment to the scope of Services and /or amendment to the specifications of the Goods;
 - b) omission of part of the Services but only where such omitted services are no longer required by the Purchaser;
 - c) changed in the specific sequences or timing in the performance of the Services or delivery of the Goods;
 - d) changes in the method of implementation of the Goods and Services;
 - e) provision of the Purchase Agreement requiring the issue of a Variation; or
 - f) proposal submitted by the Vendor.
- 15.4. The Vendor shall be bound by each Variation unless the Vendor promptly gives notice to the Purchaser with supporting evidence that:
- a) that it does not possess the relevant skills or resources to carry out the Variation; or
 - b) the Vendor considers that the Variation will substantially change the extent or nature of the Goods and Services.

The Vendor shall not otherwise make any changes to the Goods and Services.

16. SANCTIONS

16.1. Definitions

a. Sanctions mean

- (i) any sanctions, embargoes, trade restrictions or similar or related requirements, administered and/or enforced by the US department of State or US Department of Treasury; and
 - (ii) any sanctions or restrictive measures imposed by the United Nations Security Council, the European Union, the United Kingdom, the Netherlands or any European Union member state or any other governmental authority under whose jurisdiction the Purchaser, the Vendor or any Affiliate thereof operates at any time during the course of the Purchase Agreement;
- b. Sanctions List means any list of denied, blocked, debarred, embargoed, prohibited, specially designated, sanctioned or otherwise ineligible parties maintained by any government or intergovernmental or international organisation, including the United Nations Security Council, the United States, the European Union or any member state thereof;

16.2 Each Party shall comply with all applicable Sanctions in connection with the performance of the Purchase Agreement and shall be excused from performance of any obligation hereunder to the extent that such performance is prohibited by applicable Sanctions.

16.3 The Vendor shall immediately notify the Purchaser if the Vendor, any of its Affiliates and/or its sub-contractors or any of its or their respective directors, officers, agents or employees or any person acting on behalf of any of them becomes identified on any Sanctions List.

16.4 Without prejudice to any other rights or remedies that the Purchaser may have under the Purchase Agreement or at law (including, without limitation, the right to damages for breach of contract), it shall have the right to terminate the Purchase Agreement with immediate effect if:

- (a) the Vendor has breached this Clause;
- (b) the Vendor, any Affiliate or sub-contractor and any of their respective directors, officers, agents, employees or any person acting on behalf of them thereof becomes identified on any Sanctions List; or
- (c) provided that the Purchaser shall have provided the Vendor with written notice of its intention to terminate in accordance with this Clause.

The Vendor indemnifies and holds the Purchaser harmless from and against any and all claims, damages, penalties and all other costs arising from or related to any breach of this Clause, including (without limitation) any legal fees or other expenses incurred by the Buyer in respect of any investigation or enforcement proceedings by any competent authority relating to a suspected or alleged breach of Sanctions.