

# GENERAL TERMS AND CONDITIONS OF PURCHASE (GTCP) OF THE ROMANDE ENERGIE GROUP

Version of 16 April 2018

## 1. Scope and Validity

- 1.1. These General Terms and Conditions apply to all the orders placed and contracts concluded for the purchase of goods between one of the companies of the Romande Energie Group (hereinafter "Romande Energie") and the supplier.
- 1.2. Any provision that alters or derogates from these General Terms and Conditions is null and void unless it is contained in a document that has been drafted and signed by Romande Energie and the supplier (hereinafter "the parties").

## 2. Offer by the supplier

- 2.1. The offer and demonstrations made by the supplier shall be free of charge, even if they are prepared at the request of Romande Energie. Likewise, the supplier will forward within a reasonable period of time any additional information that may be required.
- 2.2. Unless otherwise agreed, the offer made by the supplier shall be valid for 3 months minimum.
- 2.3. If the content of the offer made by the supplier differs from the invitation to tender by Romande Energie, the supplier will make express mention of this fact.
- 2.4. When intellectual property rights owned by third parties manifestly restrict the right of Romande Energie to use the supplies and services, the supplier will make express mention of this fact.
- 2.5. Provided the order has not been placed, Romande Energie may withdraw from the negotiations at any time, without being liable to pay any compensation whatsoever.

## 3. Orders placed by Romande Energie

- 3.1. It is not possible to take advantage of a tacit agreement on behalf of Romande Energie. An order is not valid unless it is signed by Romande Energie. Orders, agreements and changes conveyed verbally are not valid until they have been confirmed in writing.
- 3.2. The orders placed by Romande Energie consist of the text of the order and any annexes (requirements, specifications, drawings, plans, etc).
- 3.3. If the supplier receives forecasts from Romande Energie, such forecasts are provided for information only and are not a specific order by Romande Energie.

## 4. Prices and Conditions

- 4.1. The prices indicated on the orders placed by Romande Energie are firm, final and are not subject to change. In an emergency, if it is not possible to place a written order and it was consequently not possible to negotiate the prices prior to the fulfilment of the order, the prices quoted by the supplier shall be the prices that are customary in the sector.
- 4.2. Prices include packaging, transport and all additional costs (DAP & insurance according to Incoterms 2020). Custom formalities for import into Switzerland must be done by Gerlach AG. All the documents must be sent to him at least 24 hours before the material crosses the border, specifying the purchase order number. In case of non-compliance with this provision, the costs related to customs clearance will be entirely at the charge of the supplier.
- 4.3. The price, taxes, costs, reductions and discounts as well as the terms of payment and transport will be stated in the order.
- 4.4. A price variation clause is not valid unless it is expressly accepted by Romande Energie. The revised price formula indices must be taken from official government publications. Data sourced from private organisations are accepted solely in the absence of data from an official source. The effects of applying a revision formula shall in any event be capped at the actual rise in the consumer prices index in the country of the supplier.

## 5. Order Confirmation

- 5.1. Only the amendments notified by the supplier within 2 days from receipt of the order will be taken into consideration by Romande Energie.
- 5.2. On request, the final plans drawn up for the equipment ordered will be submitted to Romande Energie free of charge by the supplier for approval by Romande Energie before the equipment goes into production.

## 6. Fulfilment of the Order

- 6.1. The supplier shall have sole management and assume sole liability for the fulfilment of all aspects of the order in accordance with good practice. The supplier will draw the attention of Romande Energie to any circumstances that are likely to impede the fulfilment of the order, in particular by providing Romande Energie with all relevant information at all times.
- 6.2. The supplier and subcontractor(s), if any, are deemed to be familiar with the terms and conditions for supplying the materials that are essential for fulfilling the order. No claims will be entertained in this respect.
- 6.3. Total or partial subcontracting of an order is not permitted without the prior written consent of Romande Energie. In any event, the supplier will assume sole liability towards Romande Energie for performing the contract and will make every effort to ensure that it is fulfilled satisfactorily.
- 6.4. The supplier will forward to Romande Energie all the technical documents and information which Romande Energie deems reasonably useful to fulfil the order.
- 6.5. The supplier is liable for any loss and damage to the equipment, components and appliances that belong to Romande Energie and are made available to the supplier for the purpose of fulfilling the order, as well as for any loss or damage to supplies that are purchased by the supplier on behalf of Romande Energie. The supplier will make every effort to protect the property of Romande Energie at his own expense, including document storage.
- 6.6. If an order placed with the supplier is cancelled, regardless of the reason, the supplier is obliged to return all items that belong to Romande Energie immediately, including the copies of all documents provided by Romande Energie. Conversely, Romande Energie will return all items that belong to the supplier.
- 6.7. Romande Energie will be given unrestricted access during normal working hours to the premises of the supplier and the premises of his subcontractors and suppliers to track the progress of the order and inspect its fulfilment. The sole purpose of inspections conducted during the manufacturing process is to update Romande Energie and such inspections do not release the supplier from liability for defects in and non-compliance of the product that is supplied.
- 6.8. The representatives of Romande Energie may ensure by means of appropriate inspections that the fulfilment of the order is correct in technical terms and they may request the suspension of any work and/or execution that is deemed to be non-compliant, either on the

basis of the stipulations in the order or failure to comply with the laws, standards or good practice.

## 7. Safety

- 7.1. The supplier shall take all reasonable steps to ensure the safety of persons and equipment at the place of delivery and performance of the service. In addition to adherence to the legislation and the technical regulations in force with regard to health, safety (in particular asbestos), and hygiene, the supplier has an absolute duty to comply with the safety regulations of Romande Energie and to familiarise himself with these regulations. The attention of the supplier is drawn to the Ordinance on Construction Works (OConstW) and to the hazards posed by the electrical installations (the Ordinance on Low Voltage Electrical Installations [O/B7] and the Ordinance on Strong Current).
- 7.2. The supplier will specify the techniques to be implemented. The supplier will take account of the comments made by Romande Energie concerning incompatibilities between the techniques involved and the facilities of Romande Energie. The supplier agrees to instruct his personnel about the hazards associated with the installations of Romande Energie and about the other hazards that are mentioned to the supplier by Romande Energie.
- 7.3. In the event of work on a construction site or installation work, the supplier will develop a health and safety plan [HSPJ] and document the emergency measures.
- 7.4. All equipment that is supplied shall comply with the legal and with the technical requirements in force. They are namely Annex 1 of Directive 93/37/EEC, Directive 2006/42/EC on machinery, federal and cantonal laws, and specific legal texts on the product in question.
- 7.5. A declaration of conformity or an equivalent certificate as well as a maintenance manual in the French language will be supplied with the first item that is delivered and subsequently whenever this type of item is altered.
- 7.6. Instructions for use in the French language will accompany the delivery of each item.
- 7.7. The supplier shall take account of these obligations when preparing his offers and in performing his contract. Failure to comply with these obligations could result in suspension of the work. The expenses incurred as a result will be payable by the supplier.

## 8. Delivery

- 8.1. Unless stipulated otherwise, the time limit(s) indicated on the order shall apply to:
  - deliveries: supplies sent to the locations stipulated on the order;
  - availability in a warehouse or factory: supplies that are ready for collection or are duly packed ready for dispatch;
  - services: when they have been accepted (i.e. compliant with the order) by Romande Energie.
- 8.2. The delivery date will be deemed to have been met if the delivery has been made and accepted on the agreed date.
- 8.3. The delivery must be carried out in an appropriate manner by a specialist using materials and tools suitable for the type of goods. It must comply with official regulations and technical and environmental standards in force.
- 8.4. All additional expenditure incurred as a result of failure to adhere to instructions or due to non-compliant deliveries shall be borne by the supplier.
- 8.5. All deliveries shall be accompanied by a delivery note, stating the order number, characteristics of the goods delivered (certificate of conformity and instructions for use in French) as well as the quantity and weight of the parcels. In the case of partial deliveries, the numbers of the items that correspond to the order placed by Romande Energie shall be indicated.
- 8.6. Romande Energie reserves the right to change the place of supply subject to reasonable notice. In such a case, the price of the order may be adjusted for the sole purpose of taking into account a change in the transport cost.
- 8.7. The supplier is liable for any damage that results from a defect in the goods, poor packaging or inadequate wrapping.
- 8.8. Ownership and risks are transferred upon acceptance of the delivery.

## 9. Delivery Delays – Penalties for Late Delivery

- 9.1. In the event of failure to adhere to the delivery dates stipulated in the order or in the event of an incomplete delivery, the supplier will incur penalties for late delivery, without formal notice and without prejudice to any other claims that Romande Energie is entitled to bring.
- 9.2. Unless otherwise stated, the penalty for late delivery is equivalent to 0.5% of the total price of the order for each day of delay, subject to a maximum of 10% of this price. It is payable even if part of the goods or services has been accepted unconditionally. Payment of the penalty for late delivery does not release the supplier from his other obligations.
- 9.3. Romande Energie is also entitled to refuse any delivery made after the date scheduled for the delivery and to cancel the order, without prejudice to its claims for damages.
- 9.4. The amount of any penalties that are imposed shall be offset and deducted from the invoice issued by the supplier.
- 9.5. .
- 9.6. Failure to forward the documents stated in the order, in the manner and on the dates that are stipulated, may result in the imposition on the supplier of a penalty for late delivery in accordance with paragraph 9.1.

## 10. Acceptance

- 10.1. Formal and final acceptance, which includes acceptance of the goods and the obligation to pay the supplier, takes place at the agreed place of delivery, even if the goods have been collected by Romande Energie. Where applicable, terms and conditions specific to each order shall determine the conditions of this final acceptance.
- 10.2. Any product that is rejected by Romande Energie will be returned to the supplier at his own expense and liability. Moreover, on request by Romande Energie, the supplier is obliged to replace the rejected product at his own expense.

## 11. Issuing Invoices, Payment and Financial Provisions

- 11.1. Invoices may be issued only:
  - when the supplier has fulfilled his obligation to deliver; and
  - for the quantities ordered and delivered
- 11.2. The order number must without fail appear on the supplier's invoice. If partial deliveries are made, the numbers of the items corresponding to our order must be indicated. Otherwise, the invoice will be returned to the supplier for correction.
- 11.3. The payment deadline will start to run from the invoice date.
- 11.4. Unless otherwise agreed, payment is made at 30 days with a 2% discount or 60 days net, but at the earliest from acceptance of the delivery.

- 11.5. Total or partial assignment of the rights and obligations of the supplier to third parties is not permitted without the written authorisation of Romande Energie.
- 11.6. Where applicable, bank guarantees must be issued by a blue chip bank that is governed by the Swiss Federal Act on Banks and Savings Banks and are payable on first demand. They do not become null and void until the original guarantee is returned by Romande Energie. The associated bank charges are payable by the supplier.

## 12. Warranties

- 12.1. The warranty period is two years for all equipment delivered by the supplier, without prejudice to the usual warranty periods for construction works according to SIA Standard 118. The warranty periods start to run from the date of acceptance of the goods. If it is demonstrated that the supplier deliberately misled Romande Energie, the warranty period shall be extended to ten years.
- 12.2. The supplier is obliged to undertake at his own expense all work, namely changes, adjustments, settings and repairs that are necessary to satisfy the terms and conditions of the order, or to replace, at his own expense, all or part of the delivery which proves to be non-compliant during the warranty period. Romande Energie may, subject to a formal notice, arrange for a third party to ensure compliance, at the expense of the supplier if the latter fails to comply with his obligation in this respect.
- 12.3. Following a proposal by the supplier, Romande Energie will have the option of either having the supplies that are rejected during the warranty period replaced free of charge by the supplier or reimbursed by the supplier at the replacement price or repaired or altered by the supplier at his own expense. For replaced articles, the entire warranty period starts to run again from the replacement date. The warranty period for repaired or altered articles is extended by a period equivalent to the period in which the equipment was unavailable.
- 12.4. If the equipment supplied is unavailable during the warranty period for reasons that are attributable to the supplier, in particular excessive wear and tear, breakdown or operating defect affecting one or more of its components, the warranty period for the entire equipment is increased by the total cumulated periods of unavailability.
- 12.5. The supplier will pay all the expenses that derive from his warranty obligations, including transport costs. Expenses resulting from damage caused by negligence, lack of monitoring or maintenance or an operating error attributable to Romande Energie are excluded.
- 12.6. Compensation claims for consequential damage are not admissible except in the event of serious misconduct or gross negligence on the part of the supplier.
- 12.7. If the defect that is detected during the warranty period originates from a systematic technical fault, the supplier shall replace or alter, at his own expense, on all his supplies likely to be affected by the fault, all the identical parts specified in the order, even if they do not give rise to a technical incident.
- 12.8. Claims cannot be made against Romande Energie in respect of the indirect benefits that are derived from improvements or the replacement of parts under warranty.
- 12.9. If a service is provided or repaired parts are delivered, the warranty period will start to run from the date of acceptance of such service or parts.

## 13. Confidentiality

- 13.1. The parties consider the subject matter of the contract or agreement that binds them or the subject matter of the order, as well as all information obtained in connection with the contract, agreement or order, to be confidential, and undertake not to divulge such data to third parties without the prior written consent of the other party, subject to legal regulations in force obliging one party to divulge all or part of the data to a third party. The parties will draw the attention of their employees responsible for performing the contract, agreement or order to the scope of this clause and will ensure that their employees sign or are bound by a confidentiality undertaking equivalent in scope to that specified in this article.
- 13.2. Failure to comply with these obligations could result in the automatic cancellation with immediate effect by Romande Energie, and without notice, of all the orders on hand at the time. This provision shall not affect the entitlement of Romande Energie to bring claims for damages.
- 13.3. The obligations that derive from this article will also remain in force after the termination of the contractual relations between the parties.

## 14. Intellectual Property

- 14.1. The supplier warrants and represents to Romande Energie that the results of his work in connection with the delivery of goods – in particular, any software (including the source code), studies, documents, texts, plans, samples and photos – made, produced, designed, invented or created by the supplier, alone and/or in association with Romande Energie are original and do not infringe any existing copyrights or other intellectual and industrial property rights owned by third parties. The supplier warrants and represents to Romande Energie that he has obtained all necessary authorisations allowing him to use components owned by third parties in relation to the supplied goods. The supplier agrees to indemnify Romande Energie against all liability and expenses associated with any investigations or complaints relating to an infringement of intellectual and industrial property or patent or counterfeit.
- 14.2. All copyrights as well as all the intellectual and industrial property rights pertaining to the goods that are delivered belong to the supplier.
- 14.3. The supplier grants to Romande Energie a right to use the results of his work in relation to the goods delivered and the inventions that result from the work produced or documents, instructions or information obtained, irrespective of the manner, when an order is placed by Romande Energie for its own use and for the use of other suppliers working for Romande Energie. This right exists for an indefinite period and is non-exclusive, free of charge and irrevocable.
- 14.4. Plans, drawings, and other documents, as well as models and tools entrusted to the supplier by Romande Energie for the purpose of fulfilling its orders will remain the property of Romande Energie and shall be returned to Romande Energie upon completion of the order concerned, without having been copied, reproduced, edited, altered, adapted, translated, changed or distributed.

## 15. Force majeure

- 15.1. Neither party may be held liable for losses, damage, delays or breaches that result from a force majeure event, i.e. an event which is beyond the reasonable control of the party laying claim (the "Party claiming force majeure"), which it could not reasonably avoid or overcome and which renders the Party claiming force majeure incapable of performing its obligations under the contract.
- 15.2. As soon as the existence of a case of force majeure becomes known, the Party claiming force majeure must inform the other party accordingly and, as far as possible and for information, notify the other party of the extent and likely duration of its inability to perform all or part of its contractual obligations.
- 15.3. If a force majeure event occurs which is likely to last more than 10 (ten) days, the parties shall immediately reach an agreement on the steps to be taken to mitigate the effects of the hindrance. The Party claiming force majeure shall in every case endeavour to mitigate the economic impact of the force majeure event and, throughout its duration, must keep the other party regularly informed of the extent and likely duration of its inability to perform its obligations.

- 15.4. The contract shall automatically be suspended for the duration of the force majeure event and throughout the period in which performance of the contract concluded between the parties is objectively impossible. Each party shall be released from its contractual obligations for the period during which fulfilment of the contract is impossible due to a force majeure event. If the force majeure event affects only part of the agreed services, the parties are released from their contractual obligations solely in respect of the services that are affected.

## 16. Liability of the Supplier

- 16.1. The supplier is liable under civil law for any damage that is caused by the supplier, his employees or subcontractors, for which the supplier himself or his employees could be held liable under the applicable law.
- 16.2. The preceding provision is subject to the application of the Federal Law on Product Liability.
- 16.3. The supplier undertakes to fully indemnify Romande Energie against any claims brought by a third party, or any action relating to liability brought by a third party for loss, damage, personal injury or property damage arising from or in connection with a breach of these General Terms and Conditions by the supplier, including, but not limited to, legal fees, court costs and other expenses incurred by Romande Energie.

## 17. Miscellaneous Provisions

- 17.1. Unless otherwise agreed by Romande Energie in writing, all documents will be drafted in the French language.
- 17.2. If the supplier becomes insolvent, bankrupt, is wound up or is subject to legal proceedings, sequestration or seizure or if the supplier fails to pay his subcontractors, all debts will become payable immediately. Furthermore, Romande Energie reserves the right to cancel the order by means of a signed letter, without payment of compensation and without prejudice to the rights of Romande Energie.
- 17.3. In the event of nullity, illegality or invalidity of any of the provisions of these General Terms and Conditions, this shall not affect the validity of the remaining provisions. The parties will endeavour to replace such a provision by a valid clause with an equivalent economic effect. Should there be a loophole, the parties will endeavour to supplement the provisions of the General Terms and Conditions in a way that reflects their true and common intention.
- 17.4. In the event of any contradiction between the contractual documents, the contract as well as the specifications will prevail over these General Terms and Conditions of Purchase.

## 18. Applicable Law, Jurisdiction

- 18.1. All orders placed by Romande Energie, regardless of their form (order, deal, agreement or contract) shall be governed by the provisions of Swiss law, with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods ratified in Vienna on 11 April 1980.
- 18.2. Any disputes arising from the conclusion, interpretation, performance, termination or breach of the contract, agreement, order or these General Terms and Conditions, which cannot be settled amicably, will be referred to the exclusive jurisdiction of the courts of the Canton of Vaud, Switzerland.
- 18.3. The French version of these general terms and conditions shall prevail.

Read and agreed, on \_\_\_\_\_

Surname, first name : \_\_\_\_\_

Position : \_\_\_\_\_

Signature: \_\_\_\_\_

Company stamp: \_\_\_\_\_

### Registered Office / Purchasing Department:

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