

# General Terms and Conditions for Sale for wind-projects

Valid from 01-02-2019

## 1. Definitions

1.1 In these General Conditions of Sale, the following terms are used:

“**Equipment**” means the equipment described in the Quotations (including any Software incorporated in such equipment);

“**Performance Criteria**” means the guaranteed levels of Service delivery, or performance of the Equipment, as may be specified in the Quotation;

“**Price**” means the amount of money due to Seller for the Equipment and/or Services, as specified in the Quotation;

“**Purchaser**” means the person or entity to whom the Quotation is addressed, or other customer or receiver of Services and/or Equipment;

“**Quotation**” means the document in which the Services are specified, or Equipment is offered for sale (including any quotation, order, offer or service specification);

“**Seller**” means Procon Wind Energy A/S (hereinafter called Procon), or if different, the company issuing the Quotation or providing the Services;

“**Services**” means the technical Services described in the Quotation or otherwise provided;

“**Site**” means the yard, vessel or physical location where the Equipment will be installed or Services performed;

“**Software**” means any software provided by the Seller or included in any Equipment.

## 2. General

These General Conditions of Sale shall apply to all Quotations made, or other orders concluded, or any Services and/or Equipment provided by the Seller unless otherwise agreed in writing.

## 3. Seller's Responsibilities

3.1 Seller shall provide the Services, and supply the Equipment, which shall be free from defects in design, material and workmanship. Such warranty on the Equipment is further set out in clause 8.

3.2 Seller shall fully comply with its obligations as specified in the Quotation and these General Conditions of Sale in a timely and professional manner using due care to safeguard the interest of Purchaser.

3.3 Seller shall deliver the Services and Equipment in accordance with an agreed-upon time schedule. If there is no such time schedule, Seller shall deliver the Services and Equipment on a best efforts basis, but without guaranteed delivery time.

## 4. Purchaser's Responsibilities

4.1 Purchaser shall obtain any necessary licenses, permits and approvals for the delivery and installation of the Equipment.

4.2 Purchaser shall fully comply with its obligations as specified in the Quotation and these General Conditions of Sale in a timely manner.

4.3 Purchaser must provide adequate and accurate information and instructions for delivery of the Services and Equipment.

4.4 Purchaser shall make all necessary staff, lifting devices, cranes, scaffolding, fences, and assets or vessels available on time for the agreed work. Purchaser shall comply with Seller's reasonable instructions and policies and all applicable laws & regulations, and shall only use the Equipment in compliance with any directions issued by Procon and only in accordance with applicable laws and regulations.

4.5 Software may only be used by the Purchaser, if the Quotation expressly contains an express right of use to the Purchaser and subject to any additional terms stated. Any changes to software by the Purchaser are at the Purchaser's own risk and cost. Seller does not give any warranty in respect of Software.

## 5. Price

5.1 The Price is exclusive of VAT, taxes, duties and other third-party charges (unless otherwise agreed). Delivery of Equipment is done on an ex works basis.

5.2 Purchaser shall promptly, at Seller's option, either reimburse Seller or make funds available to pay for any fees or charges which are not clearly specified as the responsibility of Seller.

5.3 If not due to the fault of Seller or Seller's subcontractors, Seller is delayed in the delivery of the Services or Equipment, Seller shall be entitled to increase the Price to reflect any actual costs incurred because of the delay.

5.4 Payment for Services is per hour for execution of technical services including consultancy, testing, management of staff and execution of installation work and/or repairs. There will be in addition surcharges for travelling time, travel costs, board, lodging and necessary telecommunication. Any charges or costs incurred due to factors outside of Seller's reasonable control, such as but not limited to governmental charges or duties, shall be invoiced to Purchaser.

## 6. Payment Terms

6.1 Purchaser shall pay Seller the Price in accordance with the payment schedule set forth in the Quotation. If there is no payment schedule in the Quotation, Purchaser shall pay Seller the Price as invoiced by Seller 14 days from date of invoice. Any queries on invoices must be raised to Seller within 14 days of date of invoice, otherwise these will be deemed accepted and payable.

6.2 Unless otherwise specified in the Quotation, in case of delayed payment, Purchaser shall pay Seller interest on the amount delayed at the rate of 2% per month, without prejudice to Seller's other rights under these Conditions of Sale.

- 6.3 Unless otherwise specified in the Quotation, for Quotations exceeding DKK 100,000 and with a duration of order to delivery of more than 30 days, Purchaser shall make a down-payment of 20% of the Price and once confirmed, invoices for the remaining amount will be issued every 2 weeks. Invoices under DKK 1,000 will be subject to an administrative fee of DKK 100
- 6.4 Transfer of funds shall be made in accordance with a mutually agreed upon procedure. If no procedure is agreed upon, then Purchaser shall transfer funds as directed by Seller in accordance with normal and customary practices of the trade, provided that the money shall be put at Seller's free disposal in the country of Seller's principal place of business free and clear of any encumbrances, levies, bank charges or fees of any nature whatsoever. Purchaser shall pay Seller the Price without any set-offs or counterclaims whatsoever.
- 6.5 In the event Purchaser does not strictly comply with the terms of payment set out in the Quotation or herein, Seller may, in addition to any other remedies available to Seller, suspend all performance until Purchaser has so complied.

## **7. Delivery of Equipment**

- 7.1 Delivery terms (including insurance premiums and freight) shall be in accordance with the terms specified in the Quotation. In the absence of such specification, the risk of loss of or damage to the Equipment and responsibility for payment of insurance premiums and freight passes to Purchaser upon Seller's delivery of the Equipment to Purchaser, or to the first mode of transport of delivery to Purchaser.
- 7.2 Unless otherwise specified, the time for delivery of the Equipment shall start to run upon the resolution of all technical and commercial terms including receipt by Seller of any advance payment.
- 7.3 Seller's ability to deliver the Services and Equipment timely is expressly contingent on the timely performance by Purchaser of all Purchaser's obligations in the Quotation and these General Conditions of Sale. If Purchaser fails to perform in timely fashion and if Seller is unable therefore to deliver the Services or Equipment in a timely fashion, Seller shall have no liability to Purchaser whatsoever for delays incurred.
- 7.4 If Seller is unable to supply Services or Equipment in accordance with the time schedule through the fault of Purchaser or Purchaser's agents or subcontractors, Purchaser shall nevertheless pay Seller in accordance with the payment schedule.
- 7.5 If Purchaser is unable or unwilling to accept physical delivery of the Equipment at the time specified in the time schedule or herein, Seller may store the Equipment at Purchaser's cost. In such an event, the Equipment shall be deemed delivered as of the date of storage for purposes of payment and timeliness of Seller's delivery.
- 7.6 Regardless of the delivery terms specified, Seller shall retain title to the Equipment until full payment thereof has been made, if allowed by applicable law.

## **8. Warranties on Services and Equipment**

- 8.1 Seller warrants to Purchaser that the Services and each item of Equipment are as specified in the Quotation. Seller further warrants that the Services and each item of Equipment (other than Software) quoted are free from defects in design, materials and workmanship. This warranty also extends to any repairs or replacements of defective Equipment during the warranty period.
- 8.2 The warranty period on Services is 6 months after date of delivery, and 6 months after delivery or installation on each item of Equipment. The warranty period for repairs or replacement parts is 6 months from date of repair or replacement.
- 8.3 Seller shall repair, replace or, at its option, refund the Price of any item of Equipment found to be defective during the warranty period. This is Purchaser's sole and exclusive remedy for Equipment which does not meet the above specified warranty or any other warranty specified in the Quotation. Purchaser must notify Seller in writing of the claimed defect promptly after the appearance thereof and in no event later than 30 days after the expiry of the warranty period. Freight charges for replacement Equipment will be invoiced.
- 8.4 Seller shall have no responsibility for damage caused by:
- 8.4.1 ordinary wear and tear;
- 8.4.2 unintended use, misuse, abuse, or improper storage, installation, maintenance, operation or repairs by Purchaser or by persons not under Seller's supervision; or
- 8.4.3 use of Equipment outside of the Seller's instructions or changes in the construction of mounting or use of component's without Seller's written consent.
- 8.5 SELLER MAKES NO OTHER WARRANTIES DIFFERING FROM THOSE CONTAINED HEREIN AND IN THE QUOTATION OR ANY IMPLIED WARRANTIES, WHETHER OF MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE.

## **9. Inspection of Equipment**

- 9.1 Purchaser shall be entitled to inspect the Equipment at reasonable times before delivery. Purchaser shall notify Seller of the specific items of Equipment Purchaser wishes to inspect within 30 days after acceptance of the Quotation. Purchaser shall give Seller at least 15 days of notice of its desire to inspect such items, and Purchaser shall confirm the inspection date by email at least 72 hours before the date of inspection.
- 9.2 Purchaser shall bear all costs and expenses of such inspection except those expenses connected with Seller's personnel and with normal factory tests.
- 9.3 Unless otherwise specifically stated as part of the Services of Seller, Purchaser shall promptly unpack and inspect the Equipment at the place of delivery. Seller may be present at such inspection, at Seller's option. Purchaser must notify Seller within 30 days after the inspection of any missing, damaged or defective items of Equipment. Failure to so notify Seller shall waive any claim by Purchaser of any apparent defect of or damage to the Equipment. Purchaser's notification of missing, damaged or defective Equipment shall not constitute conclusive evidence of the Equipment's condition at the time of delivery.

## **10. Liability**

- 10.1 Purchaser's sole remedies for delays in Services or delivery of Equipment, defective Equipment and failure to meet the Performance Criteria and all other breaches of Seller's obligations are as stated herein.

- 10.2 Other than as specified herein, Seller shall not be liable for any direct, indirect, special, consequential or incidental damages (including but not limited to loss of profit, use, production, raw materials or end products) arising out of the Services or the purchase, delivery, installation or use of the Equipment whether claimed in contract, warranty, tort (including negligence) or otherwise.
- 10.3 The total aggregate liability of Seller for any loss, damage or compensation whatsoever, shall never exceed the sales price in respect of any one claim or series of claims arising out of the same cause under or in relation to this agreement.
- 10.4 Purchaser shall indemnify Seller against any costs or losses which Seller incurs due to any act, omission or negligence of Seller.
- 10.5 Purchaser must notify any claims for loss or damage (including warranty claims) in writing to Seller no later than 30 days after the date of the event giving rise to the claim ("Relevant Date"). Purchaser must commence any legal proceedings within 1 year after such Relevant Date. If Purchaser fails to comply with this clause for any claims, such claims shall be waived absolutely.

#### **11. Force Majeure etc.**

- 11.1 A party may claim relief if execution and performance of obligations to the other party are delayed, impeded or prevented by circumstances beyond its control, whether foreseen or unforeseen ("Force Majeure"). In order to claim relief and thus be excused from timely performance of obligation, notice must be given promptly to the other party. Notwithstanding any claim for relief invoked hereunder, Purchaser shall pay Seller for the Services and Equipment (or parts thereof) manufactured or delivered to the date of notice.
- 11.2 A party claiming relief by reason of Force Majeure circumstances must take all reasonable steps to mitigate their length and effect. Promptly after the termination of the circumstances, the party claiming relief shall forthwith notify the other party in writing.
- 11.3 Any letter of credit or other terminable security for payment of the Price shall be extended for a period equivalent to the delay in Seller's performance.
- 11.4 If such circumstances shall continue for more than 6 months, either party may terminate all uncompleted obligations hereunder upon written notice to the other party.
- 11.5 Seller is not liable for any losses or damages arising from Force Majeure circumstances.

#### **12. Performance Criteria**

- 12.1 No warranties as to performance of the Equipment or any Services provided by the Seller are given, unless set out in writing in the Quotation.

#### **13. Disputes**

- 13.1 These General Conditions of Sale and other documents comprising the agreement between Seller and Purchaser shall be governed by the law of Denmark.
- 13.2 Any dispute between the parties arising out of or in relation to this agreement and not resolved by negotiation shall be finally by arbitration in Copenhagen pursuant to the rules of Danish Arbitration Institute.

#### **14. Miscellaneous**

- 14.1 Seller may subcontract the whole or any part of the Services or provision of Equipment to any one or more third parties, without the consent of Purchaser. 14.2 Any descriptive data or prices found in any advertisement, catalogue, brochure, circular or the like are approximate only. They shall not be considered as any warranty or legal obligation of Seller unless specifically included in any Quotation or Performance Criteria. All drawings and technical data shall be in conformity with Seller's standard drafting procedures and the English language shall be used. Purchaser shall not make any changes in any drawings of Seller without Seller's prior written consent. If Purchaser changes any drawings without Seller's consent, Seller may, in his sole discretion, void any warranty adversely affected thereby.
- 14.3 Any drawings, data or information disclosed by one party which is proprietary and confidential shall not be used or disclosed by the other party except to fulfil its obligations to the disclosing party. Confidential information shall not include information in the public domain or previously known to the party receiving the information.
- 14.4 All copyright and any other intellectual property rights in material, information or designs provided by Seller ("Material") shall vest solely with Seller. Purchaser has no right to use any such Material except for the use of any Equipment or Services for its own benefit, and shall not copy, distribute or sell any such Material. Purchaser shall maintain all Material as confidential.
- 14.5 Neither party shall assign any benefit or obligation hereunder without the prior consent of the other party. Notwithstanding the foregoing, however, Seller may assign either the benefits or obligations hereunder to an affiliated company without the prior consent of Purchaser.
- 14.6 Unless otherwise specified, the Quotation shall remain open and valid for a period of 30 days after the date thereof, and shall thereafter become null and void if not extended by Seller in writing.
- 14.7 The action or failure to act by Seller or Purchaser to enforce any one or all of the rights granted to either party shall not act as waiver of that right nor serve as agreement to a breach of any of the provisions of the applicable document.
- 14.8 If there are any opposing or contradictory conditions or terms in any documents, drawings or data, the specific term or condition shall be given precedence over the general. Notwithstanding the foregoing, contradictory conditions or terms among these General Conditions of Sale and any other document, the term or condition found herein shall prevail.
- 14.9 The provisions hereof and the other documents issued herewith contain the entire agreement of the parties and supersede all prior or simultaneous quotations, statements, promises, negotiations or the like. The Services and Equipment are sold only pursuant to these General Conditions of Sale. Seller hereby objects to and rejects any differing or supplemental terms which may be found in any of Purchaser's documents.
- 14.10 No change or alterations of any term herein or in any other document of Seller may be made without the written agreement of both parties.
- 14.11 These General Conditions of Sale shall apply to Procon Wind Energy A/S and any other company controlled by or under the common control of Procon Wind Energy A/S, which provides Services and/or Equipment, as if such company is named as 'Seller' herein.