

**PART B – ADDITIONAL GENERAL CONDITIONS FOR THE PURCHASE OF EQUIPMENT**

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**1 General**

- 1.1 These general conditions for the purchase of equipment apply, in addition to Part A and any other agreed parts of these general purchase conditions, to all offers and orders pertaining to the sale of equipment by a Vendor to Vopak and to all agreements entered into with Vopak in this regard.
- 1.2 If the equipment requires installation, inspection, commissioning, repair and/or correction services, Part C - Additional general conditions for the supply of site works will also apply.

**2 The equipment**

- 2.1 The Vendor shall manufacture and/or supply all the equipment in accordance with the applicable functional and/or technical specifications and any and all other applicable plans, procedures, specifications, drawings and requirements.
- 2.2 The Vendor shall manufacture, document, deliver, install, commission and/or repair the equipment in accordance with any reasonable instructions of Vopak.
- 2.3 The Vendor shall undertake that any applicable certificates of compliance or design approval from a certifying agency and/or all necessary approvals from the authorities shall be obtained in time and at the earliest available opportunity.

- 2.4 Partial supply of the equipment shall not oblige Vopak in any way to make a partial approval of the equipment or consideration as to whether the supplied part of the equipment complies with the Vendor's obligations.

### **3 Variations**

- 3.1 Vopak has the right at any time to issue instructions to the Vendor to make any increases, decreases, omissions, substitutions and changes to the time schedules or any other part of the equipment as regards its quality, form, character, kind or dimension, provided that Vopak submits a written change order to the Vendor.
- 3.2 The Vendor shall not make any variation except with the written consent of Vopak.
- 3.3 All variations shall be executed and completed under the provisions of the agreement and these general purchase conditions.
- 3.4 Changes and additions shall not lead to an increase of the agreed price or an extension of the agreed time or date of delivery unless and to the extent reasonable, and provided that the Vendor has made a written proposal to Vopak with respect to an increase or an extension before the execution of the variation and always provided that Vopak has approved such price increase or extension of time in writing.
- 3.5 If a change results in a decrease of the supply by the Vendor or a decrease of the agreed price thereof, Vopak is entitled to a proportional price decrease.

### **4 Design and drawing verification**

- 4.1 Unless Vopak has indicated that a third party will be responsible for the basic and/or detailed design of the equipment, the Vendor shall be responsible for the basic and/or detailed design of the equipment and shall deliver same in accordance with good engineering practice and any design conditions
- 4.2 The Vendor shall be responsible for the accuracy and completeness of the specifications, drawings and other documentation provided by Vopak and/or any third party and shall never be able to rely upon the inaccuracy or incompleteness of the documentation provided. The Vendor shall notify Vopak within 5 (five) days after receipt when the specifications, drawings and other documentation received from Vopak and/or any third party for the supply of equipment should be adjusted and/or amended.
- 4.3 Upon the request of Vopak, the Vendor shall prior to the commencement of the work related to the manufacturing and supply of the equipment, furnish to Vopak for its review and approval, complete drawings, calculations for the design and other construction documentation. The Vendor shall remain responsible for the design and the documentation related thereto, whether or not such documentation has been approved by Vopak.

## **5 Delivery plan**

- 5.1 Upon the request of Vopak, the Vendor shall furnish a detailed delivery plan in which the Vendor describes the order, timing and duration of the work for the assessment and approval of Vopak.
- 5.2 As soon as Vopak has approved such delivery plan, the delivery plan forms an integral part of the agreement. Deviation from the approved delivery plan is only permitted with the prior written approval of Vopak.

## **6 Progress reports and certificates**

- 6.1 The Vendor shall provide progress reports of the work on a monthly basis, unless Vopak requests for reports on a shorter or longer basis.
- 6.2 If Vopak has to make or makes progress payments for the equipment, progress certificates shall be prepared by the Vendor when and as required by Vopak. Such certificates contain the quantity of work executed during the preceding period and the value of such work on the basis of the agreed price.

## **7 Performance bond**

- 7.1 If Vopak has to make payments prior to the acceptance of the equipment, the Vendor shall provide Vopak, upon its request, with an unconditional and irrevocable performance bond as security for the fulfillment of the Vendor's obligations under the agreement, for the amount(s) which Vopak has to pay to the Vendor prior to the acceptance.
- 7.2 The performance bond shall be issued by a first class international bank or insurance company approved by Vopak.
- 7.3 If the validity of the performance bond expires before the date of acceptance of the equipment, the Vendor shall arrange for extension of the validity.

## **8 Handover of documentation**

- 8.1 The Vendor shall prepare and handover a complete set of all documents in connection with the equipment, including warranty and test certificates, CE (inspection) certificates of individual items and test results. All documentation and required certificates are included in the agreed price.
- 8.2 Language of documentation shall be in the English language. However, documents required by the applicable laws or regulations shall also be made available in the language prescribed in such laws or regulations.

## **9 Safety, health and environment**

- 9.1 The Vendor is responsible for the safe performance of the obligations under the agreement and specifically the safe manufacturing of the equipment and shall give the highest priority to safety in order to avoid injury to any person and/or damage to any property.

9.2 The Vendor shall ensure that both Vendor and its subcontractors strictly comply with any applicable safety, health and environmental legislation and any safety, health or environmental policies, procedures and standards of Vopak. Upon request of Vopak all costs incurred in complying with this provision shall be for the sole account of Vendor.

9.3 All accidents, environmental hazards and/or spills which incur in relation to the production of the equipment shall be reported immediately to Vopak. The Vendor shall also submit to Vopak a written annual report on health, safety and environment within Vendor's organization stating the number of incidents, cause, injury status (if applicable) together with the adequate measures that have been taken by the Vendor to prevent reoccurrence of such event and any further damage.

## **10 Inspection and testing of equipment**

10.1 Vopak and its appointed representative(s) are at all times entitled to inspect or have inspected the equipment or part(s) thereof, to examine or have examined and/or to test or have tested the equipment or part(s) thereof, irrespective of where the equipment or part(s) thereof are manufactured. For this purpose, they have free access to the sites on which the equipment or part(s) of the equipment are being manufactured.

10.2 Upon the discovery of any discrepancies or defects in or to the equipment, Vopak will inform the Vendor. The Vendor shall repair and replace without cost or delay any discrepancy or defect discovered during inspection.

10.3 Failure of Vopak to make such quality surveillance in or to the equipment shall not relieve the Vendor from its obligations under the agreement nor prejudice the rights of Vopak thereafter to reject or require correction of the defective equipment in accordance with the provisions of these general purchase conditions.

10.4 Inspection, review, examination, testing, purchase, comment, approval and/or payment by or on behalf of Vopak do not release the Vendor from any obligation, warranty or liability.

## **11 Spare parts**

11.1 Upon the request of Vopak, the Vendor shall deliver a critical and a full spare parts list of the equipment with Vendor's spare parts numbers, part names, full prices and expected lifetime.

11.2 Parts ordered from this list by a separate order within 6 (six) months of the effective date of the agreement will be delivered on the basis of the INCO term DDP (Delivered Duty Paid) to Vopak, within the agreed delivery time of the equipment.

11.3 The Vendor shall supply all spare parts needed at competitive prices for a period of 10 (ten) years from the date of the certificate of acceptance if Vopak so requests.

## **12 Assembly, performance and acceptance**

- 12.1 The Vendor shall be responsible for the complete assembly, installation, construction and commissioning of the equipment at the site of Vopak in accordance with the applicable specifications. The Vendor shall see to it that the equipment is in good working condition and shall test the equipment or parts thereof prior to the performance of the site acceptance test.
- 12.2 As soon as the equipment or any part thereof has, in the opinion of the Vendor, been delivered and is ready for operational use by Vopak, excluding minor items not materially affecting the operation, use or safety of the equipment, the Vendor shall carry out the site acceptance test. Vopak shall be notified of the time of such testing 14 (fourteen) days before the commencement of such test.
- 12.3 The Vendor shall supply the required personnel for the site acceptance test at the risk and account of the Vendor irrespective of the facilities used for testing may belong to Vopak or any third party. All costs associated with assembly, tests and commissioning shall be for the Vendor's account.
- 12.4 Vopak shall issue the certificate of acceptance within 5 (five) days upon completion of the site acceptance test acceptable to Vopak. If the equipment or any part thereof fails to pass the site acceptance test, the Vendor shall for its own account make such changes, modifications and/or additions to the equipment or any part thereof as may be necessary to meet the applicable specifications and repeat such test.
- 12.5 If the equipment or any part thereof fails to pass the repeated test, Vopak may, at its own discretion: (i) order necessary changes or modifications and/or additions and further performance tests, (ii) without prejudice to any other rights Vopak has under the agreement, appoint for the Vendor's account, other contractors to bring the equipment in compliance with the applicable specifications, (iii) reject the equipment, or any part thereof, or (iv) request the Vendor to proceed with performing its obligations under the agreement as if the performance tests have been passed successfully and reduce the agreed price by such amount as may be agreed upon the Vendor and Vopak in respect of such failure to pass the performance tests.

## **13 Transfer of ownership**

- 13.1 Upon the transfer of ownership, the Vendor shall handover to Vopak, all documentation, including certificates of ownership, and do all that is necessary to effect the transfer. The Vendor hereby grants to Vopak, an irrevocable power of attorney to do all that is necessary to effect the transfer of legal title of the equipment or any part thereof to Vopak.
- 13.2 The risk of loss and damage to the equipment shall not pass to Vopak before signing of the certificate of acceptance by Vopak. Any signature made or document issued for the purpose of the acknowledgement of receipt of the equipment delivered does not qualify as signing and/or issuing of a certificate of acceptance.

## **14 Warranty**

- 14.1 In addition to Part A – article 16, the following applies. If the Vendor is requested to remedy a defect, and in the event that the Vendor does not commence work to correct the warranty claims within 7 (seven) days, Vopak has the right, after written notice to the Vendor, to arrange the repair/correction at the Vendor's expense. In such event, the Vendor shall furnish to Vopak the Vendor's technical instructions within 1 (one) day of the written notice in order to bring Vopak in the position to follow such instructions. In the event the Vendor does not provide technical instructions, the technical instructions are incomplete or otherwise inadequate to resolve the claimed issue, Vopak has the right, after 1 (one) day of written notice to the Vendor, to define the repair/correction based on the local knowledge and arrange repair/correction at the Vendor's expense. The Vendor's warranty shall remain in full force and effect, including any repairs made by Vopak.

## **15 Insurances**

- 15.1 The Vendor shall at its own cost as of the effective date of the agreement until signing of the certificate of acceptance obtain and maintain in effect adequate and sufficient insurance, including but not limited to: Public Liability Policy against liability for death or injury, liability for property damage and liability for financial loss, Professional Indemnity Policy, Motor Vehicle Policy, Construction all Risks Policy, Goods Insurance Policy including coverage for transportation and goods in transit, Land Based Equipment Insurance, Employer's Liability Insurance and any other insurance which the Vendor is obliged to carry out under applicable legislation.
- 15.2 The Vendor shall furnish promptly to Vopak upon request reasonable evidence of the insurance coverage set out in this article (and undertakes promptly to ensure similar co-operation from its subcontractors).