

# STANDARD TERMS AND CONDITIONS OF PURCHASE



## 1. SCOPE

**These Standard Terms and Conditions of Purchase ("Terms") shall govern, and are automatically incorporated by reference into, every PO (as defined herein) submitted by Hydro AS or any of its Affiliates (Hydro AS or its respective Affiliate shall be referred to herein as "Hydro") to any supplier or any of its Affiliates ("Supplier") for Supplier's Deliverables, and any variation to these Terms shall have no effect whatsoever unless expressly agreed to by Hydro in writing executed by one of its authorized signatories. Acceptance of any PO is expressly limited to these Terms and Hydro objects to and rejects any different or additional terms provided in response. No other terms or conditions endorsed upon, delivered with or contained in Supplier's quotation, acknowledgement or acceptance of a PO or similar document shall form part of the parties' contract and are automatically voided, superseded and of no legal force or effect. Supplier waives any right which it might otherwise have to rely on any such other terms and conditions. No prior course of dealings between the parties or usage of trade shall be relevant to supplement or amend these Terms.**

The Contract between Hydro and Supplier shall consist of: (a) Hydro's PO; (b) these Terms; (c) Supplier's quote (to the extent not in conflict with the PO or these Terms); and (d) any other specifications expressly accepted by Hydro in writing, as specified above.

## 2. DEFINITIONS

**"Affiliate"** means, towards one or the other party, companies placed directly or indirectly under the same superior control, and any company holding a majority interest in these companies, either by owning a majority of the shares combined with voting rights or by exercising a control in another way than by owning shares in the concerned controlled companies.

**"Deliverables"** means all goods and services, as appropriate, to be delivered by Supplier as set out in the PO.

**"Delivery"** or **"Deliveries"** shall be made DDP (according to INCOTERMS® 2010) Hydro's manufacturing site, unless otherwise mutually agreed in writing, and shall be in accordance with the instructions of Hydro. Title to the Deliverables shall pass upon receipt by Hydro.

**"Delivery Date"** means the date required for receipt of the Deliverables by Hydro.

**"Lead Time"** means the quoted timeframe calculated between the date of receipt of the PO by Supplier and the Delivery Date.

**"PO"** means a purchase order issued by Hydro for Deliverables; POs may be issued in writing, by email or electronically through Hydro's Enterprise Resource Planning (ERP) system.

**"Specifications"** means the documents, if any, attached or incorporated by reference into these Terms, Supplier quotation, PO or a framework supply agreement, describing the characteristics and performance parameters of the Deliverables.

## 3. GENERAL TERMS AND CONDITIONS

**3.1 Acceptance of Purchase Order.** Supplier shall, within three (3) business days of receipt thereof, accept and acknowledge in writing all POs submitted by Hydro. If Hydro does not receive written acknowledgement of its POs within this timeframe, the POs are automatically deemed to be accepted. Supplier shall use its best efforts to meet the requested Delivery Date. If the Supplier is unable to meet the requested Delivery Date, the latest acceptable Delivery Date must not be later than the date of receipt of the PO plus the quoted Lead Time.

**3.2 Lead Times and Delays.** Supplier acknowledges that Delivery on or before the Delivery Date or within any quoted Lead Time is of the essence of the contract for Hydro. In the event of any

anticipated delay, Supplier shall promptly notify Hydro of the cause thereof and the steps proposed by Supplier to minimize the delay. In addition, Supplier shall arrange all such additional resources necessary to minimize any detrimental impact on Hydro.

In the event Supplier fails to meet the Delivery Date, Hydro may, at its option, elect one or more of the following remedies without prejudice to its rights and remedies: (i) accept the revised Delivery Date, (ii) reschedule, (iii) cancel its PO or terminate the contract without any liability or obligation to Supplier, (iv) obtain an alternate source of the Deliverables and obtain reimbursement from Supplier for any increase in cost, (v) obtain reimbursement from Supplier for all damages incurred, or (vi) pursue any remedies available at law or in equity.

In addition to the foregoing, Supplier shall pay a penalty equal to one percent (1%) of the value of the PO per calendar day, up to a maximum of twenty percent (20%). This remedy is not exclusive and is without prejudice to any other rights and remedies available to Hydro.

**3.3 Changes and Reschedules.** Hydro may, upon thirty (30) days' prior written notice: (a) make changes to the quantity of Deliverables ordered; and/or (b) reschedule any agreed Delivery Date, for up to ninety (90) days after the original Delivery Date without any extra cost. Changes in quantity or Delivery Date are subject to Hydro compensating Supplier for any reasonable and documented extra direct cost resulting from the change.

**3.4 Termination for Breach or Non-Performance.** Hydro reserves the right to terminate all or any part of a PO or the contract, without liability to Supplier, if Supplier (a) repudiates or breaches any of the terms of any PO or the contract, including Supplier's warranties, (b) fails to provide the Deliverables as required by the contract or (c) fails to make progress so as to endanger timely and proper completion of the Deliverables by the Delivery Date, and does not remedy such repudiation, breach or failure within ten (10) days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from Hydro specifying such repudiation, breach or failure.

**3.5 Termination for Convenience.** In addition to any other rights of Hydro, Hydro may, at its option, terminate all or any part of a PO or the contract, at any time and for any reason or no reason, by giving written notice to Supplier. Upon such termination, Hydro shall pay to Supplier solely the following amounts without duplication: (a) the contract price for all Deliverables which have been completed in accordance with a PO or the contract and not previously paid for; and (b) the actual costs of work-in-process and raw materials incurred by Supplier in furnishing the Deliverables prior to Supplier's receipt of the notice under the PO or contract, to the extent such costs are reasonable in amount and are properly allocable under generally accepted accounting principles to the terminated portion of the PO or contract; less, however the sum of the reasonable value or cost (whichever is higher) of any Deliverables used or sold by Supplier with Hydro's written consent, and the cost of any damaged or destroyed Deliverables. Hydro shall not be obligated to make payments for finished Deliverables, work-in-process or raw materials fabricated or procured by Supplier in amounts in excess of those authorized in delivery releases nor for any undelivered Deliverables which are in Supplier's standard stock or which are readily marketable. Payments made under this section shall not exceed the aggregate price payable by Hydro for finished Deliverables that would be produced by Supplier under delivery or release schedules outstanding at the date of termination. This shall be Supplier's sole remedy and Hydro's sole liability in connection with termination of a PO or the contract for convenience. Hydro and its representatives shall have the right to audit and examine all books, records, facilities, work, material, inventories, and other items relating to any termination claim.

**3.6 EHS.** Supplier shall have a satisfactory system for compliance with best practices involving environmental, health and safety requirements, as well as quality assurance measures, suitable for the Deliverables.

## 4. PRICES AND PAYMENT

**4.1 Prices.** Prices and discounts for the Deliverables shall be according to Supplier's latest quotation accepted by Hydro and are deemed to include all insurance, appropriate packaging, export duties and freight charges (if applicable), but shall be exclusive of

Value Added Tax (VAT), which amount shall be indicated separately in Supplier's invoice.

**4.2 Price Reviews.** Supplier guarantees that prices for Deliverables shall remain fixed for periods of at least twelve (12) months after Hydro's PO or acceptance of Supplier's quotation, notwithstanding that the parties may agree on fixed prices for longer time periods or on price reductions during such a period. If Supplier intends to increase any prices for Deliverables, Supplier shall notify Hydro in writing at least two (2) months prior to the end of the applicable twelve (12) month period. Supplier shall justify any price increase such as raw materials and manufacturing costs, exchange rate fluctuations, new technology, labour, interest rate changes and market changes before the parties agree to any price review. If the parties cannot agree on the increased prices within a reasonable period after Supplier's notice, notwithstanding anything to the contrary in the contract, Hydro shall have the right to cancel all open POs, along with the contract, without any liability or obligation owing to Supplier whatsoever.

**4.3 Payment Terms.** Supplier will invoice Hydro for the purchase price for the Deliverables as stated on the PO after Hydro's receipt of the Deliverables. Unless otherwise expressly agreed in writing, invoices shall be payable ninety (90) days after the date of the invoice, shall be remitted to the billing address on the PO and must include the relevant PO number.

**4.4 Set-off.** Hydro shall be entitled at any time when commercially reasonable to set off any liability of Hydro to Supplier against any liability of Supplier to Hydro howsoever arising and whether any such liability is present or future, liquidated or unliquidated. Any exercise by Hydro of its rights under this section shall be without prejudice to any other rights or remedies available to Hydro under the contract or available at law or in equity.

**4.5 Forecasts.** All forecasts provided by Hydro shall be done on a non-binding basis, unless otherwise agreed to in writing between the parties. Supplier shall agree on significantly shorter lead times if Hydro provides Supplier with non-binding monthly rolling forecasts. Within one (1) week after receiving Hydro's forecast, Supplier shall acknowledge the receipt of the forecast and confirm to Hydro in writing that it can deliver all forecasted Deliverables. If Hydro does not receive written acknowledgement of its forecasts within this timeframe, the forecasts are automatically deemed to be accepted.

## 5. DELIVERY

**5.1** The dispatch data of all shipments of Deliverables that are products shall be provided to the Hydro contact person identified on the PO by fax, email or other written expedited means within twenty-four (24) hours of dispatch.

**5.2** Supplier agrees: (a) to properly pack, mark and ship Deliverables in accordance with the requirements of Hydro, the involved carriers, and, if applicable, the country of destination; (b) to route shipments in accordance with Hydro's instructions; (c) to make no charge for handling, packaging, storage or transportation of Deliverables, unless otherwise expressly stated in the contract; (d) to provide with each shipment packing slips with Hydro's contract and/or PO number and date of shipment marked thereon; (e) to properly mark each package with a label/tag according to Hydro's instructions and the customs regulations of the country of import; and (f) to promptly forward the original bill of lading or other shipping receipt for each shipment in accordance with Hydro's instructions. Supplier will include on bills of lading or other shipping receipts, correct classification identification of the Deliverables shipped in accordance with Hydro's instructions and carrier's requirements. The marks on each package and identification of the goods on packing slips, bills of lading and invoices (when required) shall be sufficient to enable Hydro to easily identify the Deliverables included.

**5.3** Hydro may, at its option, return, freight collect, all Deliverables received more than five (5) days in advance or in excess of the quantity specified on its PO, or may, at its option, retain such units with payment therefore deferred until it would otherwise be due.

## 6. REPRESENTATIONS AND WARRANTIES

**6.1 Quality Management.** Supplier acknowledges and accepts that Supplier's commitment to quality is a primary requirement of Hydro. Supplier commits to the continued quality improvement of process to manufacture or create the Deliverables. To the extent relevant to the Deliverables, Supplier shall at all times have and document a certified quality management system meeting the requirements of ISO 9001, ISO TS 16949, AS 9001, ISO 22000 or

equivalent. Supplier will provide Hydro with such documentation and acceptable quality data upon request. Hydro or its representatives may at any time, after appropriate notification, conduct quality audits of Supplier's production facilities and quality control procedures, as well as audits to assess Supplier's compliance with its obligations under Section 6.1. In addition, subject to the confidentiality provisions of Section 7, Supplier undertakes to grant Hydro unrestricted access to all information (except financial records) and facilities relevant to the Deliverables and to provide a copy of the relevant information.

**6.2 Warranty of Title.** Supplier warrants and represents to Hydro that upon the Delivery to Hydro of the Deliverables (a) Hydro shall acquire good and clear title to the Deliverables, free and clear of all liens and encumbrances, (b) all Deliverables provided hereunder, excluding any product designs which are requested by Hydro, are either owned or properly licensed by Supplier or are in the public domain and the use thereof by Hydro, its representatives, distributors, dealers end users and other direct and indirect customers, does not and shall not infringe any proprietary rights of any third party, and (c) Supplier has the full power to enter into and to carry out the obligations under the contract and to grant Hydro all necessary rights and licenses under the contract. As of the date of the acknowledgement of the PO, Supplier represents that it has not received any notice or claim from a third party alleging that all or any part of the Deliverables, infringes the proprietary rights of any third party

**6.3 Warranty.** Supplier warrants that all Deliverables that are products will be new, free from any defects in design, material and workmanship and will conform to the agreed specifications, descriptions and drawings. Supplier warrants that all Deliverables that are services will conform to the service description and any applicable statement of work. The warranty period for all Deliverables shall be twenty-four (24) months from the date of Delivery. Hydro shall have the right at any time after the Delivery to test and inspect the Deliverables. If Hydro suspects any products to be defective, Hydro shall be entitled, at Supplier's risk and expense, to return the defective Deliverables. Within ten (10) business days of receipt of defective Deliverables, Supplier shall, at Hydro's option, either repair or replace the defective Deliverables and return them to Hydro at its expense. Supplier shall be responsible for de-installation and re-installation of defective Deliverables that are products or for the costs of doing so. All repaired and replaced Deliverables that are products shall be warranted for twenty-four (24) months. Supplier will remedy non-conforming Deliverables that are services promptly upon notification and at its own cost. In the event a Deliverable cannot be repaired, replaced or otherwise remedied, Supplier shall refund Hydro the full purchase price paid for the Deliverable. In addition to these remedies, Hydro shall be entitled to damages caused by any defective Deliverables, and upon request, Supplier shall provide Hydro with a report of the causes and an analysis of the defects and propose corrective actions to avoid similar defects in future Deliverables.

**6.4 Compliance with Laws and Hydro's Policies.** Supplier and Supplier's Deliverables shall at all times be in compliance with all applicable laws, rules and regulations including, without limitation, employment laws, personal privacy and secrecy and EHS-regulations, as well as with Hydro's EHS Standards and EC Regulation 1907/2006 concerning the Registration, Evaluation and Restriction of Chemicals (REACH). Supplier shall use its best efforts to assist Hydro in case of any customer or government audits.

Supplier shall indemnify and hold harmless Hydro, its officers, employees and agents (in this clause referred to as "those indemnified") from and against any loss (including legal costs and expenses), damages or liability, reasonably incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding, by any person against any of those indemnified, where such loss, damages or liability is caused by, arises out of, or results from or in connection with Supplier's noncompliance with any laws and regulations or Hydro's policies, as well as any negligence, willful misconduct or breach of the contract. In addition, any systematic failure to meet such standards shall constitute a material breach of the contract, entitling Hydro to immediate termination of the relevant PO or contract without any right of compensation for Supplier.

Supplier shall at all times maintain full and proper insurance coverage, with coverages in commercially reasonable types and amounts, against loss, damage, theft and all other reasonably foreseeable events which may negatively impact the Deliverables. In addition, Supplier is responsible for obtaining and maintaining all export licenses required and certificates necessary for the supply, sale and delivery of the Deliverables.

## 7. CONFIDENTIALITY

From the issuing of the first PO or signing of a contract and for a period of five (5) years after the last Delivery by Supplier, the parties shall not directly or indirectly, use any proprietary, confidential, or trade secret information or know-how of the other party (other than information which is in the public domain, lawfully required to be disclosed or is developed independently), including, but not limited to, information about products, financials, business or customers (collectively, "Confidential Information") for their own benefit or for the benefit of a third party, and shall not disclose such Confidential Information to any third party, other than the parties' employees or authorized contractors and named subcontractors solely on a "need to know" basis, unless: (a) the receiving party obtains the prior written consent of the disclosing party; (b) such disclosure is necessary to enforce a party's rights under the contract; or (c) such disclosure is required by applicable law or by legal, judicial, administrative or regulatory process, provided that the receiving party, to the extent not prohibited by applicable law or the authority with jurisdiction over such process, promptly notifies the disclosing party so that it may, if it so elects, seek a protective order or other appropriate relief. "Confidential Information" shall include any reports, notes, memoranda, analyses or other information developed by the receiving party based on the disclosing party's Confidential Information, but shall not include information that: (i) has come into the public domain through no fault of the receiving party; (ii) was lawfully disclosed to the receiving party by a third party not otherwise bound by a duty of confidentiality; (iii) was independently developed by the receiving party not otherwise in breach of the contract; or (iv) was rightfully known by the receiving party prior to entering into the contract.

Disclosure hereunder of Confidential Information is for the sole purpose of conducting business between the parties. Neither party shall utilize for any reason whatsoever Confidential Information received from the other for its own benefit, either in its own processes, or to fabricate, or have fabricated, goods for sale. Nothing herein shall be construed to create a partnership, joint venture or any other form of entity, nor a license to use any disclosed information or transfer any intellectual property rights. All intellectual rights to any information exchanged between the parties shall remain the property of the disclosing party. Further, neither party shall have right to bind the other to any commitment or obligation.

In addition, unless Supplier obtains the prior written consent of Hydro, Supplier shall not use the name, logo, service marks, trademarks or other protected property of Hydro or any of its Affiliates, or describe or identify the Deliverables in any publicity releases, marketing materials, advertising or as any type of reference. Further, any Deliverables that are the result of Supplier's provision of consulting or other professional services shall be deemed to be works for hire belonging exclusively to Hydro such that Supplier shall be deemed to have forever transferred and assigned to Hydro any and all right, title and interest it may have therein, whether intellectual property or otherwise.

## 8. INDEMNITY

**8.1 Intellectual Property Indemnity.** Supplier shall indemnify and hold Hydro harmless from all costs, expenses, liabilities and claims of infringement against Hydro alleging that the manufacture, purchase, use or sale of any Deliverable infringes or violates any third party's patent, copyright, trademark or trade secret. In such an event, Supplier, at its option and expense, shall: (a) reimburse Hydro for any costs incurred at Hydro's written request relating to such claim; and (b) pay damages and costs incurred by Hydro that are attributable to such claim (including, without limitation, reasonable attorneys' fees).

In addition, Supplier shall either (i) procure for Hydro the right to continue using such Deliverables, or (ii) replace or modify any such Deliverables provided or to be provided to be free of the infringement provided that such replacement or modified Deliverables materially conforms to the Specifications. If Supplier is unable to achieve either of the options set forth above despite its reasonable best efforts, it shall require return of such Deliverables freight collect to Supplier and promptly refund to Hydro the purchase price, plus all reasonable shipping, storage and associated costs.

**8.2 Third Party Indemnity.** Supplier will indemnify, hold harmless, and defend Hydro from and against any and all injuries, liabilities, damages, losses, costs and expenses (including, but not limited to, reasonable legal and other professional fees) payable to third parties to the extent based upon any liability claim related to the Deliverables or other claim arising from or relating to Supplier's

negligence, willful misconduct, violation of law or failure to perform its obligations under the contract, provided that Hydro (i) promptly notifies Supplier of the claim, (ii) provides Supplier with all reasonable information and assistance, at Supplier's expense, to defend or settle such a claim, and (iii) grants Supplier the right to jointly control the defense or settlement of such claim. Supplier shall not settle any such claim, without Hydro's prior written consent. Hydro reserves the right to retain counsel, at Hydro's expense, and to participate in the defense and settlement of any such claim.

**8.3 Breach of Contract.** Supplier shall indemnify and hold Hydro harmless from all claims and all direct, indirect or consequential liabilities (including, without limitation, loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including, without limitation, legal and other professional fees and expenses) incurred by Hydro as a result of breach or negligent performance or failure or delay in performance of the contract by Supplier.

**8.4 Survival of Rights and Obligations upon Cancellation.** Sections 3 (General Terms and Conditions), 4 (Prices and Payment), 6 (Representations and Warranties), 7 (Confidentiality), 8 (Indemnity) and 9 (General) shall survive cancellation, termination or expiration of a PO or the contract.

## 9. GENERAL

**9.1** Any amendments to these Terms shall be agreed in writing by the parties. POs submitted by Hydro may vary these Terms if so expressly provided.

**9.2** Any notice under the contract shall be in writing and shall be sent via courier service or by mail (internationally recognized overnight commercial courier, certified or registered), or by facsimile confirmed by mail to the person specified on the PO (provided that a copy is contemporaneously sent by one of the alternate means set forth in this Section 9.2). A copy of any notice to Hydro shall contemporaneously be sent to: Hydro Group, Biskop Gunnerus gate 14, 0185 Oslo, Norway, Attn.: Legal Department.

**9.3** Neither party shall be responsible to the other party for non-fulfillment or delays or additional costs in fulfillment of its obligations under any PO due to causes over which that party has no control ("Force Majeure"). Such causes include, without limitation, wars, hostilities between states, terrorist acts, national strikes and lock-outs, national or international transport strikes, embargoes, natural disasters, storms, fires, explosions or other similar contingencies beyond the reasonable control of a party, which leads to the inability of such party to perform its obligations under the contract. Either party who desires to declare Force Majeure shall notify the other party in writing of the reasons for non-fulfillment or delays in fulfillment of its obligations under the contract promptly upon the occurrence of the event, and shall propose to the other party remedies for such non-fulfillment or delays. If the Force Majeure event continues beyond thirty (30) days, either party may terminate the any PO or the contract in writing immediately, without prejudice to any other rights or remedies it may have.

**9.4** The contract, nor any rights or obligations arising under any PO or the contract, are assignable by either party without the prior written consent of the other party. Notwithstanding the foregoing, however, Hydro may assign the contract, or any such rights and obligations under the contract, without the prior consent of Supplier if the assignment arises out of a corporate merger, reorganization, consolidation or sale of substantially all assets of the Hydro, provided that such assignee assumes all obligations and liabilities of Hydro hereunder. Subject to the foregoing, the provisions of any PO and the contract shall be binding upon and inure to the benefit of the parties hereto and their permitted respective successors and assigns.

**9.5** Supplier may only use a sub-contractor to provide the Deliverables, or parts thereof, with Hydro's separate specific prior written consent. A failure to secure such prior consent before using a sub-contractor shall constitute material breach of contract by Supplier. Supplier shall be liable for the performance, or omissions, of its sub-contractors as if they were its own performance or omissions, regardless of Hydro's consent to Supplier's use of the sub-contractor.

**9.6** Promptly after entering into the contract, Supplier agrees to and shall execute Hydro's then current form of its Supplier Declaration, which shall be incorporated within and form an integral part of the contract between Supplier and Hydro.

**9.7** The rights and remedies set forth herein shall be in addition to all other or further rights and remedies provided in law or equity. Failure by either party to enforce any provision of the contract will not be deemed a waiver of future enforcement of that or any other provision. If for any reason a court of competent jurisdiction finds any provision of the contract to be invalid or unenforceable, the remainder of the contract will continue in full force and effect and there shall be a substitution for the relevant provision with a valid provision having an economic effect as similar as possible.

**9.8** If anything in the contract is deemed or declared invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term shall be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of the contract shall remain in full force and effect.

**9.9** The contract or action related thereto shall be governed, controlled, interpreted and defined by and under the laws of the country from which the PO is issued by Hydro, without regard to any conflict of law principles that would require application of another choice of law. The application of the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 shall be expressly excluded.

**9.10** Each party represents and warrants to the other that it has full right and power to enter into and to perform the obligations of the contract and that the individual signing the contract on its behalf is duly authorized. The contract may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute the same instrument. In addition, the contract may be executed via electronic signatures, which shall be valid and binding for all purposes.