



# **Specific Purchasing Conditions for the supply [and installation] of Electrical Equipment – Belgium**

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## **S1. FIELD OF APPLICATION**

These Specific Purchasing Conditions Electrical Equipment Belgium (also referred to as "**SPC EE BELGIUM**") shall be incorporated in Contracts made by companies of the Elia Group and shall apply together with the Elia Group General Purchasing Conditions for the Supply [and Installation] of Electrical Equipment (also referred to as "**GPC ELECTRICAL EQUIPMENT**") in all cases where these SPC EE BELGIUM are expressly incorporated, but also for all other Contracts made by the TSO as a purchaser which are governed or supposed to be governed by Belgian law.

## **S2. STRUCTURE AND HIERARCHY**

Where applicable, these SPC EE BELGIUM shall form an integral part of the terms and conditions provided in the GPC ELECTRICAL EQUIPMENT, and provisions of the GPC ELECTRICAL EQUIPMENT addressing the content of the document (such as rules of interpretation or a severability clause) shall also apply hereto. In case of contradiction between a particular clause in these SPC EE BELGIUM and a particular clause in the GPC ELECTRICAL EQUIPMENT, the provision in these SPC EE BELGIUM will prevail over the provision in the GPC ELECTRICAL EQUIPMENT.

## **S3. DEFINITIONS**

Terms defined in the GPC ELECTRICAL EQUIPMENT, when used herein, shall have the same meaning as in the GPC ELECTRICAL EQUIPMENT, unless a definition of the relevant term is made in this document.

## **S4. PAYMENT**

### **S4.1 Invoicing**

#### **S4.1.1 Electronic invoicing system**

To the extent that the TSO uses any electronic or other validation (invoicing) system, including but not limited to the e-invoicing, the Contractor undertakes to use such system upon the TSO's request and in accordance with the TSO's instructions.

#### **S4.1.2 Conditions for issuing invoices**

An invoice may only be issued if it has been preceded by the TSO's written approval of a proforma invoice containing a detailed description of the Services. The Contractual Documents specify the moment when the proforma invoice may be drawn up. Otherwise, the Contractor will submit the pro-forma invoice to the TSO only after the full and satisfactory completion of all of the Services forming the object of the Contract. In any event, the proforma invoices will be sent to the TSO no later than 15 Days after the completion of the Services.

The final invoices and credit notes must contain all of the legally required notices and observe all of the procedures specified by the TSO in the Contractual documents.

The final invoices must be sent, in order for the Contractor not to be forfeited of its right to claim payment, within six months after the approval of the pro- forma invoice and in any event within twelve months from the performance of the Service to which it relates.

#### **S4.1.3 Mandatory mentions**

The pro forma invoice and the invoice will contain:

- (a) The Contract reference;
- (b) The PO number;
- (c) The name of the administrative responsible of the PO;

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- (d) The total amount in € (excluding VAT)
  - (e) The VAT number of Elia Asset S.A.: BE 0475.028.202;
  - (f) The part of the invoice relating to the delivery shall also show all legal requirements and as a minimum, the following details:
    - i. The originating country;
    - ii. The country of manufacture;
    - iii. The mode of transport;
    - iv. The weight, in kilograms, packing excluded;
    - v. The nature of transaction (sale);
    - vi. The DDP Incoterm.

## **S4.2 Payment terms and procedures**

Payments are made within thirty (30) Days from the end of the month of the final invoice which has been approved pursuant to the procedure stated in Article S4.1 by payment onto the account of the Contractor registered by the accounting department. The TSO cannot be held liable for any delay in payment due to the Contractor's nonobservance of the invoicing procedures or the lack of transmission by the Contractor of the necessary data to the accounting department.

Partial or complete payment by the TSO does not imply an acceptance and/or acknowledgement of the delivery of Services.

## **S5. STAFF**

### **S5.1 Representation and warranties**

The Contractor represents to comply with applicable labour and social security laws including documentation requirements and will provide the TSO with proper evidence on request. A default on its labour and social security obligations is recognized by the Parties as a serious breach of the Contractor's obligations and entitles the TSO to terminate the Contract, pursuant to Article 36.1 of the GPC ELECTRICAL EQUIPMENT. The TSO cannot be held liable for the payment of fines or taxes if the Contractor does not comply with such obligations.

Before initiating the Contract, the Contractor shall report the Contract and provide the necessary information pursuant to the provisions of §7 of Article 30bis and 30ter of the Belgian Act of 27 June 1969 on social security for employed persons. The Contractor shall do so for any work as defined under §7 of Articles 30bis and/or 30ter of the Belgian Act of 27 June 1969 on social security for employed persons carried out by any of its auxiliary persons.

If Article 30bis, §3 to 4 and/or Article 30ter, §2 to 4 of the Belgian Act of 27 June 1969 on social security for employed persons and/or Article 403 of the Belgian Income Tax Code 1992 apply, the Contractor and, if applicable, every sub-contractor shall, no later than the day of the signature of the Contract, provide TSO with certificates indicating that they have no fiscal and/or social debts.

Moreover, on the due date of each invoice sent to TSO, the Contractor and any sub-contractor shall provide TSO with certificates dated on this date in order to provide TSO with assurance that there are no fiscal or social debts at the time of payment.

In the event that the Contractor or any sub-contractor appointed by the Contractor has social and/or fiscal debts and/or in the absence of such certificates, TSO shall apply deductions to each payment due to the Contractor

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pursuant to the provisions of Articles 30bis and/or 30ter of the Belgian Act of 27 June 1969 on social security for employed persons and Article 403 of the Belgian Income Tax Code 1992.

In any case and in the event that TSO is due to pay the fiscal and/or social debts of Contractor or any sub-contractor appointed by the Contractor under the joint and several liability pursuant to abovementioned Belgian Act of 27 June 1969 and the Belgian Income Tax Code 1992, it shall be entitled to offset these payments (without prejudice to its right to request the payment), including the costs and interests, with any amount it might still owe to the Contractor, without any formality being required.

The Contractor warrants that it pays and shall pay any amounts due to its auxiliary persons including (where appropriate) payment of salary, benefits and expenses, and remittance to the appropriate authorities of all required income tax and national insurance contributions. The Contractor acknowledges that TSO properly communicated the contact details of the website of the Belgian Federal Public Service for Employment, Labour and Social Dialogue, which contains information on the remuneration due, as follows: i.e.

<https://emploi.belgique.be/fr/themes/remuneration/salaires-minimums-par-sous-commission-paritaire/banque-de-donnees-salaires>

Without prejudice to the other provisions, TSO reserves the right to immediately terminate the Contract in the event that a written notification would show that the Contractor or any sub-contractor appointed by the Contractor does not comply with the legal obligations regarding the remuneration of employees.

In any case and in the event that TSO is due to pay the salary debts for the employees of the Contractor or any sub-contractor under the joint and several liability pursuant to Belgian Act of 12 April 1965, it shall be entitled to offset these payments (without prejudice to its right to request the payment), including the costs and interests, with any amount it might still owe to the Contractor, without any formality being required, as long as the evidence of the proper payment of the remuneration has not been provided by the Contractor or any sub-contractor.

The Contractor warrants that it does not and shall not employ third-country nationals' employees who are illegally staying in Belgium. If TSO becomes aware that the Contractor employs third-country nationals' employees who are illegally staying in Belgium, TSO reserves the right to immediately terminate the Contract without indemnity. In addition, the Contractor commits to impose the obligation not to employ third-country nationals' who are illegally staying in Belgium to any sub-contractors he appoints. If TSO is aware that any sub-contractor appointed directly or indirectly by the Contractor employs third-country nationals' who are illegally staying in Belgium, TSO reserves the right to immediately terminate the Contract without indemnity.

The Contractor shall obtain all visas, permits (including work and residency permits), licences or other authorisation for all its auxiliary persons necessary to enable those people to perform the Contract, and shall pay all costs associated with obtaining such visas, permits, licences or other authorisations.

The Contractor represents, warrants and undertakes that he will only employ foreign employees who:

- are legally employed during the term of the work to be executed in Belgium;
- are legally seconded and are in possession of a A1-form delivered by the competent foreign authority, the validity of which is at least equal to the duration of the Contract (if applicable);
- are in possession of a valid LIMOSA-form (if applicable);

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- are in possession of the necessary documents delivered by the municipality of the place where they will stay in Belgium;

The Contractor represents, warrants and undertakes that he will commit its employees to:

- immediately after arrival on the Belgian territory and within the legal period, report to the municipality of the place where they will stay in Belgium and to request the necessary documents, on presentation of the necessary supporting documents (identity card or passport, evidence of the service contract, A1-form and authorization to work in the country of Contractor) (if applicable);
- at all times, also on the working place, be in possession of the identity card or passport, a valid A1-form, a valid LIMOSA-form and the residence documents (if applicable).

The Contractor commits to, including in the name of and on behalf of TSO, assess whether a LIMOSA declaration is mandatory for any of its employees. The Contractor recognizes and agrees that its concerned employees will not start to perform the Contract as long as TSO does not get a copy of the certificate issued by the Belgian social security authorities attesting that the LIMOSA declaration has properly been submitted in accordance with Title IV, Chapter 8 of the Belgian Program Law (I) of 27 December 2006 and with its implementing regulations.

In any event, without prejudice to the other provisions, TSO reserves the right to immediately terminate the Contract in the event that the Contractor does not comply with its obligations as described in the present section, without indemnity.

If the Contractor or one of the sub-contractor appointed by the Contractor would not respect one of the obligation provided for in the present section, the Contractor guarantees TSO against all consequences and commits to fully compensate TSO for any damages it would suffer resulting from the failure to respect its obligations in accordance with the present section.

Parties expressly agree that TSO can pursue remedies against the Contractor to claim the reimbursement of the financial sanctions (including criminal ones) that would be imposed by the competent authorities because of the failure of the Contractor to respect its obligations in accordance with the present section. The present section also covers TSO's legal obligations that have been delegated to the Contractor for the execution of the Contract.

## **S5.2 Registration of attendance**

[If applicable] When applicable, the Contractor shall take the necessary measures to register the attendance of each natural person pursuant to Article 31bis and following of the Belgian Well Being at Work Act of 4 August 1996. The Contractor shall ensure that all its auxiliary persons comply with all provisions regarding registration of attendance.

## **S6. LIQUIDATED DAMAGES FOR FAILURE TO PERFORM**

Any failure to perform the Contract by the Contractor that is reasonably deemed material by the TSO will give rise to liquidated damages in favour of the TSO. The amount of the liquidated damages is set forth in the Contractual Documents which may stipulate different amounts, depending on the degree of severity and type of default.

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If the amount of the liquidated damages is not specified in the Contractual Documents, the liquidated damages for each such failure will amount to 1% of the amount of the Contract. The total amount of the cumulated liquidated damages for failure to perform shall in any case not exceed 10% of the Contract price.

The liquidated damages are due and payable ipso jure by a simple notice addressed to the Contractor, indicating the failure in performance.

The liquidated damages are cumulative in nature and do not discharge the Contractor from any of its contractual obligations. They are also independent of any liquidated damages for late performance.

The liquidated damages are not submitted to the liability caps in accordance with Article 37 of the GPC ELECTRICAL EQUIPMENT.

## **S7. LIQUIDATED DAMAGES FOR LATE PERFORMANCE**

Late performance will automatically give rise, ipso jure and without written notice, to liquidated damages for late performance as from the expiry of any contractual deadline, even if partial, unless the Contractor can validly justify an extension or postponement of its deadline.

If the amount of the liquidated damages for Late Performance is not specified in the Contractual Documents, the liquidated damages for late performance are equal to 0.2% of the amount of the Contract per Working Day of delay, up to a limit of 10% of the amount of the Contract.

The liquidated damages for late performance are not submitted to the liability caps in accordance with Article 37 of the GPC ELECTRICAL EQUIPMENT.

## **S8. FINANCIAL GUARANTEES**

### **S8.1 Performance Bond**

If Parties have agreed upon in the Contract that the Contractor will provide a security for the proper performance of the Contract, the Contractor shall at its own Costs, provide the TSO with a duly executed performance bond on first demand in form of a bank payment guarantee, from a bank with a rating, of the amount and in the form agreed upon in the Contract ("Performance Bond"). If the required rating is lost or reduced, the Contractor will notify it to the TSO. The TSO reserves its rights to require from the Contractor to provide it with a Performance Bond from a bank that complies with the minimum rating requirements, within 20 (twenty) Business Days after the loss of the minimum required rating by the first bank.

If the Contractor fails to deliver the Performance Bond, the TSO shall be entitled to withhold payments until the Performance Bond has been delivered and/or terminate the Contract. The Contractor's obligations under the Contract shall remain unaffected by such retention.

### **S8.2 Defects Liability Bond**

If Parties have agreed upon in the Contract that the Contractor will provide a security for claims by the TSO for defects during the warranty period in accordance with Article 32.4 of the GPC ELECTRICAL EQUIPMENT, the Contractor shall, at the latest when applying for Provisional Acceptance in accordance with Article 29.3 of the GPC ELECTRICAL EQUIPMENT, and at its own costs, provide the TSO with a duly executed defects liability bond on first demand in form of a bank payment guarantee, from a bank with a rating, of the amount and in the form agreed upon in the Contract ("Defects Liability Bond"). If the required rating is lost or reduced, the

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Contractor will notify it to the TSO. The TSO reserves its rights to require from the Contractor to provide it with a Defects Liability Bond from a bank that complies with the minimum rating requirements, within 20 (twenty) Business Days after the loss of the minimum required rating by the first bank.

The TSO shall return the Defects Liability Bond to the Contractor 6 (six) months after the lapsing of the relevant warranty period. In case a warranty period is extended pursuant to the Contract, the term for the Defects Liability Bond shall be extended accordingly by the Contractor.

### **S8.3 General provisions regarding the Bonds**

The Performance Bond and the Defects Liability Bond will be together referred as the “Bonds”.

The TSO shall not make a claim under the Bonds, except for amounts to which the TSO is entitled under the Contract in the event of:

- (a) failure by the Contractor to extend the validity of the Bonds as described in the preceding paragraphs, in which event the TSO may claim the full amount of the relevant Bonds;
- (b) failure by the Contractor to remedy a default in accordance with the obligations under the Contract after receiving the TSO's notice requiring the default to be remedied; or
- (c) if the TSO has terminated the Contract under Article 36.1 (Termination for cause by the TSO) of the GPC ELECTRICAL EQUIPMENT and if the TSO is entitled to claim damages against the Contractor.

In the event of insolvency, ceasing of activity, liquidation, or any other situation entailing termination due to the fault of the Contractor for all or part of the Contract, the amount of the Bonds in relation to the damages suffered will be acquired ipso jure by the TSO and its amount will be deducted from all amounts due in any capacity to the TSO.

If the Contractor fails to make the Bond(s) stipulated in the Contractual Documents on its own initiative, the TSO will be entitled to make automatic withholdings on the amounts it owes to the Contractor in its performance of the Contract, without prejudice to any other remedy.

## **S9. TERMINATION FOR CONVENIENCE**

Without prejudice to Article 36.2 of the GPC ELECTRICAL EQUIPMENT, in the event of termination of the Contract for convenience as mentioned in Article 36.2 of the GPC ELECTRICAL EQUIPMENT, the Contractor is entitled to receive payment for the Services already rendered in accordance with the Contract and a compensation up to 5% of the ongoing PO value for any direct damages incurred which has been duly justified by the Contractor, it being understood that the compensation shall not include compensation for loss of profit or margin on the material.

## **S10. GOVERNING LAW AND JURISDICTION**

The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) is governed by and construed in accordance with the law of Belgium to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG)”. The Parties agree that the courts of Brussels shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims). In addition, the TSO is entitled to take legal action at the competent court at the domicile or place of principal establishment of the Contractor.



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