



Elia
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GENERAL PURCHASING CONDITIONS

The English version of the General Purchasing Conditions has been given on a merely informational basis.
Only the French and Dutch version shall be deemed authentic.

General purchasing conditions for works, supplies, and services

Complete Working Document

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1 FIELD OF APPLICATION

The present general conditions apply to all Contracts as well as any request for works, supplies, or services made by Elia on its own behalf or on behalf of third parties.

In view of its specific status, Elia is partially subject to the regulations relating to public procurement contracts. The call for tender will specify whether or not the relevant Contract is subject to such regulations.

2 DEFINITIONS

- 2.1. Contracting Party: the company or group of companies that contracts with Elia.
- 2.2. Contract: the agreement between Elia and the Contracting Party whereby the latter party undertakes to provide the Services agreed in the Contractual Documents.
- 2.3. Contractual Documents: the whole formed by the documents relating to each Contract considered individually, namely (1) the documents which state the requirements and needs of Elia, (these documents are referred to hereafter as the "call for tender"), (2) the bid of the Contracting Party, (3) any subsequent negotiation document, (4) the order(s), and (5) any additional addendums.
- 2.4. Elia: one of the companies of the Elia group, namely Elia System Operator S.A., Elia Asset S.A., Elia Engineering S.A., as well as any affiliates of these companies in accordance with Clause 11 of the Belgian Companies Code.
- 2.5. Days: unless stated otherwise, the term Days is to be understood as calendar days and includes Saturdays, Sundays, public holidays, holidays, and closing days. Working Days is understood as meaning all days not including Saturdays, Sundays, public holidays, and mandatory closing days of the company or sector of the Contracting Party.
- 2.6. Bidder: the company or group of companies which submits a bid to Elia and which has not yet received an order.
- 2.7. Services: the works, deliveries, and/or services forming the scope of the Contract.
- 2.8. Site: A Place(s) or part of the places where the activities relating to performance of the Contract are carried out.
- 2.9. Party: The Contracting Party and Elia respectively (together the Parties).

3 DRAFTING OF THE CONTRACT

3.1 Conclusion of the Contract

3.1.1 Call for tender

When a call for tender refers to documents that are not attached, the Bidder is presumed to be aware of these documents if it does not expressly request written notice from Elia before submitting its bid. These documents form an integral part of the documents of the call for tender.

3.1.2 **Bid**

As a rule, the bid must comply with the documents of the call for tender. In the event of failure to do so, the bid may be excluded without Elia having any obligation to question the Bidder or to invite him to submit a compliant bid. If the Bidder wishes to derogate from some of the documents of the call for tender, the Bidder must indicate it expressly. In the absence of such indication, the Bidder will be deemed to agree to comply with the call for tender documents.

The Bidder is obliged to mention the following to Elia, in its bid at the very latest: all errors, omissions, contradictions, or difficulties of performance which it notes in or foresees on the basis of the call for tender documents. No modification of the conditions of the Contract will take place unless the Bidder has mentioned the relevant element(s) to Elia in this manner and within this timeframe.

3.1.3 **Order**

Only a Contract or a written order, signed by persons duly authorised to bind Elia, is valid as acceptance of the bid. Any initiation of the performance of the Contract before the receipt of the duly executed order or the Contract will be carried out at the risk of the Bidder.

When an order is placed without a call for tender, it is presumed that the Contracting Party has accepted the order on the conditions mentioned therein if 1) it starts performing the contract or (2) it has not notified Elia in writing, within 8 Days after receiving the order, of a) its disagreement regarding some of the conditions or b) its refusal to enter into a contract.

3.1.4 **Condition precedent**

The order or the Contractual Documents specify whether the Contract is subject to one or several conditions precedent, such as the securing of authorisations or licences and their enforceable character. If the condition does not take place, no indemnity will be due to the Contracting Party.

3.1.5 **Hierarchy among documents**

The Contractual Documents are mutually complementary. The omission of an element in one of the Contractual Documents does not mean that it is not a part of the Contract if it appears in another Contractual Document.

The hierarchy of documents is generally specified in the Contract. If this is not the case, the following shall be applicable:

- contract specific documents prevail over general documents;
- main document prevails over its annexes; and
- general Purchasing Conditions prevail over all other general documents stemming from Elia.

The exceptions proposed by the Bidder to the provisions contained in the call for tender only apply if they are explicitly accepted by in the order. In all other instances, the documents issued by Elia shall prevail over those of the Contracting Party.

3.2 **Application and exceptions to the general purchasing conditions**

By submitting a bid or accepting an order, the Contracting Party accepts the application of these General Conditions and waives the applicability of its own terms and conditions. Exceptions to these General Conditions can only be permitted in the form of explicit provisions, duly accepted in writing by the Parties. This exception is only valid for the Contract in question.

The conditions of the Contracting Party that are reproduced or to which reference is made in its invoices, order forms, Service sheets, or other documents shall not apply.

3.3 **Parties to the Contract**

3.3.1 **Joint and several liability**

When the Contract is concluded with an association or temporary company, the shareholders of these entities will be indivisibly and jointly and severally liable to Elia for all of the contractual obligations falling to the Contracting Party. The shareholders of this association or temporary company will appoint one of them as the representative with full power of attorney to ensure the coordination of performance of the Contract.

The details of the association or temporary company must be announced no later than the time of submission of the initial bid.

3.3.2 **Subcontracting**

The subcontracting of the whole of the Contract is prohibited. Partial subcontracting is subject to the prior written authorisation of Elia in respect of both (1) the subcontracted part and the identity of the subcontractor.

If the identity of the subcontractor and the description of the part of the Contract is to be entrusted to such subcontractor are mentioned in the bid of the Contracting Party, the acceptance of the bid without any reservation on this point will be deemed as a prior authorisation of Elia.

In any event, Elia may at its full discretion refuse a subcontractor.

No legal tie exists or may arise between Elia and the subcontractors of the Contracting Party, even if Elia were to approve the latter.

The Contracting Party remains fully and personally liable toward Elia for the parts of the Contract that it has subcontracted.

3.3.3 **Intervention by Elia on behalf of a third-party**

Elia is entitled to conclude a Contract on behalf of a third party. In such instance, the Contractual Documents will stipulate this explicitly.

4 **PERFORMANCE OF THE CONTRACT**

4.1 **Quality**

The Contracting Party shall perform the Contract in accordance with the best professional practices (*volgens de regels van de kunst / dans les règles de l'art / best practice*, hereinafter "best practice") and the stipulations of the Contractual Documents, and this in observance of all of laws and regulations in force and particularly the regulations regarding illegal labour, forced labour, and child labour.

The Services must be complete from every point of view. They include, among others, all of the elements required for full performance of the Contract or realisation of the guaranteed performances and Services, even in the absence of any explicit mention thereof in the Contractual Documents. Each Contract consists of an obligation to attain a specific result (*obligation de résultat / resultaatsverbintenis*). The Contract includes all Services necessary for the repair and replacement of the supplies and works during the warranty period and the restoration or clean-up of the Site after the performance of the core elements of the Contract.

The Contracting Party's material which is necessary for the proper performance of the Services (including the delivery of the supplies or performance of the works and/or services) must be made available for the entire duration required for performance of the Contract.

The interventions and/or approvals by Elia will in no case reduce the liability of the Contracting Party.

Meetings are organised at the initiative of Elia or the Contracting Party whenever the proper performance of the Contract so requires. For each of these meetings, a summary report will be issued by the Contracting Party within 5 Working Days and submitted to Elia for approval.

4.2 **Price**

4.2.1 **Definitions**

- Total price contract: A Contract in which a fixed price covers all of the Services to be provided or which only consists of fixed rate items. The price covers all of the expenses and fees set forth by the Contracting Party, including those resulting from the obligations imposed on it. All of the equipment required for performing the Services by the Contracting Party will also be included in the total price.
- Contract with price notes: A Contract in which the price payable to the Contracting Party is determined by multiplying the unit price (which is agreed in advance for the Services) by the measured quantities (quantities of raw materials, materials, equipment, construction and/or assembly work, Services, etc. that have been effectively provided and/or implemented by the Contracting Party and accepted by Elia).
- Controlled expenditure contract: A Contract in which the Services are paid, after review, on the basis of the cost price, corresponding to the conditions and the profit margin contained in the Contractual Documents.
- Mixed Contract: A Contract in which the Services are remunerated according to several of the methods mentioned above.

4.2.2 **Agreed prices**

The prices are mentioned in the Contractual documents and are indicated exclusive of VAT. The Contracting Party is responsible and liable for the payment of all taxes related to the Services. To the extent that Elia has to pay any such taxes upfront, it shall charge them to the Contracting Party at cost.

The prices are fixed among others, based on economic or labour market fluctuations, and cannot be revised unless otherwise mentioned in the Contractual Documents which will then specify the applicable formula. In any event, there is no room for price revision for Contracts which initial duration does not exceed one year. No price increase will apply during the period after which the Contracting Party has exceeded the predefined deadline.

The Contracting Party is nevertheless obliged to pass on to Elia the benefits of a significant reduction in the price of its Services which may occur between the signing of the Contract and its performance.

The price is considered to have taken into account all possible performance constraints, namely:

- foreseeable natural phenomena;
- the use of the public domain or functioning of public services;
- the presence of works, mains, lines and cables of any kind, as well as works necessary for the relocation or modification of these facilities;
- the (possible) simultaneous performance by third parties of other works or services on the site (and, as the case may be, the resulting impossibility for the Contracting Party to perform its works or Services at the same time pursuant to contractual or regulatory constraints);

- the (possible) presence of other companies;
- the use of facilities or works.

Unless otherwise indicated in the Contractual documents, the deliveries, packaging, markings, and transport must be executed in accordance with Incoterms (latest valid edition) DDP (Delivery Duty Paid) in force at the time of the conclusion of the Contract or of its renewal, including the related insurance policies.

4.2.3 Additional and/or supplementary services

No additional or supplementary Service may be invoiced within the terms of the Contract in the absence of a prior written document from Elia in which Elia indicates at least the agreed price and conditions.

In the event of reimbursement and/or a reduction in the prices granted to Elia in general and/or within the context of the Contract, this reimbursement and/or reduction also applies to the additional and/or supplementary Services.

4.3 Payments

4.3.1 Invoicing

An invoice may only be issued if it has been preceded by Elia's written approval of a pro-forma invoice containing a detailed description of the Services. The Contractual Documents specify the moment when the pro-forma invoice may be drawn up. Otherwise, the Contracting Party will submit the pro-forma invoice to Elia only after the full and satisfactory completion of all of the Services forming the object of the Contract. In any event, the pro-forma invoices will be sent to Elia no later than 15 Days after the completion of the Services. Elia has 7 Working Days, starting from the date of the receipt of the pro-forma invoice, to approve / comment / reject this pro-forma invoice, provided that the Contracting Party has correctly followed the instructions as described above.

To the extent that Elia uses any electronic or other validation (invoicing) system, the Contracting Party undertakes to use such system upon Elia's request and in accordance with Elia's instructions.

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

The final invoices must be sent, in order for the Contracting Party 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.

4.3.2 Payment 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 clause 4.3.1. by payment onto the account of the Contracting Party registered by the accounting department. Elia cannot be held liable for any delay in payment due to the Contracting Party's non-observance of the invoicing procedures or the lack of transmission by the Contracting Party of the necessary data to the accounting department.

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

4.3.3 **Offsetting**

If there are claims and debts between the Parties, regardless of origin, Elia will have the exclusive right to offset its debts with its claims from the Contracting Party or to assert its right of retention or the exception of non-performance, as if all of the claims and debts have derived from a single contractual commitment.

4.4 **Deadlines - Planning**

4.4.1 **Performance deadlines**

4.4.1.1 *Observance of deadlines*

The Contracting Party is obliged to perform the Services forming the object of the Contract within the deadlines or on the dates set in the Contractual Documents. Unless otherwise indicated, the deadline will begin to count down from the day after sending of the order or Contract by Elia.

4.4.1.2 *Extension of deadlines*

The extension of contractual deadlines can only be permitted if it is justified by a case of force majeure or if it forms the object of a prior written agreement by Elia or an instruction on its part. Such an extension will not give rise to the payment of any compensation by Elia.

In the event of provision of material and Services that requires the intervention of a regulatory body or the services of a carrier, these interventions will not be accepted as a reason for delay.

4.4.2 **Planning**

Contractual plannings are kept up-to-date by the Contracting Party and/or revised upon Elia's request whenever particular circumstances significantly modify the elements which were considered when the plannings were established. The updates made to the plannings, as well as their approval by Elia, will in no way release the Contracting Party from its obligation to observe the initial deadlines or from its liability.

4.5 **Suspension of the Contract**

Elia may suspend the performance of the Contract for the duration that it so determines at any time and without being obliged to provide justification. In such event, the Contracting Party is entitled to obtain payment for the Services already rendered and compensation for any damage incurred which has been duly evidenced by the Contracting Party.

4.6 **Documentation**

The Contracting Party must on its own initiative transmit all of the documents that allow Elia to verify the compliance of the Services and to make use thereof.

The Contractual Documents must specify which documents are to be submitted to Elia for prior approval. Unless otherwise stipulated, Elia has thirty (30) Days from the date of its receipt to submit its comments to the Contracting Party. The latter party must make the requested changes or make its position known within fifteen (15) Days of receipt of Elia's comments.

The approval given by Elia will in no way release the Contracting Party from its liability.

4.7 **Staff**

4.7.1 **General points**

This clause applies to the Contracting Party and any of its subcontractors.

The Contracting Party agrees that it will assign qualified and experienced staff to perform the Contract. Upon request by Elia, the Contracting Party will provide evidence of the staff's competence using any appropriate means and prove their good conduct by providing a certificate of good character. The Contracting Party agrees to scrupulously comply with labour (for example, but not limited to, the Limosa obligations) and fiscal laws on employment in Belgium and will spontaneously provide evidence of it to Elia. The Contracting Party draws up the documents and prepares the necessary declarations. Any default on its labour and fiscal obligations constitutes a serious breach of the obligations of the Contracting Party and justifies the termination of the Contract, pursuant to clause 5.4 herein.

Elia cannot be held liable for the payment of fines or taxes if the Contracting Party does not comply with such obligations.

4.7.2 **Independence with regard to Elia**

The Contracting Party and its staff remain entirely independent of Elia and may at no point be considered employees of Elia. The Contracting Party solely exercises authority over its staff and is responsible for them, bearing all of their salaries, bonuses, taxes, or charges.

4.7.3 **Representative of the Contracting Party**

The Contracting Party is to be represented during the performance of the Contract by a manager who is approved in advance by Elia and has training and experience compatible with the Contract and who is fluent in the language(s) of the place of performance of the Contract. This manager is solely authorised to receive, on behalf of the Contracting Party, instructions and observations from Elia concerning the performance of the Contract. He or she will warn Elia as soon as possible of any problem, risk, incident, accident, or defects during the performance of the Contract. In addition, a representative of the Contracting Party who is also fluent in the language(s) of the place of performance of the Contract must also be permanently present at the Site.

4.7.4 **Attendance list**

The Contracting Party will submit to Elia an updated attendance list of staff assigned to perform the Contract. In the event that this list is not kept by the Contracting Party or in the event of inaccurate or incomplete entries, the Contracting Party must compensate Elia for any damage it has therefore incurred.

4.8 **Safety**

For the performance of its assignment, the Contracting Party itself must observe rigorously - and ensures that its staff, subcontractors, and suppliers do the same - the provisions relating to the well-being of the workers, access, environment, and hygiene conditions stipulated in Elia's General Safety Regulations and in any other laws and regulations in force.

The Contracting Party is liable for any breach of this obligation and agrees to bear all the consequences of the same. The Contracting Party agrees to bear all of the related expenses, which are supposed to be included in its prices, including waiting times.

A breach of this obligation entitles Elia to take any necessary measure, at the expense and risk of the Contracting Party, including the exclusion of staff from the Site.

Any default of this obligation is considered to be serious misconduct, justifying the termination of the Contract pursuant to clause 5.4.

4.9 Environment

The Contracting Party agrees to comply strictly with every regulation relating to environmental protection as well as those relating to spatial planning applicable on the Site. Where it is technically and economically possible, it will go beyond these requirements.

The Contracting Party will make every effort to cause no harm to the environment during or after the performance of the Contract, notably according to European and national regulations, and will hold Elia and third parties harmless for all of the consequences of such damage, including those resulting from hazardous substances or soil pollution arising from or caused by the activities of the Contracting Party.

The Contracting Party undertakes to draw up and implement an environmental management system with a view to reducing the environmental impact of its products and services. This management system will relate to the following particular areas: air, water, and soil pollution; impact on biodiversity; and greenhouse gases. This system will include a rigorous monitoring system for energy and water consumption, among other things, and if relevant for the Services forming the object of the Contract. Moreover, the Contracting Party will pay continuous attention to the different aspects of the life cycle of the products, as well as use of recycling, both upstream and downstream, and this as from the moment of developing those products.

The Contracting Party undertakes to provide, upon request of Elia, a description of the management system implemented. The applicability of this may be verified within the context of an audit. Moreover, the Contracting Party agrees to inform every individual within Elia, specifically the Purchasing Department and the Environment Department, about the environmental aspects of its Services. At the request of Elia, the Contracting Party will participate in the drafting of a file on this aspect of its Services, particularly mentioning (per request of Elia) the precise composition of its products (number of kg of each material per tonne of finished product) as well as their country of origin. Elia strongly encourages its Contracting Parties to obtain ISO14001 or EMAS certification.

Prior to the conclusion of the Contract, as well as during its performance, the Contracting Party is continuously assessed on this aspect of its Services. The continuance of contractual relations between Elia and the Contracting Party will depend on the outcome of these assessments.

The Contracting Party agrees to sort and remove from the Site all waste, packaging, and excess material resulting from the performance of the Contract. It will transmit to Elia the declarations of collection and processing of waste by approved waste processors, as well as any document attesting of the observance of its obligations for recovering packaging. Failing this, Elia will evacuate the waste, packaging, and excess material at the expense of the Contracting Party, pursuant to clause 5.5.

The Contracting Party must inform Elia without delay of any incident likely to have an impact on the environment and that has arisen from the performance of the Contract. Independent from the moment when the incident is discovered, the Contracting Party will take charge of all of the direct and indirect consequences of this incident. Elia shall not be liable for the pollution caused by the Contracting Party or any other party.

Any default of this obligation is considered to be serious misconduct, justifying the termination of the Contract pursuant to clause 5.4.

4.10 **Access to the premises of the Contracting Party by Elia**

If the performance of the Contract takes place on the premises of the Contracting Party, Elia may, at any time, access the premises of the Contracting Party in order to monitor the activities as well as the staff of the Contracting Party within the context of the tasks that it has assigned to the latter.

4.11 **Liability**

The Contracting Party must hold Elia, its bodies and agents, as well as third parties, harmless from all direct damage, physical or intangible, attributable to it, brought about within the context of executing this Contract or which result from the same, with this including damage caused by abnormal neighbourhood disturbances (clause 544 of the Belgian Civil Code). It is understood that the Contracting Party shall also be responsible and liable for the subcontractors which he appoints to perform the Contract.

The Contracting Party agrees to indemnify Elia against any request and action (and/or all related costs and disbursements) brought against Elia by third parties to the Contract in relation to its performance or due to damage caused by the Contracting Party during or as a result of the performance of this Contract.

The Contracting Party's total liability will be limited per event giving rise to liability, and in the aggregate, to the value of the Contract (per order of the Contract) or 5.000.000 euro, whichever is higher.

The limitations as foreseen in this clause shall not apply in the case the damage results from fraud or wilful misconduct.

4.12 **Financial guarantees**

The Contractual Documents specify the form, the amount, and the conditions for the release of any financial guarantee that the Contracting Party is to make for the benefit of Elia.

If the Contracting Party fails to make the guarantee stipulated in the Contractual Documents on its own initiative, Elia will be entitled to make automatic withholdings on the amounts it owes to the Contracting Party in its performance of the Contract, without prejudice to any other sanction.

The calling of the guarantee is to be made by way of simple notice of default committed by the Contracting Party on its obligations and the amount for which it is called. Any potential third party must perform its obligations on first demand. If the guarantee is called, the Contracting Party must re-establish the guarantee within 8 Days. Failing this entitles Elia to terminate the Contract pursuant to clause 5.4.

In the event of insolvency, ceasing of activity, liquidation, or any other situation entailing termination due to the fault of the Contracting Party for all or part of this Contract, the entire guarantee will be acquired ipso jure by Elia and its amount will be deducted from all amounts due in any capacity to Elia.

4.13 **Insurance**

The Contracting Party must subscribe to and maintain in effect all of the necessary insurance policies in view of the object of the Contract.

In the event of subcontracting, the Contracting Party must impose the same obligations on its subcontractors and justify to Elia their observance of these obligations.

The insurance policies below as well as all of those stipulated by the Contractual Documents must be in force before any performance of the Contract, for the entire duration of this performance and during the warranty periods. Proof of this must be provided to Elia and Elia may request a confirmation of maintenance of the warranties from the insurer at any time. As the case may be, Elia may, if it considers it useful, act in the place of the Contracting Party to subscribe insurance policies or to pay premiums and may deduct the resulting expenses from the amounts due to the Contracting Party.

The insurance policies must provide for a waiver of liability in respect of Elia and must consider Elia and its agents as third parties with regard to the other policyholders.

The subscription by the Contracting Party of the insurance policies requested in these General Conditions and/or in the Contractual Documents will not release the Contracting Party from the liability that it must legally or contractually assume.

4.13.1 *Workplace accidents and third-party motor insurance*

The staff of the Contracting Party and its subcontractors is to be covered by insurance for accidents in the workplace and during travel to and from work. The vehicles of the Contracting Party, its subcontractors and their agents must be covered by third-party motor insurance, even if they are only used on private land.

4.13.2 *Civil liability and construction all risk insurance*

The professional or operating, contractual and extra-contractual (tort) liability of the Contracting Party, as well as construction all risks, must be insured for sufficient amounts while taking into account the risks of the Contract. This insurance obligation does not in any way imply any limitation on the liability of the Contracting Party or any warranties of Elia against third-party's claims for amounts exceeding the insured limits or for uninsured risks.

4.14 *Force majeure*

In the event force majeure that a situation of Force majeure, as defined below, is invoked by Elia or the Contracting Party, performance of the duties under the Contract shall be suspended temporarily for the duration of the event giving rise to force majeure.

Force majeure shall mean any and all incidents which (i) could not reasonably have been predicted, (ii) arise after the conclusion of the Contract, (iii) are not attributable to negligence on the part of either party and (iv) make the performance of the Contract temporarily or permanently impossible.

The party invoking force majeure shall notify the other party by telephone and/or by any means of written communication at the earliest possible opportunity of the reasons why it is unable to fulfil some or all of its obligations and the period during which it reasonably envisages being unable to fulfil them.

Nevertheless, the party invoking force majeure shall make every effort to limit the consequences of its failure to fulfil its obligations to the other party and third parties, and to resume the fulfilment of said obligations immediately after the event amounting to force majeure has ceased to exist.

In the event that the period of force majeure lasts for thirty (30) consecutive days or more and one of the parties, following the situation of force majeure, is unable to fulfil its core obligations under the terms of the Contract, either party may terminate the present Contract with immediate effect subject to sending a registered letter stating its reasons for the termination force majeure, on the understanding that any amount outstanding at the time the Contract is terminated remains payable pursuant to the terms and conditions thereof. Notwithstanding the above, where Elia is entitled to terminate this Contract for force majeure, Elia shall have the right, at its sole discretion, to propose alternate means of securing performance of the relevant Services, including but not limited to performance by a third party at no additional expense for Elia pending resolution of the force majeure event.

4.15 **Intellectual rights and transfer of know how**

All information, plans, diagrams, technical-commercial results, objects, measures, or other items in any form developed by or for Elia within the framework of the Contract or which constitute the direct or indirect result of the Contract will become the full and entire property of Elia according to their development. The compensation for the transfer of these intellectual rights is included in the price. The Contracting Party is responsible for obtaining from its agents and representatives, subcontractors and suppliers the necessary transfer of rights to ensure that the transfer of ownership of these rights is made in favour of Elia.

No reproduction, use, or reference to these elements, developed by or for Elia, or any reference to Elia, its names, brands, logos, photos, codes, designs and specifications regarding its form and use may be made by the Contracting Party in advertisements, promotional, and publicity efforts, publications or presentations of a technical, commercial or other nature without the prior written authorisation of Elia.

The Contracting Party itself and at its own expense bears all consequential damages concerning the Services that are covered in whole or in part by patents, trademarks, or brand names, designs, and industrial models. The Contracting Party shall make an arrangement with the holder of the rights at its own expense, to pay royalties, secure the necessary transfers, licences, and authorisations or, in the absence of an agreement, modify the Services in order to avoid any infringement to copyright laws.

In the event of an action or proceedings for infringement brought against Elia, the Contracting Party undertakes to:

- intervene in the case for Elia by defending Elia's rights and interests and to hold it harmless from any pecuniary and other consequences which may result to Elia from these actions and proceedings ;
- bear all of the damages principally due to the holders of the patents, trademarks, or brand names, designs, and industrial models, in principal, expenses and interest ;
- reimburse to Elia, on request, any general expenses including the fees of lawyers, experts, and technical advisers which Elia has incurred by virtue of or on the occasion of these actions or proceedings ;
- ensure the immediate adaptation, if necessary, of the contentious material, by replacing it, if needed, free of charge, with equivalent material exempted from any copyright infringement. All costs, risks, and dangers arising from it are exclusively borne by the Contracting Party ;
- ensure that every transaction between the Contracting Party and the third party is subject to prior written authorisation by Elia.

Prior approval by Elia of the modifications to be made to the Services will in no way modify the obligations of the Contracting Party, especially in the event of new infringement proceedings following such modifications.

4.16 **Modifications to the Contract**

4.16.1 ***Modification proposed by the Contracting Party***

During the performance of the Contract and, where appropriate, until final acceptance, the Contracting Party agrees to inform Elia as soon as possible of all of the improvements/corrections that can be made to the Contract, as well as their impact on the initial conditions of the Contract.

4.16.2 **Modification imposed by Elia**

In all scenarios, Elia reserves the right to impose changes to the technical conditions of the Contract. If the parties disagree in this respect on any compensatory measures, the procedure for the resolution of technical disputes provided for in clause 8.12.2 below will apply.

4.16.3 **Form**

The modifications to the Contract must form the object of a written addendum to the Contract and must be signed by Elia and the Contracting Party.

5 NON-PERFORMANCE – SANCTIONS

5.1 **Penalties**

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

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

The penalties are due and payable ipso jure by a simple notice addressed to the Contracting Party, indicating the failure in performance.

The penalties are cumulative in nature and do not discharge the Contracting Party from any of its contractual obligations. They are also independent of any penalties for late performance.

5.2 **Penalties for Late Performance**

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

The penalties 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.

5.3 **Provision of material by Elia**

Elia may impose that the Contracting Party uses, at its own risk, material that Elia has made available to it in the course of the Contract:

- if the Contracting Party plans to use material which is not compliant with the Contract ; or
- if the Contracting Party is not able to observe the contractual deadlines and/or the plans.

In this event, the amount to be paid under the Contract will be reduced by the value of this material, without prejudice of the right of Elia to claim penalties due for breach and/or late performance. The Contracting Party must use this material and maintain the contractual prices concerning the other Services, even if this provision gives rise to supplementary Services.

In any event, the Contracting Party may not use the material provided by Elia for any purpose other than performance of the Contract.

5.4 Termination

If the Contracting Party is in default on the performance of any part of its obligations that are reasonably deemed material by Elia, Elia may terminate the Contract, in whole or in part, if no satisfactory remedy or plan to remedy, is provided within 15 Days of a formal notice submitted by Elia by registered letter to the Contracting Party, without the prior intervention of a court or any other legal formality being required. This termination will take the form of a simple registered letter. Furthermore, Elia is entitled to apply other sanctions provided by the Contract and/or to claim damages.

In case of fraud or wilful misconduct Elia may terminate the Contract by means of simple registered letter without prior notice or issuance of formal notice, without the prior intervention of a court or any other legal formality being required.

This right to terminate the Contract does not prejudice other recourses or Elia's rights, including but not limited to its right to claim damages, where applicable.

The termination will take effect on the day after the posting of the registered letter notifying the termination. The Contracting Party must immediately return all documents, information, source codes, etc. which would have been provided by Elia. These elements and data are and will remain the sole and exclusive property of Elia.

The Contracting Party may not have any reason to oppose the takeover of the Services by Elia or by a third party.

Termination will not give rise to the payment of any compensation by Elia. However, Services which have been provided before the termination of the Contract by the Contracting Party and which prove to be useful for Elia, shall be compensated according to the conditions as set out in clause 4.3. of this Contract.

5.5 Right of replacement

Elia may remedy the effects of the Contracting Party's breach by replacing the Contracting Party with a third party for the performance of the former's obligations, and this at the expense and risks of the Contracting Party. The right of replacement for this purpose is to be exercised without the intervention of a judge and by simple notice by registered letter of Elia containing Elia's wish for replacement. This letter is to contain a request for the Contracting Party to draw up promptly an inventory of its Services, on a joint basis after due hearing of the parties. If the Contracting Party fails to draw up or countersign this inventory, the declaration by Elia's representative alone will be deemed valid. This right of replacement also applies in the event where the Contracting Party fails to observe its warranty obligation.

6 ACCEPTANCE

6.1 Tests prior to provisional acceptance

6.1.1 *FAT ("Factory Acceptance Tests")*

Unless otherwise stipulated, the Services of the Contracting Party shall form the object of FAT (Factory Acceptance Tests) carried out by Elia when a portion or all of the supplies are produced in a factory. The Contracting Party agrees to notify Elia in a timely fashion of the availability of the Services for the FAT and to provide Elia with all of the inspection resources necessary for the proper realisation of the FAT. No Service may be implemented on the Site if it has not successfully undergone the appropriate FAT. The carrying out of the FAT will in no way reduce the liability and obligations of the Contracting Party.

6.1.2 **SAT ("Site Acceptance Tests")**

Prior to the request for provisional acceptance (Commissioning), the Contracting Party agrees to carry out proper performance and functioning tests for its Services on the Site (Site Acceptance Tests) and to ensure that these tests are able to form the object of a provisional acceptance by Elia. The protocol and the results of the SAT must be provided to Elia at the same time as the request for Elia's provisional acceptance.

6.2 **Mechanical completion prior to provisional acceptance**

If it is necessary to place the Services into operation in order to obtain the provisional acceptance or before this, the Contracting Party will provide a signed document, attesting that the test run may be carried out under its responsibility.

Starting from the mechanical completion, Elia shall carry out a test run. Until its provisional acceptance, the Contracting Party will remain fully responsible for its Services and will retain right at its own expense and with the prior written approval of Elia to proceed with the necessary modifications, adjustments and readjustments within the limits permitted by the operation.

This mechanical completion is in no case considered as a provisional acceptance.

6.3 **Refusal of the Services prior to the provisional acceptance**

6.3.1 **Reason for refusal**

Elia reserves its right, on justified grounds, to refuse the Services up to the date stipulated for the provisional acceptance.

Elia may particularly refuse all Services which contain the supplies:

- if, during the manufacture or assembly period, certain items are acknowledged as defective ;
- if, after the manufacture or assembly period, the Contracting Party has not, within the allocated deadlines, ensured that the items are in a state which complies with the conditions laid down in the Contract ;
- if preliminary tests show that the Services, with regard to the guaranteed operating conditions, exceed the acceptable limits set out in the Contract.

6.3.2 **Refusal procedures**

The refusal of a Service may lead to the refusal of every Service associated with it or the refusal of the whole functional set of performances provided through the Contract.

In any event, the Contracting Party must immediately cure the breaches recorded. As may be the case, it will, at its own expense, dismantle, and remove every item and all material present on the Site at the time indicated by Elia. Failure to do this will allow Elia to arrange, at the expense and liability of the Contracting Party, for the demolition, dismantling, decontamination, or removal in accordance with clause 5.5.

Elia may nevertheless, without prejudice to all its other rights, decide to deny the replacement of the refused Services and terminate the Contract pursuant to clause 5.4. The Contracting Party will, within 30 Days after the dispatch of such notice, refund Elia the payments already received for the refused Services.

6.4 **Provisional acceptance (“Commissioning”)**

6.4.1 **Granting of acceptance**

6.4.1.1 *Acceptance procedures*

Provisional acceptance may only be granted if the Service is completed in full and may be used in accordance with its intended purpose.

Provisional acceptance is always granted by way of a document signed by the representative of Elia. Acceptance is never tacit, even in the event of full payment of the Service or use of the Service.

Provisional acceptance tests may, upon the request of Elia, be entrusted to an accredited inspection organisation.

If the Contracting Party is of the opinion that the conditions for provisional acceptance are fulfilled, it shall submit a written notice with the request to Elia to sign the provisional acceptance certificate. Within 30 days after this request from the Contracting Party, Elia shall either sign the provisional acceptance certificate or refuse the provisional acceptance by providing to the Contracting Party the reasons of such refusal.

In case Elia does not respond within the above period of 30 days, the Contracting Party shall send a final notice by registered letter to Elia with the request to respond within 30 days after the date of the registered letter. If Elia does not respond within this additional period, the milestone linked to the provisional acceptance shall be granted by Elia to the Contracting Party. At the same time, the warranty period shall commence and the transfer of risk pursuant to clause 6.6.2 shall be effective.

6.4.1.2 *Documents to be provided for provisional acceptance*

Provisional acceptance may be denied if the copies of the contractually required documents for provisional acceptance have not been submitted in advance to Elia by the Contracting Party.

By the time of provisional acceptance, the Contracting Party is to submit a complete file to Elia, accompanied by a classification of material whose contents are subject to the prior agreement of Elia. This file is to contain all the documents drawn up during performance of the Services, including detailed plans of all items of equipment provided and works carried out. These plans must correspond with the actual performance of the Services on the Site and take into account all modifications, including minor ones, made during the manufacture, performance, assembly, testing or adjustment.

6.4.1.3 *Unconditional acceptance*

Unconditional acceptance is granted if the Service meets all the requirements of the Contractual Documents, applicable law and complies with the best practice.

6.4.1.4 *Acceptance with reservations*

Elia may decide to grant provisional acceptance with reservations or comments in the event of minor default(s) which do not make it impossible to use the Service for its intended purpose.

The Contracting Party must cure such minor defaults and address these reservations or comments as soon as possible and in any case, before the final acceptance.

6.4.2 **Refusal of acceptance**

If the Services do not comply with the requirements of the Contractual Documents, applicable law, and/or best practice, Elia may refuse to give provisional acceptance. The Contracting Party must provide all modifications and improvements and/or, at the choice of Elia, re-perform the Services in whole or in part, without prejudice to the sanctions provided for in clause 5, as soon as possible.

Moreover, Elia reserves the right to order, at the expense and risk of the Contracting Party, the removal of materials and equipment from the Site that are considered to be non-compliant, as well as the demolition, reconstruction, or correct reassembly of non-compliant works, both with regard to the means of performance and to the materials and equipment used.

The expenses linked to this refusal of acceptance are to be borne exclusively by the Contracting Party.

Provisional acceptance may only be given after any new tests and inspections have given rise to successful results. The costs of such tests and inspections are to be borne by the Contracting Party.

6.5 **Final acceptance**

Upon expiry of the warranty period, the Contracting Party shall request final acceptance of its Services. For the Services to qualify for final acceptance, any and all comments or reservations issued at the time of provisional acceptance must be met, and any and all defects observed during the warranty period must have been remedied. Such final acceptance will be given by means of a report signed by a representative of Elia and insofar as the Services are suitable for final acceptance.

In the absence of remarks or reservations issued on provisional acceptance and/or defects observed during the warranty period, the final acceptance will take place tacitly at the end of the warranty period if no complaint has been expressed before the end of this warranty period.

6.6 **Transfer of Property and Risk**

6.6.1. Transfer of Property

The transfer of Property shall be effected:

- In respect of Services (works), once these have been supplied or part-payment of the price has been made
- In respect of Services (other than works) manufactured by the Contracting Party, once these Services have been finished or part-payment of the price has been made;
- In respect of Services (other than works) not manufactured by the Contracting Party, on the date of conclusion of the Contract or, in any event, one part-payment of the price has been made. The Contractor undertakes to place them apart, making it clear that they have become Elia's property.

6.6.2. Transfer of Risk

The transfer of risk, including risk deriving, in particular, from environmental and safety requirements, will be effected on the date of provisional acceptance or, if there is no obligation to conduct provisional acceptance, the date of delivery on Site.

7 END OF THE CONTRACT

7.1 Warranty Term

7.1.1 Warranty

Without prejudice to its liability under ordinary law, which is in no way diminished by the present clauses, the Contracting Party warrants that its Services will be free from any defect that could affect them during the warranty period (including the general warranties and the particular warranties set out in the Contractual Documents), for which the minimum duration is 24 months from the transfer of risk.

Notwithstanding this, in the event that the warranty agreed between the Contracting Party and its suppliers or subcontractors has a duration or scope exceeding those deriving from the Contract, the Contracting Party agrees to subrogate Elia in its rights with regard to its suppliers or subcontractors.

7.1.2 Obligations of the Contracting Party

During the warranty period, the Contracting Party agrees to remedy all defects at its expense, as well as all of their consequences, and to replace every part of the defective Services as quickly as possible and within 15 Days maximum, taking all necessary measures to avoid the impairment of operations. The Contracting Party alone bears all costs, particularly transportation and man-hours, including the costs which may be made by Elia.

If Elia purchases new material from third parties and makes it available to the Contracting Party within the framework of performance of the Contract, the Contracting Party will nevertheless be responsible and liable for the complete and satisfactory performance of the Contract.

If the defect derives from a design or manufacturing error, the Contracting Party has to replace or modify all identical components forming part of its Service, even if these have not given rise to any incident.

7.1.3 Extension of the warranty period

If, during the warranty period, all or part of the Services are unavailable, the entire warranty period in relation to such (part of the) Services shall be extended by the cumulative duration of all of these periods of unavailability.

If, during the warranty period, it is necessary to replace an element of the Services, the warranty period for the specific element shall only accrue as from the transfer of risk for the replacement items.

If, during the warranty period, it is necessary to replace an element due to abnormal wear, breakage, or an operational defect, the extension of the warranty period applying to this element will not form an obstacle to the pronouncement by Elia of a partial definitive acceptance, insofar as the replacement of that element does not entail the decommissioning of the Services as a whole.

7.2 Technical support

Independently of its obligations regarding replacement, repair, and warranty, the Contracting Party is obliged to pursue the activities or the production necessary for use of the Services by Elia, for a normal duration. In this capacity, the Contracting Party undertakes to:

- provide identical Services for a sufficient period, from the expiry of the warranty period onwards. In any event, the Contracting Party will only terminate the production of a good or the provision of the service useful for the use of the object of the Contract after having given Elia prior notice of 18 months and having submitted to it all of the elements which Elia requires to take over the monitoring;
- provide the technical support Services on the Site for a sufficient period, from the expiry of the warranty period onwards, in order to assist Elia with the installation, operations, processing, and maintenance. This technical support will not be borne by Elia during the warranty period.

7.3 **Termination**

7.3.1 ***Termination for Convenience.***

Elia may terminate the Contract at any time by registered letter without justification, observing a prior notice period of 30 Days. The notice period begins to count down from the day after the date of the registered letter's posting.

By the expiry date of the notice, the Contracting Party must return all work clothes, documents, information, source codes, etc. which might have been provided by Elia. These elements and data are and will remain the exclusive property of Elia.

Termination of the Contract for convenience as mentioned in this clause will be without prejudice to Elia's obligation to pay to the Contracting Party the remuneration due under the Contract for the Services to be provided up to the date of suspension or termination of the Contract (with only the first of these two dates being taken into account), subject to provision of such Services.

Without prejudice to the above, Elia agrees to the pay to the Contracting Party, in the event of termination of the Contract for convenience as mentioned in this clause, an indemnity for loss of the fees that would normally have been due for the next three months following termination.

The Contracting Party shall use reasonable efforts to limit the costs for Elia in the event of such termination.

7.3.2 ***Bankruptcy***

To the maximum extent permitted by law, Elia is entitled to—without being forced to paying an indemnity to the Contracting Party—terminate the Contract with immediate effect by registered letter, without indemnity and without the prior intervention of a judge, in the event of death, ceasing of payments, insolvency, placing into liquidation of the Contracting Party, or when the Contracting Party waives a significant part of its assets in whole or in part.

8 MISCELLANEOUS PROVISIONS

8.1 **Non-exclusivity**

The conclusion of the Contract does not give the Contracting Party any right of exclusivity. Even during the validity period of the Contract, Elia may order the performance of Services identical or similar to those described in the Contractual Documents by other contracting parties or by its own services. On account of this, the Contracting Party may not invoke any right to compensation.

8.2 **Assignment**

8.2.1 ***Assignment of the Contract by the Contracting Party***

Unless Elia issues prior written authorisation, the Contracting Party is prohibited from assigning to third parties all or part of the rights, claims, and obligations resulting from the Contract.

8.2.2 Assignment of the Contract by Elia

Elia may assign all or part of the rights and obligations under the Contract to any company linked to or associated with it pursuant to the Companies Code, as mentioned in clause 2.4. of this Contract, or the Act of 29 April 1999 relating to the organisation of the electricity market, and will do this by informing the Contracting Party of this assignment as soon as possible.

8.2.3. Assignment of the Contract to a Third Party-Contracting Party/Transfer of Contract

The Contracting Party hereby authorises and gives approval to Elia to submit a copy of the Contractual Documents to any other contracting party with which Elia has before concluded a contract, in which this latter party, termed the Third Party-Contracting Party, has the obligation to use the Services of the Contracting Party. The Contracting Party undertakes to apply, as much as reasonable possible, the same contractual conditions which are applicable between Elia and the Contracting Party to this Third Party-Contracting Party.

Elia will inform the Contracting Party in advance of the name of the Third Party-Contracting Parties likely to use the Contract and undertakes not to disclose passages of the Contractual Documents for which the Contracting Party has duly justified their confidentiality.

8.3 Delegation by Elia

Elia may grant the power to any third party to carry out any action provided in the Contract in its name and on its behalf.

8.4 Languages

The language of the Contract is specified in the Contractual Documents and is to be applied to all of the documents. In the event of contradiction and/or ambiguity, the version of a Contractual Document drawn up in the language of the Contract will prevail over any other version.

The Contractual Documents specify which documents relating to the Contract supplied by the Contracting Party must be translated, at the expense of the Contracting Party, into French, Dutch, and/or English, as well as the deadline.

8.5 Administrative authorisations

The Contracting Party is responsible for obtaining the prior authorisations and licences requested by the competent authorities and/or the approved acceptance bodies for the supply and performance of the Services.

The Contracting Party is not authorised to claim a price supplement after the conclusion of the Contract for submitting requests to or for making its Services compliant with the requirements of the competent authorities and/or approved acceptance bodies.

The Contracting Party agrees to provide Elia, at the request of the latter party, with all of the information relating to the Services provided as may be necessary for Elia to submit any authorisation requests.

8.6 Relations between the parties – Independence

Each of the parties remains independent from the other. Neither the Contracting Party nor any person or third party designated by the Contracting Party to perform the Contract is the employee, associate, agent, representative or legal representative of Elia.

No element of the Contract may be interpreted as creating an agency or distribution relationship between the Parties, creating a joint venture or permitting one party to represent or commit the other party regarding third parties.

8.7 **Complaints**

If the Contracting Party wishes to submit a complaint, it must provide information on the grounds of this complaint by a registered letter to Elia within 8 Days of the occurrence of the facts that caused it. Elia acknowledges receipt within 8 Days.

As from the date of Elia's notice of receipt, the Contracting Party will have 30 Days to submit a complete case file, stating the grounds for the complaint and evaluating the amount of the loss incurred. If the Contracting Party is unable to submit this complete case file by this deadline, it will inform Elia, which may grant it a new deadline, if this impossibility results from the very nature of the Contract and is not attributable to the Contracting Party. If the Contracting Party has not submitted its case file by the deadline established above, which may have been extended, the Contracting Party will be considered to have waived its complaint.

Elia notifies its position to the Contracting Party within 30 Days of receipt of the complete case file.

8.8 **Waiver**

Any waiver and/or non-application of a provision of these General Purchasing Conditions is not to be interpreted as constituting a waiver and/or general non-application of the General Purchase Conditions.

8.9 **Divisibility**

If one of the provisions of these general purchase conditions dispositions is vitiated by nullity or is unenforceable, the other provisions remain in full effect. The Parties shall replace the null or unenforceable clause by a legal, valid, or enforceable provision in accordance with their initial objective.

If such a clause is not concluded within 30 Days of the date of submission by one Party of a registered letter requesting the other Party to take part in discussions for the replacement of the null or unenforceable clause, each of the Parties will be entitled to terminate the Contract without indemnity and without the prior intervention of a court, subject to 30 Days' prior notice.

8.10 **Confidentiality**

8.10.1 ***Commitment of the parties***

The Parties hereby give a mutual undertaking to safeguard the confidentiality of all Confidential Information, as defined below, which a Party and/or its staff and enforcement agents must be able to access, whether or not within the framework of an employment contract, and which is necessary for the conclusion or performance of the Contract.

The Contracting Party declares that it has been personally and specifically informed by Elia and has familiarised itself with the specific provisions on confidentiality obligations regarding the management of the Belgian electricity transport network (at both federal and regional levels).

8.10.2 ***Definition***

Confidential Information (hereafter referred to as "Confidential Information") is all information that one Party (hereafter referred to as the "Notifying Party") transmits to the other Party (hereafter the "Recipient Party"), with the exception of the following information:

- information which, at the time of the transmission, was already in the public domain ;

- information already legally known by the Recipient Party and/or its employees and work agents at the time of transmission, and which has not been communicated by the Notifying Party, prior to the transmission, directly, indirectly, or by breaching an obligation of confidentiality ;
- the information which, after transmission, has been brought to the attention of the Recipient Party and/or its staff and work agents via a third party, without breaching an obligation of confidentiality with regard to the Notifying Party.

8.10.3 *Authorised disclosure*

Each Recipient Party undertakes not to disseminate and to keep confidential all Confidential Information in whatever form, with the exception of the disclosure:

- to its staff and work agents, whether within the context of an employment contract with them or not, insofar as this is necessary for the performance of the Services and insofar as the Contracting Party provides advance written evidence that these individuals do not work for the Stakeholders cited below and are least bound by the same obligation of confidentiality as the one in question ; or
- to the competent regulatory, administrative, and judicial authorities which may request disclosure of the same, in which case the Recipient Party will, as far as possible, inform the Notifying Party of the situation in advance, and will reach an agreement concerning the form and content of the communication of this information.

8.10.4 *Absence of transfer of property rights*

The transmission of the Confidential Information does not entail any transfer of property nor of any other right except as explicitly provided for in the Contract.

8.10.5 *Destruction of documents*

In the event that the Contract is not concluded, the Bidder undertakes to return or to provide evidence of the destruction of all of the documents and information, regardless of medium, which it has received or obtained, concerning the conclusion or performance of the Contract, and which contain Confidential Information. The Recipient Party may only retain one single copy for archiving purposes.

8.10.6 *Lack of reference*

The Contracting Party and/or its staff and work agents, whether within the context of an employment contract or not, may not refer to the Confidential Information, to the Bid, to the Contract or to its performance in any publication or presentation of a scientific, technical, commercial, or any other nature without the prior written agreement of Elia.

8.10.7 *Commitment regarding the use of the Confidential Information*

The Contracting Party declares and guarantees that the Confidential Information will only be used for the purposes of establishing the bid/performance of the Services, [and for no other purpose, notably, but without limitation, the activities of producers, suppliers, network managers, intermediaries, and other national and foreign stakeholders considered by electricity legislation (hereafter the "Stakeholders")].

8.10.8 *Breach of confidentiality and gross misconduct*

Any breach of this obligation of confidentiality by the Recipient Party is considered a gross misconduct and entitles the Notifying Party, pursuant to clause 5.4, to terminate any contractual relationship, transaction, or other relationship with the Recipient Party immediately and without any indemnity being due, without prejudice to the right of the Notifying Party to obtain full compensation for any loss deriving from the said misconduct.

8.10.9 ***Duration of confidentiality***

Each Party undertakes to observe this obligation for up to five (5) years after the end of the Contract or in the event that the Contract is not concluded, after the notification of the Confidential Information.

8.11 **Fraud**

If Elia discovers, at any moment, that the Contracting Party is guilty of any action, agreement, or understanding of a nature to distort normal competition conditions, Elia may terminate the Contract in progress without indemnity, without prior notice and without the prior intervention of a judge, as well as exclude the Contracting Party from participating in any capacity in any of the Contracts which Elia may conclude for a maximum period of 2 years as from the decision of exclusion.

8.12 **Disputes**

8.12.1 ***Applicable law and competent courts***

The Contract is exclusively subject to Belgian law. The courts of Brussels have sole jurisdiction.

8.12.2 ***Resolution of technical disputes***

In the event of a disagreement of a technical nature between Elia and the Contracting Party, the dispute may be submitted to an expert designated jointly by the parties or, in the absence of an agreement, by the President of the Commercial Court of Brussels, at the request of the first Party to take action.

In the absence of an agreement on the application of this procedure, clause 8.12.1 will apply.

The sole mission of the expert will be to settle the technical dispute and hence, as the case may be:

- to impose the changes to be made to the technical conditions of the Contract, as well as the resulting modifications, particularly with regard to the prices and contractual deadlines ;
- to determine whether the provisional acceptance should have been granted and if so, to set the date on which the provisional acceptance should have been granted ;
- to determine whether the final acceptance should have been granted and if so, to set the date on which the final acceptance should have been granted.

The expert issues his or her decision within 30 Days of the date of the appointment. The Parties may submit any document to the expert in advance that is of use for resolving the dispute as quickly as possible. A copy of these documents is to be notified at the same time to every other party involved in the proceedings.

The expert's decision is binding on Elia and on the Contracting Party as well as on any other intervening party that has agreed to take part in the proceedings. The expenses of the expert's report are to be shared between Elia and the Contracting Party, as decided by the expert.

8.13 **Representations and warranties**

8.13.1 ***General***

The Contracting Party represents, warrants, guarantees and covenants to Elia that the representations and warranties provided in this Clause 8.13 are true and accurate at the date of the signing of the Contract (or at any other date specified in each case).

8.13.2 Absence of conflict of interest

None of the Contracting Party, the legal or Beneficial Owner(s) (as defined below) of the participating interests in the Contracting Party, nor any immediate family member or other close relative of such legal or Beneficial Owner(s), currently have or at any time in the past have had any undisclosed Conflict Of Interest (as defined below) with respect to any prospective business partner of Elia.

For the purpose of this Clause 8.13.2, Conflict Of Interest means any situation where either a legal entity or an individual is in a position to exploit a professional or official capacity in some way to further either of his/its corporate or personal benefit.

For the purpose of this Clause 8.13.2, a Beneficial Owner means any person who indirectly, whether under oral and/or written agreement, has or had a right to receive a monetary or other benefit from a participating interest in the Contracting Party.

8.13.3 The Contracting Party's status

The Contracting Party is a legal entity duly incorporated and validly existing under applicable laws.

The Contracting Party is duly authorised to own its assets and to carry on its business as it is being conducted.

8.13.4 Anti-corruption and anti-bribery laws

The Contracting Party represents, warrants and covenants that it is in compliance with, and will remain in compliance with, all Anti-Corruption Laws (as defined hereunder).

Neither the Contracting Party nor any of its respective affiliates or officers has, in connection with the Contract and the transactions contemplated hereby, directly or indirectly made, and will not make, any contribution, gift, bribe, rebate, payoff, influence payment, kickback, promise or other payment to any person, private or public, including any public officials, whether in money, property or services to (i) obtain favourable treatment or secure any contracts, deeds, certificates, statements, agreements or commitments, or (ii) obtain special concessions (or compensate special concessions already obtained), in each case, in violation, in any material respect, of any Anti-Corruption Laws (as defined hereunder).

For the purpose of this Clause 8.13.4, Anti-Corruption Laws means together (i) the United Kingdom Bribery Act 2010, (ii) the principles set out in the Organisation for Economic Cooperation and Development, (iii) the Convention Combating Bribery of Foreign Public Officials in International Business Transactions, (iv) the United Nations Convention against Corruption adopted by the General Assembly of the United Nations by Resolution 58/4 of 31 October 2003, (v) Clauses 246 to (and including) 252, and Clauses 505bis and 505ter of the Belgian Criminal Code, and (vi) all other anti-corruption and/or anti-bribery laws and requirements of any jurisdiction (in particular, but not limited to Belgium, the United Kingdom and any other relevant Member States of the European Union) applicable to the Contracting Party, or any of its respective affiliates or officers (whether by virtue of their jurisdiction of incorporation/nationality or conduct of business permits or authorizations).

The Contracting Party will take particular care to ensure the propriety of all interactions with any and all public officials during the term of the Contract and while pursuing the transactions contemplated hereby. In particular, the Contracting Party undertakes to inform any of its respective affiliates or officers of the provisions of this Clause 8.13.4 and to organise training sessions to inform the same of these Anti-Corruption Laws.

Any compensation paid by the Contracting Party to contractors, agents, representatives or any other person in connection with the performance of services will not be in breach of any Anti-Corruption Laws and will be, to the best of their knowledge, for legitimate, bona fide goods or services.

The Contracting Party has fully disclosed to Elia, to the best of its knowledge, all information pertaining to former or current relationships between its officers or other representatives and any public officials and/or candidates (whether or not elected or appointed) for government office.

The Contracting Party has fully disclosed to Elia whether any of its officers or other representatives is a, or is likely to hold the status of, public official or a candidate for government office.

If at any time there are changes, to the Contracting Party's knowledge, to the information provided to Elia, including the development of a new relationship between any of its officers or other representatives and a public official, the Contracting Party undertakes to immediately notify Elia of those changes. Elia reserves the right, upon reasonable prior written notice to the Contracting Party, to alter the terms of the Contract, or terminate the Contract and the transactions contemplated hereby, to the extent necessary to ensure that such relationships will not result in a violation of any law. The Contracting Party covenants that no part of any consideration paid hereunder will accrue for the benefit of any public official or candidate regardless of the existence or non-existence of a relationship between any of its officers or other representatives and such public official or candidate for government office.

8.13.5 *Binding obligations and absence of conflict with other obligations*

The Contracting Party's obligations pursuant to the Contract are legal, valid, binding and enforceable obligations.

The entry into, and performance of the Contract and of the transactions contemplated hereby, by the Contracting Party, do not and will not conflict with:

- (a) any law applicable to the Contracting Party (and in particular, without limiting the generality of the foregoing, any Anti-Corruption Laws);
- (b) the Contracting Party's constitutional documents;
- (c) any agreement or instrument binding upon the Contracting Party or concerning any of their respective assets, or constitute a default or termination event (however described) under any such agreement or instrument.

8.13.6 *Power and authority*

The Contracting Party has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Contract and the transactions contemplated by the Contract. No limit on its powers will be exceeded as a result of the borrowing or giving of guarantees or indemnities contemplated by the Contract.

The designated representative(s) of the Contracting Party to the signing of the Contract has (/have), alone (/jointly), the power to enter into, perform and deliver, and has (/have) taken all necessary action to authorise his (/their) entry into, performance and delivery of, the Contract and the transactions contemplated by the Contract. No limit on his (/their) powers will be exceeded as a result of the giving of guarantees or indemnities contemplated by the Contract.

9 PROVISIONS SPECIFIC TO WORKS CONTRACTS

9.1 Approval

The Contracting Party is responsible for compliance with the accreditation requirement by the subcontractors on which it draws and is liable for all losses linked to the failure by these latter parties to observe the same.

9.2 Implantation

The Contracting Party ensures that the plans submitted to it by Elia comply with the actual conditions and are compatible with the works already performed and/or to be performed; it must notify Elia of any observed anomaly within 15 Days of receipt of the plans.

The area for performance of the works must be determined at the Site and must be materialized by a demarcation made by Elia, albeit under the supervision and liability of the Contracting Party until the provisional acceptance. The Contracting Party may also demarcate this, for its own needs and in compliance with the regulations of Elia in effect. It will immediately notify Elia of any anomaly. The adaptation of the demarcation according to the progress of the works will be decided in consultation with Elia.

The Contracting Party adopts all measures necessary for the replacement of any damaged or missing element or which it must displace or cover during the works period.

Elia reserves the right to order the modification, at any time and at the expense and risk of the Contracting Party, of any installation that does not comply with the plans and/or the existing routes and markings. If the Contracting Party fails to comply with the orders given by Elia to that effect, Elia may, at the expense and risk of the Contracting Party, take over from the Contracting Party or replace it by third party, pursuant to clause 5.5.

9.3 Safety and health coordination

The Contracting Party agrees to observe all of the obligations arising from the applicable regulations regarding the well-being of workers and temporary or mobile construction sites.

During performance, all modifications discussed in consultation with the health and safety/performance coordinator will be added in the order in which they are presented in the health and safety plan, so that this plan reflects the state of progress of the works at all times.

All directives relating to safety, given by the health and safety/performance coordinator, must be strictly observed. The Contracting Party shall indemnify and hold Elia harmless against any claims resulting from non-compliance with these rules and regulations by the Contracting party.

9.4 Coordination log

The coordination log designates the file composed of all the documents kept updated by the health and safety/performance coordinator and which contain information and notes relating to the coordination and events occurring during the performance of the works. The coordination log must be completed and kept updated pursuant to the applicable regulations.

All modifications proposed regarding performance of the Contract, as well as all complaints by the Contracting Party and by Elia relating to safety, will be systematically recorded and countersigned by the two Parties for information purposes.

Recording in the coordination log merely serves as an organised registration and in no way indicates an acceptance of the proposed modification or submitted complaint. It does not exempt the Contracting Party from observing the formalities set forth in clause 4.2.3 and 8.7, as appropriate.

9.5 **Construction site meetings**

9.5.1 **Preparatory meeting for the opening of the construction site**

Elia will organise a preparatory meeting for the opening of the construction site, relating, at least, to the following points:

- the presentation of the project ;
- the presentation of the works scenario ;
- the presentation of the planning ;
- the presentation of the intervening parties ;
- the examination of the health and safety plans: these must be submitted to Elia's project coordinator, and to the health and works safety coordinator prior to the preparatory meeting for the opening of the construction site ;
- the identification and the definition of the specific risks arising from the local situation/environment ;
- the information requests sent to the entrants by the Contracting Party.

The Contracting Party will draw up a meeting report on the following points at least:

- the issues and instructions discussed ;
- the various documents ;
- the attendance list.

9.5.2 **Construction site opening meeting**

After the preparatory meeting for the opening of the construction site, Elia will organise a construction site opening meeting, during which, the following actions will be carried out:

- the submission of the final health and safety plans ;
- the drawing up of the work authorisations ;
- the submission of the demarcation plan ;
- the establishment of any other document needed due to the presence of third parties (manager of the distribution network, customer, etc.).
- the submission of the evidence of possession by the Contracting Party of all of the information regarding the entrants of the site.

The Contracting Party will draw up a meeting report, relating, at least, to the following points:

- the issues and instructions discussed ;
- the various documents ;
- the attendance list.

9.5.3 **Safety information meetings**

The safety information meetings aim to inform workers and encourage them to adopt safety conscious behaviour and actions. These have a minimum frequency of one meeting per month. The Contracting Party is responsible for notifying sufficient information to the performing parties and for organising the information meetings.

A new safety information meeting will, moreover, be organised no later than the day following an accident that occurred or almost occurred.

9.5.4 **Construction site meetings**

A construction site meeting must be periodically organised on the date and time set by mutual agreement. The decisions necessary for the proper execution of the works, as well as the organisational agreements, will be taken during these meetings.

In any case, the following parties will take part in these meetings:

- the representative(s) of Elia ;
- the Contracting Party's head of the construction site, holding sufficient decision-making powers to ensure the observance of the decisions taken.

If need be, the following persons may take part in the meetings:

- the project manager of the Contracting Party ;
- the other interested persons (e.g., public authorities, owners, or operators of the land and subsoil, etc.) ;
- the health and works safety/performance coordinator ;
- any person whose presence is considered useful by Elia.

These meetings have the objective of discussing the progress of the works according to a defined plan, i.a.:

- verification and approval of the minutes of the previous meeting;
- safety and environment organisation ;
- administrative issues ;
- aspects of technical organisation ;
- performance planning ;
- financial aspects.

Minutes of the meeting will be drawn up by the Contracting Party within 5 Working Days of the meeting. Elia will give its approval before the distribution of said report.

The agreements recorded in the approved minutes of the construction meetings have a binding character and form an integral part of the Contract, if they do not differ from it substantially.

9.6 **Organisation of the construction site**

The Contracting Party must provide for the various locations and items of equipment on the Site or outside it for its workers, subcontractors, and the site installations.

The Contracting Party is responsible for its tools. If a third party is authorised to use these tools, even provisionally, this will be at the Contracting Party's own risk.

9.7 **Delivery of supplies necessary for the performance of the works**

Every supply necessary for the performance of the works delivered on behalf of Elia to the Site during the works must be taken over by the Contracting Party, which must, notably, indicate the storage area at the same, and take all useful measures to ensure that they do not suffer from any deterioration or disappearance. All storage expenses are to be borne by the Contracting Party.

On delivery, the Contracting Party must verify the apparent condition of each delivery and verify its compliance with the delivery receipt. The Contracting Party must submit every delivery receipt to Elia's representative.

9.8 Discoveries during the works

In the event of the discovery of objects of an artistic, archaeological, or historical interest, human remains, weapons, etc., the Contracting Party must immediately inform Elia and the competent authorities and comply with the legal provisions in force and with the provided guidelines. The Contracting Party shall indemnify Elia for any damage, loss or claims that are due to a failure to inform or delay in informing Elia thereof. The Contracting Party hereby assigns to Elia any rights it may obtain with regard to these remains as a result of their discovery.

9.9 Road traffic

Traffic on roads or highways, railways or waterways or access routes may not be interrupted, even momentarily, without the written agreement of the relevant authorities and public services.

The Contracting Party shall submit requests to the relevant authorities and public services in due time for authorisations relating to the disruption of the usual traffic and safety on roads and waterways.

The Contracting Party shall nevertheless limit the disruptions to operators and local residents resulting from the works as much as possible. Consequently, it will particularly adapt the approaches to the sites necessary for the performance of the Contract, so as to ensure free access to properties, possessions, etc. It will create the footbridges required for use by pedestrians and vehicles.

The Contracting Party bears in any event full liability for the direct and indirect consequences resulting from the disruption to traffic, and the price submitted by the Contracting Party includes all direct and indirect expenses due to disruptions and instructions to traffic for the entire period of the works.

10 PROVISIONS SPECIFIC TO SUPPLY CONTRACTS

10.1 Packaging, marking and storage

10.1.1 *Packaging*

All packaging fees are to be borne by the Contracting Party.

The dimensions and weight of the packages must be compatible with the gauges and loading capacities of the maintenance devices, means of transport and transport routes selected, as well as the possibility of storing of this material. The Contracting Party undertakes to carry out itself verifications on this issue and to take all useful measures.

Elia may request that the Contracting Party submit in due time to it the instructions provided for the packaging of its supplies and their recovery. This notice in no way reduces the liability of the Contracting Party.

10.1.2 *Marking*

All products must be marked before their delivery, at the expense of the Contracting Party, according to the applicable legal or regulatory provisions and to the instructions of Elia. The number of the Contract or order must be specified on the packaging and/or on the delivery receipt.

10.1.3 *Storage*

If necessary, the Contracting Party provides for the storage of the products in its locations, at its expense.

In the event that a shipment or delivery is postponed at the written request of Elia, the Contracting Party must store its delivery at its sole liability and arrange insurance cover for the storage risks.

In such scenario, the storage and insurance charges will be charged to Elia starting from the third month of storage after the last of the two following dates occurs:

- the delivery date according to the performance program defined in the Contract ;
- the date on which the delivery is effectively likely to have been made.

10.2 **Shipment and delivery**

10.2.1 **Contents**

Partial deliveries and/or shipments are prohibited, except with prior written agreement from Elia.

All relevant assembly guides and/or manuals for use and/or maintenance must be delivered or shipped with the supplies. If the deliveries and/or supplies are staggered, these documents must be attached to the first delivery/or shipment.

10.2.2 **Deadlines and times**

The Contracting Party shall submit a written request to Elia for authorisation to carry out the shipment and/or delivery, at least 15 Days before the scheduled date.

The Contracting Party must comply with the timetable indicated by Elia. The deliveries and acceptances of shipments of supplies must be made solely during the days and at the times indicated by the contact staff of Elia, to the indicated address and, failing that, during Working Hours and on Working Days.

The signing by Elia of any document on delivery or shipment is solely valid as proof of the arrival of the supplies and not as an acceptance, provisional or otherwise.

10.2.3 **Transport**

The Contracting Party shall be in charge of the transport of the delivery up to the delivery and/or shipment address indicated by Elia.

In the event of a delay attributable to the Contracting Party, Elia may impose on the Contracting Party a specific transport measure, by informing it thereof in writing, and in the absence of performance by the Contracting Party, Elia may implement the same at the expense of the Contracting Party after an 8-day deadline has elapsed.

10.2.4 **Unloading**

Unless there is an express note to the contrary in the contractual documents, the unloading is incumbent on the Contracting Party. The use of unloading and maintenance devices belonging to Elia (if these are present and available) is possible subject to Elia's prior written consent.

The Contracting Party shall arrange for all the necessary staff and equipment. If the material is particularly heavy or cumbersome, the Contracting Party will contact the manager of Elia at least 3 Working Days in advance.