

# General Terms and Conditions of Innobionic Limited, Carpenter Hourt, 1 Maple Road Bramhall, GB-Cheshire SK7 2DH,

## 1. Basic Provisions

1.1. Innobionic Limited (hereinafter referred to as 'the Contractor' or 'CO') exclusively concludes agreements on the basis of the present General Terms and Conditions (hereinafter referred to as 'GTC'). Any terms and conditions submitted by Client (hereinafter referred to as 'CL') not in conformity with these GTC shall not apply, notwithstanding CO's failure to object to such terms and conditions in individual cases.

1.2. Individually concluded agreements shall take precedence over the provisions stipulated by these GTC. Any deviation from the present GTC shall be made in writing and shall only apply to the respective individual agreement.

## 2. Offers presented by Contractor

2.1 All offers presented by CO, except when specifically declared binding, shall be generally subject to confirmation; in such a case, any valid conclusion of an agreement shall require an offer submitted by CL as well as CO's acceptance thereof (Order Confirmation) in accordance with Clause 3. Handwritten notes on Order Confirmations shall not be deemed valid unless confirmed by a revised Order Confirmation.

2.2 In the event that, in individual cases, the conclusion of an agreement was preceded by an offer presented by CO, an Order Confirmation issued by CO shall be required; otherwise, CO shall not be obliged to perform.

## 3. Offers submitted by Client and Confirmation of Order

3.1. In the event of CL submitting an offer, any resulting agreement between the Parties shall only arise on the basis of its acceptance by CO. All offers submitted by CL shall be in writing. Offers submitted by CL shall cease to be binding three weeks from their receipt by CO.

3.2. Offers shall only be deemed accepted by CO upon CO's submission of a written Order Confirmation to CL. CO shall be entitled to refuse offers submitted by CL without stating any reasons for such a refusal.

## 4. Prices

4.1. All prices shall be invoiced in EURO.

4.2. Prices shall be exclusive of VAT, ex works (EXW) in accordance with Incoterms 2000. Prices do not include packaging, shipment, insurance, installation, or commissioning, which shall be charged separately.

4.3. Should CO incur any additional costs for labor and/or increased procurement costs for any materials used and/or any other costs for any reason whatsoever between the conclusion of the relevant agreement and its actual performance, all prices agreed between the Parties shall be adjusted accordingly unless the period of time between the conclusion of the relevant agreement and its actual performance is less than 2 months.

## 5. Scope of Performance

5.1 The CO's obligation to perform shall be exclusively subject to its written confirmation. All additional agreements and alteration shall be made in writing to be considered valid.

5.2 Order documents such as drawings, illustrations, indications of weight and other measurements shall be only applicable if expressly declared to be binding.

5.3. CO shall continue to retain ownership as well as copyright of all order documents. Documents identified as confidential by CO must not be made available to any third party. At CO's request, all documents including all and any copies made thereof must be returned to CO without delay.

## 6. Performance

6.1. CO's obligation to perform shall commence no sooner than upon final clarification of all technical and contractual details, following the CL's fulfillment of its obligations as well as of all constructional, technical, and legal requirements that may be necessary for CO's performance.

6.2. CL shall be obliged to supply all required permits or preceding preparatory third-party works and services, in particular those issued by the competent authorities or performed by the respective utility providers (gas, water, electricity), as the case may be. At CL's expense, CO shall be entitled but in no way obliged to arrange for any notifications required to be submitted to the competent authorities.

6.3. Prior to installation and commissioning, the person ordering shall supply all required information concerning the positions of concealed power lines, gas and water pipes, or similar utilities and shall provide all required statistical data at its own initiative. CO shall be under no obligation whatsoever to verify the aforementioned information and data.

6.4. Prior to installation and commissioning, all items required for the initiation of the works must be present at the installation site, and all preceding preparatory works and services must be completed to such a degree that installation can be initiated as agreed and performed without interruption. All access roads leading to the site as well as the installation site itself shall be sufficiently leveled and cleared.

6.5. For the duration of the completion of the Order, the CL shall put at the CO's disposal appropriate premises for the secured storage of tools, equipment, and materials free of charge.

6.6. The quantities of energy and water required for the completion of the Order including commissioning shall be provided by CL free of charge, or will be charged to CL by CO separately.

6.7. CL shall confirm to CO the hours worked by the installation personnel as well as the commissioning of the installation without delay.

6.8. In the event of the installation or commissioning being delayed due to circumstances beyond CO's control, CL shall bear all reasonable costs for idle periods and also for all additional travel required by CO or its employees or the persons charged with completing the Order.

6.9. Should the CL ask for urgent completion after placing its Order with CO, all resulting additional costs such as overtime surcharges, costs for accelerated procurement of materials and similar expenditure shall be invoiced to CL as extra charges, subject to CO's approval of such urgent completion.

6.10. CO reserves the right to carry out minor technical alterations of contractual services and deliveries which may be reasonably expected to be acceptable to CL without consulting CL and without seeking CL's approval.

## 7. Subcontractors

7.1. CO shall be entitled to employ subcontractors at its own discretion.

## 8. Deadlines and Delays

8.1. The term for the delivery of products or performance of services by CO shall be dependent on the CL's offer. When confirming an Order, however, CO may unilaterally stipulate an extended term of delivery which may differ from the content of the offer and/or the acceptance. Should CL not be in agreement with the term of delivery unilaterally stipulated by CO, CL shall notify CO of this fact in writing within three days following receipt of CO's Order Confirmation; otherwise, the term of delivery/performance so stipulated by CO shall apply.

8.2. Delivery deadlines and completion dates shall only be binding upon CO if they were expressly confirmed by CO as such in writing.

8.3. Compliance with delivery deadlines and completion dates shall in any case be subject to the CL's fulfillment of its contractual duties. In the case of delays in connection with the commencement of performance, or with the performance itself, all bindingly agreed terms and deadlines, including any 'guaranteed' or 'firmly' confirmed terms and deadlines, shall be extended accordingly, always provided that said delays are due to circumstances beyond the CO's control. Any additional costs arising from such delays shall also be borne by CL.

8.4. Should CL fail to remedy the circumstances causing a delay as defined by Clause 8.3. within a reasonable period of time stipulated by CO, CO shall be entitled to dispose of the materials and equipment already procured as it deems fit without prejudice to CO's right to withdraw. In the event of a continuation of performance, all terms and deadlines shall be extended accordingly by the period of time required to again procure the equipment and materials so disposed.

8.5. In the event of a delay on the CO's part, all claims for damages shall be limited to 0.5% for each full week of delay; in no event, however, shall such claims exceed 5% of the net invoice price exclusive of VAT for the delivered portion of the Order which could not be activated in a serviceable manner due to the aforementioned delay. CL shall not be entitled to claim any further damages as a result of delays so described. In all other respects, the limitations pursuant to Clause 15 shall apply.

8.6. Except when agreed otherwise, the applicable term of delivery shall be 'ex works'. Therefore, any delivery date shall be deemed to have been complied with, and thus handover effected, if the item to be delivered was made ready for collection at the CO's premises and CL notified of this fact.

## 9. Withdrawal

9.1. CL may only withdraw from an agreement by setting and granting an extension of no less than two months to CO. CO must be notified of such an extension in writing by registered letter including information with regard to the aforementioned legal transaction.

9.2. In the event of an undue withdrawal from an agreement by CL, or should CL desire its cancellation, CO shall be free either to insist on the fulfillment of the agreement or to consent to its cancellation. In the latter case, CO may either claim liquidated damages in the amount of 20% of the net invoice price exclusive of VAT or demand from CL compensation for the damage actually incurred.

9.3. In the event of a delay in acceptance, or as a result of other substantial reasons, in particular bankruptcy of the CL, rejection of the CL's petition for bankruptcy due to a lack of estate, or default in payment on the CL's part, CO shall in any case have the right to withdraw from the agreement, provided that said agreement has not been fulfilled by both Parties in its entirety. In the event of such a withdrawal due to CL's fault, CO shall have the right to either claim liquidated damages in the amount of 20% of the net invoice price exclusive of VAT or to demand from CL compensation for the damage actually incurred. Additionally, CO shall be free to withdraw from an agreement due to any other ground stipulated by law. Should CO choose not to avail itself of its right to withdraw, CO shall have the right, without prejudice to any other rights it may have, to freely dispose of the contractual items or services and to supply equivalent items or services as substitutes at the respective contractual terms and conditions within a reasonable period of time.

## 10. Terms of Payment

10.1. For the delivery of block-unit combined heat and power stations, standby power plants, biodiesel power stations, and other facilities as well as for the performance of miscellaneous services, the following terms of payment shall apply:

10.1.1. 30% of the total purchasing price or total charge no later than two weeks following dispatch of Order Confirmation.

10.1.2. 70% of the total purchasing price or total charge prior to handover of purchased items or performance of agreed services.

10.2. All payments shall be remitted to an account designated by CO.

10.3. Invoices covering services not defined in Clause 10.1 shall be paid no later than two weeks following dispatch, without deduction, to the account designated by CO.

10.4. In the event of delays in performance pursuant to Clause 8.3., CO shall have the right to invoice CL immediately, with all agreed prices and charges becoming due instantly.

10.5. Should CO become aware of any information regarding the CL's lack of solvency or its present adverse financial situation, or in the event of the CL being in default, CO shall have the right to invoice CL immediately, with all agreed prices and charges becoming due instantly, and to make the continuation of works dependant on CL's payments or furnishing of appropriate security.

10.6. In the event of a delay in payment, default interest in the amount of 10% per annum shall be agreed. However, CO shall have the right to claim lost interest in excess of the aforementioned sum at any time.

## 11. Setoff

11.1. Any setoff of claims of amounts payable to CL against debts towards CO shall be prohibited, except in the case of the CO's insolvency or in the event that the CO's counter claims are legally connected to CO's debt resulting from the order, or if said counter claims were assessed by a court of law or duly acknowledged by CO.

## 12. Retention of Ownership

12.1. CO shall retain ownership of all its delivered items and services pending full settlement of purchasing price as well as all other indebtedness that may exist on the CL's part; CL shall take all necessary steps in accordance with all applicable laws and regulations to protect CO's title to the delivered items and services pending CL's full settlement of all amounts owed to CO, all this at CL's cost and expense.

12.2. In the event of a default in payment on the part of CL, or the CO's becoming aware of any information regarding the CL's lack of solvency, CO shall have the right to de-install and/or otherwise remove all items still within CO's continuing ownership as defined above, and CL shall be obliged to release said items to CO. The CO's exercise of the right so described shall not constitute a withdrawal from the relevant agreement on the part of the CO except when expressly identified as such by CO.

## 13. Assignment of Claims

13.1. In the event of a delivery for which the CO's retention of ownership applies, CL shall offer to CO assignment of all of its claims against third parties pending full settlement of the amounts owed to CO even at the present date, provided that the CL's aforementioned claims originate from the sale or processing of the CO's deliveries. All costs arising in connection with such an assignment shall be borne by CL, and CO shall have the right to accept said assignment at any time. At CO's request, CL shall be obliged to name its own contractors and to inform them of the aforementioned assignment in a timely manner as well. The customer shall be notified of the assignment so described (or the offer thereof, as the case may be) in all accounting records, delivery notes, and invoices.

13.2. Additionally, any claims against insurers shall also be offered to CO for assignment even at the present date.

13.3. Should CL be in default with his payments to CO, all sales revenue received by CL must be kept separate, to be held by CL on the CO's behalf only.

13.4. All claims against CO may only be assigned by CL with the CO's express approval.

## 14. Warranties

14.1. CL shall be obliged to inspect all deliveries no later than 8 days following handover.

14.2. The distributor shall be obliged to notify CO in writing of all visible defects or deficiencies no later than fourteen days following handover and of all hidden defects within the same period of time following their discovery; otherwise, any delivery will be deemed duly accepted without reservation or defect.

14.3. In fulfilling its contractual warranties, CO may use the following options at its own discretion:

a) appropriate reduction of price,

b) replacement of defective delivery while claiming an appropriate period of time for such replacement,

c) repair by CO or third parties authorized by CO within an appropriate period of time,

d) reimbursement for improvement expenditures not exceeding the equivalent amount stipulated in lit. a), provided that the distributor has duly carried out, or plans to carry out, the improvements of the delivery in question himself, it being understood that the distributor may do so without further inquiry.

14.4. All transport and customs charges becoming due as a result of lit. b) and c) above shall be borne by CL.

14.5. No warranties shall be granted for wearing parts, accessories, or repairs caused by unauthorized third-party interventions. Furthermore, no warranties shall be granted for damage resulting from the following causes unless caused by CO: inappropriate or improper use, faulty installation and/or startup contrary to CO's instructions, inclusion of spare parts other than the CO's original parts, natural wear and tear, incorrect or negligent handling, improper fuel and other materials required for operation, unsuitable building site, defective construction work, chemical, electrochemical, or electrical effects.

14.6. Should any contractual items or services be used in conjunction with third-party equipment and/or programs, warranties for functional deficiencies or defective performance shall only be granted if such deficiencies or defects occur in the absence of said conjunction.

14.7. Any equipment or materials supplied by CL shall not be subject to the warranties granted by CO

14.8. Any installation shall be considered accepted upon completion of more than 2000 hours of operation. In the event of defects, an installation shall be deemed 'accepted with defects'.

## 15. Indemnity

15.1. CO shall only be liable for gross negligence and willful damage within the limitations of the relevant statutory requirements.

15.2. Unless prohibited by law, the amount of damages to be paid by CO shall be limited to 20% of the net invoice price exclusive of VAT.

15.3. In the course of installation, repair and maintenance works, all damage caused to equipment already present and existing as a result of non-identifiable circumstances or faulty material shall in any case be at the CL's expense.

15.4. Claims resulting from product liability shall remain valid irrespective of the provisions mentioned above.

## 16. Product Liability

16.1. All services performed as well as all goods, equipment, and installations supplied can only be used and operated at a degree of safety to be reasonably expected as a result of the applicable certification provisions, instructions for used and/or maintenance as well as of other maintenance and operation guidelines, particularly with regard to prescribed inspections of equipment and installations, or on the basis of other instructions that may have been provided.

16.2. Right of relief in accordance with Art. 12, Product Austrian Liability Act, shall be excluded unless the person entitled to relief can demonstrate that the defect originated in the CO's sphere of influence or, at a minimum, was a result of gross negligence.

## 17. General Disclaimer of Liability

17.1. CO shall not be liable for the functionality of delivered items and any damage, provided that they are attributable to the CL's express requests with regard to their design or manufacture.

## 18. Governing Law and Place of Jurisdiction

18.1. All contractual relations as well as all resulting contractual and non-contractual claims shall be exclusively governed by Austrian law, with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods and the provisions of Austrian private international law.

18.2. The competent court for Vienna, Austrian post code A-1010, shall be agreed to be the court for all disputes arising from the present agreement. CO shall be entitled, however, to take legal action against the CL in any other statutory court of law.

18.3. Should any provision of these GTC be or become invalid, the validity of the remaining provisions shall not be affected thereby. In such a case, or in the event of any gaps in their agreement, the Parties shall use their best endeavors to arrive at a lawful arrangement that is as similar as possible to the original business intentions of the Parties.