

## ANNEX A

### UNIDO GENERAL CONDITIONS FOR THE PURCHASE OF GOODS

#### **Article 1. Conclusion of Contract**

This Contract shall be concluded at the time and date the original and a copy of the Purchase Order Contract (hereinafter referred to as “the Contract”), duly countersigned by the Seller, reaches the United Nations Industrial Development Organization, attention “Procurement Services Unit/OSS/PSM” (hereinafter referred to as “UNIDO”), provided that the countersigned Contract reaches UNIDO within the time fixed in this Contract or, if no time is fixed, within a reasonable time. The rights and obligations of the Parties shall be governed solely by the terms and conditions of this Contract, including these General Conditions. No additional or inconsistent provisions proposed by the Seller shall bind UNIDO unless agreed to in writing by a duly authorized official of UNIDO.

#### **Article 2. United Nations Convention on Contracts for the International Sale of Goods**

Questions concerning matters arising under but not settled in this Contract shall be settled in conformity with the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980), which shall be applicable to this Contract. The applicable language version of the Convention shall be the version in the language in which this Contract is written.

#### **Article 3. Delivery**

The Seller shall hand over the goods, and UNIDO shall take over the goods, at the place or places of delivery specified in the Purchase Order form. Unless otherwise stipulated in the Purchase Order form, the goods shall be delivered DDU (Delivered Duty Unpaid) INCOTERMS 2010.

#### **Article 4. Payment**

1. Unless otherwise stipulated in the Contract, UNIDO shall make payment:
  - (a) For goods to be delivered to UNIDO in Vienna within 30 days of:
    - (i) Taking over the goods; and
    - (ii) Receiving the invoice and any other documents specified in this Contract, whichever is later;
  - (b) For goods to be delivered elsewhere, upon shipment and within 30 days of receipt of:
    - (i) The Seller’s invoice for the goods;
    - (ii) Copies of the customary shipping documents; and
    - (iii) Any other document specified in this Contract, whichever is later.
2. The Seller shall also deliver the customary shipping documents to the consignee.
3. Unless otherwise authorized by UNIDO, a separate invoice must be submitted for each shipment under this Contract and such invoice must bear the purchase order number appearing on the top right-hand corner of the Purchase Order form.
4. The prices therein may not be increased, except by express written agreement of UNIDO. UNIDO shall not pay any charge for late payments unless expressly agreed to in writing. Time in connection with any cost discounts offered will be computed from the date of receipt by UNIDO of full documentation as specified by this Contract.
5. Payment for any goods pursuant to this Contract shall not be deemed an acceptance of the goods.

#### **Article 5. Tax exemption**

1. Section 7 of the Convention on the Privileges and Immunities of the United Nations and Section 9 of the Convention on the Privileges and Immunities of Specialized Agencies which are applicable to UNIDO by virtue of Article 21 of its Constitution, UNIDO is exempt from all direct taxes, except charges for public utility services, and is exempt from customs duties and charges of a similar nature in respect of articles imported or exported for its official use. In the event any governmental authority refuses to recognize UNIDO’s exemption from such taxes, duties or charges, the Seller shall immediately consult with UNIDO to determine a mutually acceptable procedure.

2. Accordingly, the Seller authorizes UNIDO to deduct from the Seller's invoice any amount representing such taxes, duties or charges, unless the Seller has consulted with UNIDO before the payment thereof and UNIDO has, in each instance, specifically authorized the Seller to pay such taxes, duties or charges under protest. In that event, the Seller shall provide UNIDO with written evidence that payment of such taxes, duties or charges has been made and appropriately authorized.

#### **Article 6. Warranty and packing**

1. The Seller shall provide UNIDO with all manufacturers' warranties, including but not limited to the warranty that the Goods shall be new and free of defects and any right or claim of a third party including rights based on industrial property. Without any limitation of the foregoing, the Seller warrants to UNIDO that the Goods, including their packaging, shall conform to the Contract Documents, and in particular to UNIDO specifications, and shall be fit for the purposes for which such Goods are ordinarily used and for purposes expressly made known to the Seller by UNIDO, and shall be of good quality, free from faults and defects in design, material and workmanship. The Seller also warrants that the Goods are contained or packaged in a manner adequate to protect the Goods. All such warranties shall remain in effect for a period of [one (1) year] after receipt and acceptance of the Goods by UNIDO (the "Warranty Period").

2. If, during the Warranty Period, the Goods or any part thereof purchased under this Contract are found by UNIDO to be defective or not to conform with the Contract Documents, upon written notification to the Seller by UNIDO, the Seller shall, promptly and at its own expense correct all such defects and non-conformities. If the defects and non-conformities cannot be corrected, the Seller shall, at the choice of UNIDO, either replace the defective Goods or promptly reimburse UNIDO.

3. The Seller shall pack the goods with sound materials and with every care, in accordance with the normal commercial standards of export packing for the type of goods specified in this Contract. Such packing materials used must be adequate to safeguard the goods while in transit. The Seller shall be responsible for any damage or loss which can be shown to have resulted from faulty or inadequate packing.

#### **Article 7. Indemnification**

The Seller shall indemnify, hold and save harmless and defend at its own expense UNIDO, its officials, agents, servants and employees from and against all suits, claims, demands and expenses arising out of acts or omissions of the Seller or his employees, agents, or sub-suppliers in the performance of this Contract. This requirement shall extend to claims or liabilities in the nature of workmen's compensation and to claims or liabilities arising out of the alleged infringement of a patent, design, trade-name or trade-mark arising in connection with the goods sold under this Contract.

#### **Article 8. Specifications**

1. In the case of goods called for on the basis of specifications forming part of this Contract, UNIDO shall have the right to terminate this Contract if the goods do not conform to such specifications.

#### **Article 9. Examination**

1. The duly authorized representatives of UNIDO shall have the right before payment to examine the goods called for under this Contract at the Seller's stores, during manufacture, in the ports or in places of shipment, and the Seller shall provide all facilities for such examination. UNIDO may issue a written waiver of examination at its discretion. Any examination carried out by representatives of UNIDO or any waiver thereof shall not prejudice the implementation of other relevant provisions of this Contract concerning obligations assumed by the Seller, including technical specifications.

2. UNIDO shall have a reasonable time after delivery of the goods to inspect them and to reject and refuse acceptance of goods not conforming to this Contract.

3. Inspection prior to shipment does not relieve the Seller from any of its contractual obligations.

#### **Article 10. Export licenses**

If an export license or any other governmental authorization is required for the goods, it shall be the obligation of the Seller to obtain such license or governmental authorization. In the event of failure to obtain such license or authorization within a reasonable time, UNIDO may declare this Contract avoided.

### **Article 11. Force Majeure**

1. Force Majeure as used herein shall mean acts of God, laws or regulations, industrial disturbances, acts of the public enemy, civil disturbances, explosions and any other similar event of equivalent force not caused by nor within the control of either party and which neither party is able to overcome. As soon as possible after the occurrence of any event constituting Force Majeure, and if the Seller is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Contract, the Seller shall give notice and full particulars thereof in writing to UNIDO. In this event, the following provisions shall apply:

(a) The obligations and responsibilities of the Seller under this Contract shall be suspended to the extent of its inability to perform them and for as long as such inability continues.

(b) The term of this Contract shall be extended for a period equal to the period of suspension taking, however, into account any special conditions which may cause the time for completion of the work to be different from the period of suspension.

(c) If the Seller is rendered permanently unable, wholly or in part, by reason of Force Majeure, to perform its obligations and meet its responsibilities under this Contract, UNIDO shall have the right to terminate this Contract on the same terms and conditions as are provided for in paragraph 24, "Termination" except that the period of notice may be seven (7) days instead of thirty (30) days.

(d) For the purpose of the preceding sub-paragraph (c), UNIDO may consider the Seller permanently unable to perform in case of any period of suspension in excess of ninety (90) days. Any such period of ninety (90) days or less shall be deemed temporary inability to perform.

### **Article 12. Independent Supplier**

The Seller shall have the legal status of an independent Supplier. Any person assigned by the Seller to perform services under this Contract shall remain in the employment of the Seller. Without restricting the generality of the foregoing, UNIDO shall not be liable for any claims and demands, loss, costs, damages, actions, suit or other proceedings, brought or prosecuted, in any manner based upon, occasioned by or attributable to the employment relationship between any person assigned by the Seller to perform services under this Contract and the Seller. The Seller and his employees shall conform to all applicable laws, regulations and ordinances promulgated by legally constituted authorities of the Government(s) of the country/countries in which the contract work is to be performed.

### **Article 13. Assignment**

The Seller shall not assign, transfer, pledge or make other disposition of this Contract or any part thereof or of any of the Seller's rights, claims or obligations under this Contract except with the prior written consent of UNIDO.

### **Article 14. Observance of the Law**

The Seller shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the terms of this Contract.

### **Article 15. Risk of Loss**

Notwithstanding anything to the contrary in this Contract, risk of loss, injury or destruction to the Goods shall be borne by the Seller until physical delivery of the goods has been completed in accordance with this Contract.

### **Article 16. Bankruptcy**

Should the Seller be adjudged bankrupt, or be liquidated or become insolvent, or should the Seller make a general assignment for the benefit of its creditors, or should a receiver be appointed on account of the Seller's insolvency, UNIDO may, without prejudice to any other right or remedy, declare this Contract avoided.

### **Article 17. Advertising**

Unless authorized in writing by UNIDO, the Seller shall not advertise or otherwise make public the fact that he is furnishing goods or services to UNIDO. The Seller shall not use the name, emblem or official seal of UNIDO or any abbreviation of the names of the United Nations or of UNIDO for advertising or for any other promotional purpose.

### **Article 18. Discretion**

The Seller is required to exercise utmost discretion in all matters relating to this Contract. Unless required in connection with the performance of this Contract or where specifically authorized by UNIDO, the Seller shall not communicate at any time to any person, Government or authority external to UNIDO any information which has not been made public and which is known to him by reason of his association with UNIDO. The Seller shall not, at any time, use such information to private advantage. These obligations do not lapse upon completion of performance under this Contract or termination of this Contract by UNIDO.

### **Article 19. Notice**

Any notice given in connection with this Contract shall be in English and shall be deemed to be validly given if sent by registered mail, by fax or by cable to the other Party at the address of either Party set out in the heading of the Purchase Order form.

### **Article 20. Validity**

The invalidity in whole or in part of any article or paragraph thereof shall not affect the validity of the remainder of such article or paragraph of this Contract.

### **Article 21. Staff members not to benefit**

The Seller shall not admit any staff member of UNIDO to any direct or indirect benefit arising from this Contract or the award thereof. The Seller agrees that breach of this provision shall constitute a fundamental breach of this Contract.

### **Article 22. Seller's failure to perform**

If the Seller fails to fulfil its obligations under the terms and conditions of this Contract, UNIDO may, by written notice to the Seller, inform it of the nature of the failure and declare this Contract avoided. Alternatively, UNIDO may fix an additional period of a reasonable length for the performance by the Seller of its obligations. If the Seller has not remedied the failure within such additional period fixed by UNIDO, UNIDO may then, by written notice to the Seller, declare this Contract avoided and cancel this Contract without any liability for termination charges or any other liability of any kind of UNIDO.

If the Contract is declared avoided and if UNIDO, in a reasonable manner and within a reasonable time thereafter, buys goods in replacement, UNIDO may recover from the Seller, as damages, the difference between the price under this Contract and the price in the substitute transaction as well as any other recoverable damages.

### **Article 23. Penalty for delay**

Subject to Article 11, if the Seller fails to deliver any or all of the goods or perform any of the services within the time period specified in the Contract, UNIDO may, without prejudice to any other rights and remedies, deduct from the total price stipulated in this Contract an amount of 1% of the price of such goods or unperformed services for each week of delay, up to maximum of 10% of the total price of the Contract.

### **Article 24. Termination**

1. UNIDO may declare this Contract terminated in whole or in part, and at any time, upon giving thirty (30) days' notice in writing to the Seller.
2. In the event of such termination is not caused by the Contractor's negligence or fault UNIDO's liability shall extent to full payment in respect of goods shipped and/or taken over and/or work already accomplished, and for other necessary final expenses of the Seller, and for the cost of such urgent work as is essential and as the Seller is asked by UNIDO to complete.
3. The Seller shall keep expenses at a minimum and shall not undertake any forward commitment from the date of receipt of UNIDO's notice of termination.

### **Article 25. Arbitration**

1. The Parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of, this Contract or the breach, termination or invalidity thereof. Where the parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules then obtaining, or according to such other procedure as may be agreed between the Parties.
2. Any dispute, controversy or claim between the Parties arising out of this Contract or the breach, termination or invalidity thereof, unless settled amicably under the preceding paragraph of this Section, shall

be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force. The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute. It is understood, however, that the provisions of this paragraph shall not constitute nor imply the waiver by UNIDO of its privileges and immunities. The language to be used in the arbitral proceedings shall be the language of this Contract.

**Article 26. Conflict of interest**

1. The Seller shall, in connection with the performance of this Contract, neither seek nor accept instructions from any authority external to UNIDO. The Seller shall refrain from any action which may adversely affect UNIDO and shall fulfill his commitments with full regard for the interests of UNIDO.

2. The Seller shall not admit any staff member of UNIDO to any direct or indirect benefit arising from this Contract or the award thereof. The Seller agrees that breach of this provision shall constitute a fundamental breach of this Contract.

**Article 27. Privileges and immunities**

Nothing contained in this Contract shall be deemed a waiver express or implied, of any privilege or immunity that UNIDO may enjoy, whether pursuant to the Convention on the Privileges and Immunities of the United Nations or any other convention or agreement.

**Article 28. Amendments**

No modification to this Contract shall be valid unless mutually agreed between the Parties and confirmed by a written amendment signed by their authorized representatives.

**Article 29. Child labor**

1. The Contractor represents and warrants that neither him, nor any of his suppliers is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which, inter alia, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical mental, spiritual, moral or social development.

2. Any breach of this representation and warranty shall entitle UNIDO to terminate this Contract immediately upon notice to the Contractor, at no cost to UNIDO.

**Article 30. Mines**

1. The Contractor represents and warrants that neither him, nor any of his suppliers is actively and directly engaged in patent activities, development, assembly, production, trade or manufacture of mines or in such activities in respect of components primarily utilized in the manufacture of Mines. The term "Mines" means those devices defined in Article 2, Paragraphs 1, 4 and 5 of Protocol II annexed to the Convention on Prohibitions and Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects of 1980.

2. Any breach of this representation and warranty shall entitle UNIDO to terminate this Contract immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind of UNIDO.