

## GENERAL TERMS AND CONDITIONS NON-AERO

### 1. Definitions

In the present Terms and Conditions capitalized terms shall have the following meaning:

“**ASCO**” means ASCO Industries NV, a company incorporated and existing under the laws of Belgium, having its registered office in Belgium at Weiveldlaan 2, 1930 Zaventem, registered with the Crossroads Bank for Enterprises under number 441.428.489, including any of its direct and indirect subsidiaries and other affiliated companies anywhere in the world;

“**Change of Control Event**” means either or both of the following events as a result of which the legal or beneficial ownership of 50 % of the share or capital stock of the Supplier, or the right to control and appoint the directors or the management of the Supplier is changed directly or indirectly, including the sale or transfer, in any way whatsoever of substantially the whole of the assets of the Supplier;

“**Contract**” the set of documents containing the terms and conditions governing the supply of the Products including without limitation the RFQ, the present Terms and Conditions, the Specifications, the Purchase Order and any document referenced therein;

“**Customer**” means any Customer of ASCO, any subsequent owner, operator or user of the Products and any other individual, partnership, corporation or person which has or acquires any interest in the Products from, through or under ASCO;

“**Day**” means, unless otherwise specified, a Day, other than a Saturday or a Sunday, on which banks are open for business in Belgium;

“**Delivery**” means Delivery by the Supplier to ASCO of a Product including all Product Documents strictly in accordance with the provisions of the Contract;

“**Delivery Schedule**” means the delivery schedule which shall include, in respect of a Purchase Order, the planned deliveries of Products;

“**Due Delivery Date**” means the date specified in the Delivery Schedule on which the Delivery has to occur;

“**Event of Default**” means each and any of the following events: (i) any failure by the Supplier to perform or comply with any obligation set forth in this a Purchase Order of these General Terms and Conditions and such failure is not remedied within a period of thirty (30) Days or more following receipt by the Supplier of notice from ASCO specifying such failure and requesting remedy thereof; (ii) any failure by the Supplier to perform or comply with any applicable law; (iii) the occurrence of a Change of Control event; (iv) the suspension, dissolution or winding-up of the Supplier's business, the Supplier's insolvency, or its inability to pay debts, or its non payment of debts, as they become due, the institution of reorganization, liquidation or similar proceedings by or against the Supplier or the appointment of a custodian, trustee, receiver or similar person for the Supplier's properties or business, an assignment by the Supplier for the benefit of its creditors, or any action of the Supplier for the purpose of effecting or facilitating any of the foregoing; (v) any event which is described in these General Terms and Conditions or in a Purchase Order as a material breach or an event which entitles ASCO to terminate all or any of the Purchase Orders;

“**General Terms and Conditions**” means the present general terms and conditions;

“**Intellectual Property**” means any design, invention, discovery, improvement, innovation or other creation that is capable of being protected by an Intellectual Property right or other similar form of legal protection, technical data, such as recorded information, regardless of its form, and computer software resulting from a study, research or development activity. This includes, in particular, trade secrets and know-how and, in general, all data not being capable of being protected other than by a secrecy or by a contractual undertaking on the part of the person who receives them, proprietary technical data, which are owned or controlled by a natural or legal person which gives that person a lead over its competitors or which are of such a nature that they are not normally divulged to the general public, for example but without limitation, detailed manufacturing drawings, detailed calculations and studies, trade secrets and know-how, and non-proprietary technical data, meaning all other technical data;

“**Installation**” means the installation and/or assembly of the Product or parts thereof fully in accordance with the provisions of the Contract, state of the art requirements and good industry practices, including without limitation performing the various test as specified in the Specifications or the RFQ, checking all connections, checking the operation of all different components and parts (if any) of the Product and the subsequent handing over of all Product Documents;

“**Product**” means goods or services (including Product Documents) furnished or to be furnished to ASCO as described in the Purchase Order;

“**Product Documents**” means all manuals, designs, plans, drawings, data, software, and other files and documents relating to the Product;

“**Product Definition**” means the Product specification, as amended from time to time, which describes in detail the Products;

“**Parties**” means ASCO and the Supplier, and *Party* shall be construed accordingly;

“**Purchase Order**” means a purchase order and amendments thereto placed by ASCO pursuant to these General Terms and Conditions;

“**Quality Requirements**” means any and all applicable quality requirements including state of the art standards as may vary from time to time;

“**RFQ**” the document(s) sent by ASCO to the Supplier to invite the latter to quote for the supply of Products;

“**Specifications**” means the document(s) containing: (i) the technical specifications of the Products and all requirements that such Products and/or the work for such Products have to comply with, (ii) the procedure governing the bid process, and, (iii) the Quality Requirements, all as may be amended from time to time.

“**Supplier**” means any (potential) supplier of a Product to ASCO.

## **2. Applicable terms and conditions**

2.1 Unless otherwise provided in the Purchase Order these General Terms and Conditions shall be deemed accepted by the Supplier on each Purchase Order and shall be applicable on the RFQ and bid process phase, on the Purchase Order issued by ASCO and on the quotation/bidding, purchase, manufacture and Delivery of Products and performance of obligations by the Supplier under such Purchase Order. All terms and conditions, including the Supplier's pre-printed standard terms, other than those mentioned herein or in a Purchase Order, are hereby expressly excluded.

2.2 The present Terms and Conditions shall together with all the provisions, specifications and stipulations set forth in the RFQ and the Specifications form the Contract. In the event of conflict between one or more documents, the following order of precedence shall apply: (i) Purchase Order; (ii) Specifications; (iii) RFQ; (iv) General Terms and Conditions.

## **3. Purchase Orders**

3.1 Each Purchase Order will constitute a separate contract for the manufacture and delivery of the Products mentioned therein. Only a Purchase Order issued by ASCO constitutes a valid and binding undertaking of ASCO to purchase the Products mentioned therein.

3.2 The Purchase Order shall be deemed to have been accepted by the Supplier within fourteen (14) Days of receipt of such Purchase Order, or by starting work on the Purchase Order, whichever is earlier. ASCO may revoke any Purchase Order prior to acceptance by the Supplier.

3.3 ASCO does not give a guarantee for the volume of Products ordered.

## **4. Packaging and transport**

Supplier shall be solely liable for organizing proper packaging, storage and transport of the Products until Delivery to ASCO in the best possible way to secure protection of the Products and prevent any loss or damage and in accordance with all applicable laws and regulations.

## **5. Installation**

Supplier shall be solely liable for Installation of the Products, if (i) specifically agreed in the Purchase Order or (ii) if such Installation is required due to the Product's nature and ASCO's intended use. The Supplier undertakes to handle and complete Installation and to provide all material, tooling, equipment and alike to that effect.

## **6. Delivery**

6.1 The Supplier shall deliver the Products at the place specified in the Purchase Order and in accordance with the lead time specified on the Purchase Order and with all provisions of the Contract.

6.2 The obligation to deliver the Products strictly in accordance with the Contract is an essential obligation of the Supplier. If the Supplier fails to fulfil or meet this obligation ASCO is entitled to terminate the Purchase Order in accordance with article 14, without prejudice to any of its rights and remedies under the Contract or at law.

6.3 Delivery of each Product shall be deemed to have been made upon Installation of the Product, irrespective of the applicable Incoterm. If no Installation would be required pursuant to article 5, Delivery shall be deemed to have been made upon arrival of the Product at the point of Delivery specified in the Contract including any applicable delivery terms.

6.4 Unless otherwise agreed the Supplier shall make Delivery in accordance with the *Incoterms® 2010* DDP Place of destination as specified in the Contract.

6.5 In case of late Delivery, ASCO will be entitled without notice to charge late delivery penalty costs of 0.5% per week of delay starting as from the seventh (7<sup>th</sup>) calendar day after the Due Delivery Date, whereby every week started will be counted as a complete week, for the total value of the Products being late, without prejudice to ASCO's right to claim compensation for the actual damages incurred. Penalties based on this clause 6.5 shall not exceed 10% of the total value of the Products being late.

## **7. Inspection and Acceptance - Rejecting of Products**

7.1 Each Product shall be subject to inspection and acceptance by ASCO within reasonable time after Delivery. Such inspection and acceptance shall only cover the non-conformities and the defects of the Products which are clearly visible without unpacking and/or special testing.

7.2 No inspection, approval of samples or any formal documentation prior to Delivery in accordance with these General Terms and Conditions and/or the Purchase Order can be considered as an acceptance.

7.3 Payment for the Products by ASCO shall not constitute acceptance, nor shall it release the Supplier from any of its obligations, representations or warranties under these General Terms and Conditions and the Purchase Order, nor impair any rights or remedies of ASCO or its Customers.

7.4 If, as a result of sampling inspection, any portion of a lot or shipment of identical or similar Products is found not to be in conformity with the Contract, or is found to be defective, ASCO may reject and return the entire shipment or lot without further inspection or, at its option, complete inspection of all Products in the shipment or lot.

7.5 All costs, expenses and loss of value incurred as a result of or in connection with the non-conformance, rejection, repair, replacement, or other corrective action will be borne by the Supplier.

## **8. Title and Risk**

Unless otherwise provided in the Purchase Order, title and risk of the Products shall pass from the Supplier to ASCO upon Delivery of the Products in accordance with the Contract, without prejudice to the Supplier's liability for rejection of Products or Supplier's warranty. The passing of title upon Delivery shall not constitute acceptance of the Products by ASCO.

## **9. Prices**

9.1 The prices for the Products shall be as set out in the Purchase Order. The prices shall include all work, services and supplies to be performed by the Supplier under a Purchase Order, including but not limited to, all costs in respect of Installation.

9.2 Prices shall be exclusive of VAT. Prices shall be inclusive of all other taxes, duties or similar charges of any nature in connection with the design, manufacture, assembly, sale, Delivery and Installation of the Products.

9.3 ASCO may from time to time in writing direct changes, including changes proposed by the Supplier, relating to the Products, such as, but not limited to, changes relating to the technical requirements and descriptions, the drawings, the place of delivery, inspection procedure, quantities, production and Delivery rates, etc. If any change causes an increase or decrease in the cost of the Product or the time required for performance, either Party can introduce a claim for adjustment of the price of such Product as mentioned in the relevant Purchase Order. The Party claiming an adjustment shall make available to the other Party any documents supporting a claim for adjustment to enable the other Party to audit and verify the claim for adjustment. Failure of the Parties to agree upon any adjustment shall not excuse the Supplier from performing in accordance with such directed change.

## **10. Payment**

10.1 Payment shall be made by wire transfer to the Supplier's account.

10.2 Unless otherwise provided in the Purchase Order payment shall be made within 60 (sixty) Days end of the month following receipt by ASCO of a correct and complete invoice from the Supplier, and provided the Products to which the invoice relates comply in all respects with the Contract and are free and clear of defects whatsoever.

10.3 Notwithstanding any other provision in the Contract ASCO shall be entitled to deduct from or set-off against any payment due to the Supplier, any sums due by the Supplier to ASCO.

## **11. Security**

Upon first demand of ASCO, Supplier shall provide ASCO with a security for performance of its obligations under the Contract, in form and substance acceptable to ASCO in its sole discretion.

## **12. Warranties**

12.1 Supplier hereby warrants to ASCO that each Product shall conform to the latest issue of the Specifications, and shall be free from defects whatsoever, including but not limited to, defects in workmanship, manufacturing processes, design and in material. The Supplier warrants that the Products are and shall be at all times in compliance with any laws and regulations applicable on the market where the Products will be sold, incorporated or used.

12.2 Such warranty shall survive inspection, test, acceptance of and payment for the Products. Supplier's warranty shall start from Delivery of each Product and shall remain in full force and effect for a period of twelve (12) months as from Delivery. In respect of Products which are rejected by ASCO and which are repaired or reworked, or of which a part or component is rejected, repaired or reworked; the period of warranty shall start to run upon Delivery of the repaired or reworked Product or part of component thereof. Notwithstanding the foregoing, in case the Products relate to any works to structural aspects of a building or other construction and/or the stability thereof, then the warranty period shall be ten (10) years as from final acceptance of such works.

12.3 Upon the appearance or discovery of a non-conformity or defect which is subject of the Supplier's warranty, ASCO will notify Supplier in writing of any such defect. If ASCO requests Supplier to repair or replace any defective Product or part thereof, Supplier shall repair or replace the same within a reasonable delay as may be specified further in the Specifications.

12.4 Supplier warrants that it is, and that ASCO has relied upon Supplier as being, an expert fully competent in all aspects and phases of the work involved in manufacturing and supplying the Products. Supplier agrees that it shall not deny any responsibility or obligation to ASCO on the grounds that ASCO has given any instructions, approved any documentation or drawings prepared, provided or produced by Supplier or the manufacturing facilities and techniques used by Supplier.

12.5 Supplier's warranty does not exclude any other warranties whether expressed or implied by law or the Contract.

### **13. Force majeure**

Neither Party shall be liable for any delay or non-performance in its obligations under a Purchase Order and the date on which such Party's obligations are due shall be extended by a period which does not exceed the period of the delay, when such delay, or the impossibility to perform is due to any cause beyond the control of the Party claiming excusable delay or impossibility to perform and is not due to such Party's fault or negligence. Such causes include but are not limited to acts of God, acts of the public enemy, acts (including delay or failure to act) of any government, fires, floods, epidemics, quarantine restrictions, national strikes, freight embargoes, unusually severe weather, explosions or earthquakes, war, insurrection, riots and any other events of force majeure. The Party claiming excusable delay shall take all reasonable measures to mitigate the effects of the event of excusable delay and shall, as soon as practicable after such event ceases to prevent or hinder its performance of the Purchase Order, resume performance and notify the other Party in writing thereof and the actual effect (if any) of the said event on the performance of that Party's obligations.

### **14. Termination**

14.1 Termination for Default. If an Event of Default shall occur ASCO shall have the right to exercise any one or more of the following options: (i) cancellation: ASCO may, by giving written notice to the Supplier, immediately cancel any Purchase Order, in whole or in part, and ASCO shall not be required after such notice to accept the Delivery by the Supplier of any Products with respect to which ASCO has elected to cancel the Purchase Order(s); (ii) cover: ASCO may manufacture, produce or provide, or may engage any other persons to manufacture, produce or provide any Products in substitution for the Products to be delivered or provided by the Supplier under any Purchase order which has been cancelled; (iii) rework or repair: ASCO may rework or repair, or may engage other persons to rework or repair any Products; (iv) set-off: ASCO shall, at its option, have the right to set off against and apply to the payment or performance of any obligation, sum or amount owing at any time to ASCO under any Purchase Order, all deposits, amounts or balances held by ASCO for the account of the Supplier and any amounts owed by ASCO to the Supplier, regardless of whether any such deposit, amount, balance or other amount or payment is then due and owing; and/or (v) in addition to any other remedies or damages available to ASCO under these General Terms and Conditions or at law, ASCO may recover from the Supplier the difference between the price for each Product as mentioned in the Purchase Order and the aggregate expense, including, without limitation, administrative and other indirect costs, paid or incurred by ASCO to manufacture, produce, provide, engage other persons to manufacture, produce or provide, or to rework or repair the Products.

14.2 Termination for convenience. ASCO may, from time to time and at ASCO's sole discretion, terminate any or all Purchase Orders, in whole or in part, by written notice to the Supplier. Any such written notice of termination shall specify the effective date and the extent of any such termination. On receipt of a written notice of termination the Supplier shall, unless otherwise directed by ASCO: (i) immediately stop work as specified in the notice; (ii) immediately terminate its subcontracts and own purchase orders relating to the work which is the subject of the terminated Purchase Order(s); (iii) settle any termination claims made by its suppliers, provided that ASCO shall have approved the amount of such termination claims prior to such settlement; (iv) preserve and protect all terminated inventory and Products; (v) at ASCO's request, transfer title, to the extent not previously transferred and delivered to ASCO or ASCO's designee, all supplies and materials, work-in-process, tooling, raw materials, manufacturing drawings and other data produced or acquired by the Supplier for the performance of any Purchase Order, all in accordance with the terms of such request; (vi) take all reasonable steps required to return, or at ASCO's option and with ASCO's prior written approval, to destroy all ASCO proprietary information and Products in the possession, custody or control of the Supplier; (vii) take such other action as, in ASCO's reasonable opinion, may be necessary, and as ASCO shall direct in writing, to facilitate termination of the Purchase Order(s); and (viii) complete performance of the work not terminated, as specified in the termination notice.

14.3 Supplier's claims. If ASCO terminates any or all Purchase Orders in whole or in part pursuant to article 14.2, the Supplier shall have the right to submit a written termination claim for the work in process at the moment of termination. Such termination claim shall be submitted to ASCO not later than six (6) months after the Supplier's receipt of the termination notice. Such claim must contain sufficient detail to explain the amount claimed and the allocation of the costs, including detailed inventory schedules and a detailed breakdown of all costs claimed separated into categories, including but not limited to materials, purchased parts, finished components, labour, general and administrative burden.

14.4 Maximum Liability. ASCO's liability for any loss or damage resulting from any termination pursuant to article 14.1 or 14.2 shall not exceed the price of the Products as per the Purchase Order(s) which is/are the subject matter of the work in process at the moment of termination.

**15. Liability and Indemnification**

15.1 The Supplier shall be liable for, and indemnify and hold ASCO harmless, from and against any and all damages, costs, claims, losses, liabilities, suits, judgments, expenses or penalties or the like (the "Claims") (i) in any way connected with the death of or injury to any persons whomsoever or loss of or damage to any property of any person, body or company arising directly or indirectly or consequentially from the acts or omissions of the Supplier, and/or (ii) arising directly or indirectly or consequentially from the non-compliance by the Supplier (or its sub-contractor) of the provisions of the Contract, except to the extent that such Claims have arisen as a result of any fraudulent acts or willful misconduct of ASCO or any of ASCO's employees or other representatives.

15.2 ASCO shall not be liable towards the Supplier or its employees, except in case of fraudulent acts or willful misconduct.

**16. Insurance**

16.1 The Supplier will at all times maintain appropriate and adequate insurances in line with the size and scope of and the risks related to the Purchase Order. The Supplier shall also insure the Products against risk of loss or damage until Delivery. Upon ASCO's reasonable demand, Supplier shall procure additional insurance or additional coverage.

16.2 Upon ASCO's request, the Supplier will provide proof of the insurances referred to above under the form of an insurance certificate.

**17. Employees**

17.1 Each Party shall make sure that its employees involved in the RFQ-phase and bid process and in performance of a Purchase Order shall have the required and appropriate qualifications, technical skills and experience.

17.2 Employees of each Party are and remain at all times that Party's employees, and cannot be considered as employees of the other Party. Each Party shall have exclusive control and direction of, and be liable for, its employees engaged in the performance of the work. The Supplier shall indemnify, defend and hold harmless ASCO from and against all claims by the Supplier's employees or from third parties, including but not limited to social security authorities, against ASCO alleging that ASCO is the employer of such employees.

17.3 The Supplier will indemnify and hold harmless ASCO and ASCO's employees and other representatives for any and all claims made by Supplier's employees, except in case of fraudulent acts or willful misconduct of ASCO or any of ASCO's employees or other representatives.

**18. Assignment - Sub-contracting**

18.1 ASCO may at any time assign the whole or part of the Purchase Order to any of its affiliates without the consent of the Supplier.

18.2 The Supplier shall not assign or sub-contract all or any part of its obligations under the Purchase Order without the prior written consent of ASCO.

18.3 Any sub-contract placed by the Supplier shall be and remain the sole responsibility of the Supplier and the Supplier shall procure that it shall be subject to the same terms and conditions as contained in the Contract, in so far as they are applicable and necessary to protect ASCO's interests. Notwithstanding the foregoing, any sub-contract shall include where necessary the rights of ASCO as a third party with the intention that ASCO shall be entitled to enforce rights under such sub-contract.

**19. Confidentiality**

19.1 Unless otherwise provided in a Purchase Order, all information, either oral or written, or embodied in materials, which are provided by ASCO to the Supplier, shall be considered by the Supplier as trade secrets and confidential information of ASCO. The Supplier shall not disclose, publish or reproduce, in whole or in part any confidential information, and shall not make use of such information other than as is strictly necessary for the performance of work under the RFQ and/or the Purchase Order or with the prior written approval of ASCO.

19.2 The Supplier agrees that all confidential information received from ASCO will be disclosed only to its employees, consultants, subcontractors and suppliers on a need to know basis and the Supplier undertakes that each of such persons shall be bound by the same obligations in respect of confidential information as those contained in the Contract.

19.3 In case the Supplier or any of his employees, agents, officers, directors or subcontractors breach this obligation of confidentiality, ASCO may immediately and without further notice terminate any or all Purchase Orders in whole or in part in accordance with the provisions of these General Terms and Conditions, without prejudice to any other right or remedy ASCO may have on basis of these General Terms and Conditions or at law.



19.4 The present confidentiality obligation is in addition to and does not prejudice in anyway the provisions of any confidentiality agreement that has been or may be entered into between ASCO and Supplier.

**20. Intellectual Property Rights**

20.1 The Supplier shall fully and effectively defend, indemnify and save harmless ASCO and its Customers against any and all claims, liability, losses, costs, damages or expenses whatsoever, including any loss of profits which may be incurred by ASCO or its Customers, as a result of any infringement or alleged infringement by the Supplier of any Intellectual Property Rights, patent or registered design in any Product or otherwise in relation to the Contract, or the manufacture, sale, Installation, use, service, maintenance, operation or enjoyment of the Products.

20.2 ASCO shall notify the Supplier promptly upon receipt of any claim or notice of infringement of any third party rights. The Supplier shall immediately take all steps to prevent or settle such dispute and shall at all times indemnify ASCO against all effects whatsoever thereof.

**21. Compliance**

The Supplier shall comply, and shall cause that each of its employees as well as the Products complies, at all times with the applicable health, safety, environmental (including without limitation waste disposal) and other occupational requirements as may be imposed by law or by ASCO in ASCO's reasonable discretion, as well as with any other applicable laws and regulations (including without limitation the Reach regulation) and minimize its impact on health, safety and environment. All possible costs, taxes, fees and burdens associated with such compliance, both administrative and financial, are at the cost of the Supplier only.

**22. Intrastat**

If the Supplier is a resident of a EU State he must mention following two points on its invoices in compliance with the regulations of intra EU Trade statistics: (i) Intrastat code and (ii) weight of the Products.

**23. Waste management and disposal**

Supplier shall be solely responsible for organizing at its own risk and expense, without any obligation of ASCO or any recourse to ASCO, the management and disposal of any and all waste generated by the delivery of the Products or the performance of its obligations under the Contract. Such management and disposal shall be organized in such a way as to avoid any interference with or negative impact on ASCO's activity.

**24. Miscellaneous Provisions**

24.1 No Waiver. Any failure or delay by the Parties in exercising any right under this Agreement, any single or partial exercise of any right under this Agreement or any partial reaction or absence of reaction in the event of violation of one or more provisions of this Agreement, shall not operate or be interpreted as a waiver (either express or implied, in whole or in part) of that Party's rights under this Agreement or under said provision(s), nor shall it preclude any further exercise of any such rights. Any waiver of a right must be express and in writing. If there has been an express written waiver of a right following a specific failure by a Party, this waiver cannot be invoked by the other Party in favor of a new failure, similar to the prior one, or in favor of any other kind of failure.

24.2 Severability. If any provision in the Contract would be held to be illegal, invalid or unenforceable, in whole or in part, under any applicable law, that provision shall be deemed not to form part of the Contract, and the legality, validity or enforceability of the remainder of the Contract shall not be affected. If such illegal, invalid or unenforceable provision affects the entire nature of the Contract, then the Parties shall use their reasonable best efforts to immediately negotiate in good faith a valid replacement provision.

24.3 Entire Agreement. The Contract constitutes the entire agreement between the Parties and supersedes all prior agreements or arrangements, oral and written, between the Parties relating to the subject matter thereof. No amendment or modification of the Contract shall be binding on the Parties, unless made in writing and duly executed by both Parties.

24.4 Applicable law and Jurisdiction. The Contract is construed in accordance with and is governed by Belgian law, as are any non-contractual obligations and claims in tort or other arising out of or in connection with this Agreement, excluding the application of the 1980 United Nations Convention on Contracts for the International Sales of Goods.

All disputes arising out of or in connection with the Contract will be submitted to the exclusive jurisdiction of the courts of Brussels, without prejudice however for any Party's right to seek injunction relief in any court or other forum having jurisdiction.

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