



**ERG GROUP**

**GENERAL PURCHASING CONDITIONS**

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## **1. CONTRACTUAL CONDITIONS**

- 1.1 The following contractual conditions constitute an integral and substantial part of the order, to which they are annexed.  
Any exceptions to these conditions may only be made if expressly specified in the order.
- 1.2 Client shall be responsible for the technical contacts necessary for the purpose of defining the supply, control and approval of the drawings and any other designs, reminders and notice, tests and overall coordination of the supply, in accordance with the following terms, with the exception of those cases where the Client opts to delegate these services to Companies or third parties.  
In such cases, said technical controls and formalities will be the responsibility of the Company appointed on the basis of specific instructions to be communicated by Client to Supplier and which shall be binding on Supplier.
- 1.3 Acceptance of the order implies the acceptance of and compliance with all cited regulations, tables, data, specifications and drawings and/or appendices to the order as well as the annulment of all supplier terms of sale.

## **2. CONFIDENTIAL DOCUMENTS**

- 2.1 All documents, drawings, specifications and any other technical and non-technical documents made available by Client to Supplier, remain the property of Client and may only be used in connection with the execution of the order.  
Supplier may not disclose them or use them for other purposes.

## **3. MATERIALS SUPPLIED BY CLIENT**

- 3.1 Any materials supplied by the Client remain the property of the Client. In accordance with the law, Supplier shall be liable for any damage to those materials while in the possession of Supplier, who shall take out adequate insurance cover against any damage, without exclusion, as well as against theft.

## **4. QUANTITIES**

- 4.1 Client is only obliged to accept the quantity of goods ordered.
- 4.2 Client shall not therefore undertake responsibility and/or obligations of any kind for goods sent in excess of goods ordered, also in the event that such goods have been entered into its warehouses. Any such goods shall remain at the disposal of Supplier, at its exclusive risk and expense.

## **5. ACCEPTANCE OF GOODS - NOTIFICATION OF FAULTS OR DEFECTS**

- 5.1 Receipt of the goods by Client or payment for them shall not of itself indicate acceptance of or satisfaction with the goods in question.  
Any complaints of faults and/or defects, may be made by Client at any time subsequent to receipt of the goods up to twelve months following the date of delivery.  
Client is not obliged to advise the Supplier of any faults and defects in accordance with the terms set out in sections 1495 (first paragraph) and 1667 (second paragraph) of the Italian Civil Code (C.C.)
- 5.2 When the order is split into more than one consignment, failure to advise about defects in quality or malfunctions in goods already delivered, shall not imply acceptance of the supply as a whole, and Client shall remain entitled to make complaints within the terms specified above.

## **6. TRANSFER OF RISK**

Materials shall always be delivered to Client's Warehouse including where transport costs are borne by the Client.  
The transfer of risk from Supplier to Client only occurs upon consignment of the goods to the Client premises.

## **7. SCHEDULING**

- 7.1 Within 20 days of the order date, Supplier shall send Client a procurement schedule for materials and production, as well as copy of every sub-order and related confirmation, communicating any variations and/or modifications as they occur.

## **8. COMMUNICATION BETWEEN THE PARTIES**

- 8.1 All communications between Supplier and Client relating to the Contract (e.g. commencement of work, suspension of work, recommencement of work, completion of work, testing, handover, etc.) shall be made in writing.

If Supplier subscribes to the I-Faber S.P.A. portal document exchange system, Supplier undertakes to authorise the document, issued by the company I-Faber S.P.A., and called the "*Regolamento del servizio Icity.collaboration*" and to comply with the terms and conditions therein.

- 8.2 Within the terms indicated in the contract documents Supplier shall, when requested, provide Client with all relevant technical documentation.

- 8.3 Any document requiring approval from Client shall, unless otherwise provided, be returned to Supplier as approved or with a request for modification, within twenty days of the date of its receipt. Supplier shall return all such documentation to Client within fifteen days, in reproducible copy, duly signed and stamped.

- 8.4 Supplier shall be responsible for planning and implementing the supply, as well as for compliance with the prescriptions, regulations and/or specifications set out in the order and under current legislation. As such, possible approval by Client of the technical documentation provided by Supplier shall not exempt Supplier from the afore-mentioned responsibilities.

- 8.5 Documentation supplied by Supplier to Client may be used by Client for any purpose without any obligation towards the Supplier.

## **9. TERMS OF DELIVERY**

- 9.1 The terms of delivery as set out in the contract are binding and of the essence and may not be waived in the absence of confirmation in writing by Client. In the absence of said authorization Client shall be entitled to cancel the order and no amounts will be owed to Supplier and Client shall remain entitled to full refund of any sums already paid as well as compensation for any damage caused.

If penalties for delayed delivery have been stipulated, Client may exercise the right specified above following expiration of the maximum penalty period.

## **10. FORCE MAJEURE**

- 10.1 The terms of delivery may be extended for a period equal to the duration of any events of force majeure occurring and/or within the contractual delivery limits; Force majeure includes events arising out of natural disasters, wars, revolutions and strikes, excluding in-house strikes for Supplier or its sub-suppliers.

- 10.2 Supplier shall immediately advise Client by registered letter and/or fax, of the onset and termination of the impediments referred to above. Following termination of said episodes, Supplier shall provide all documentary evidence duly certified by the local Chamber of Commerce.

- 10.3 In the event that Client is no longer interested in the supply as a result of the event of Force Majeure, Client shall be entitled to cancel the order and no amounts shall be payable to Supplier.

## **11. REMINDERS**

- 11.1 Client may appoint persons to issue reminders regarding the various phases of the procurement schedule. As such, Supplier will grant free access to said persons at all times at their premises and shall give them all information and assistance necessary for them to perform their tasks.

11.2 Supplier shall obtain similar assurances from sub-suppliers.

## **12. INSPECTIONS - CONTROLS - TESTS**

12.1 Inspectors nominated by Client shall monitor progress in the procurement, as specified in the order and shall verify and check that items fully correspond to contract specifications, both during the production process and at the time of delivery.

Should they deem it appropriate, the aforesaid inspectors may block the use and shipment of any equipment and materials which when inspected and tested do not conform to the procurement specifications.

As such, all tests and checks generally, including those carried out on materials not produced by the Supplier, shall be carried out in the presence of the Client's inspectors or their nominees.

Supplier shall therefore advise the Client, solely and exclusively by telegram, telex or fax, of the exact date with at least ten days' notice specifying: the current status of the order and relative quantities ready for testing and also advising whether the test is preliminary or final.

Once the aforesaid communication has been received, if Client does not intend to be present for the test, Supplier shall be promptly informed of this in writing.

Supplier shall grant free access by the afore-mentioned inspectors during normal working hours to all parts of the shop floor and will give all necessary assistance to them during their controls; the same provisions shall also apply to sub-suppliers.

All expenses relating to the tests and to the compilation of reports and bulletins issued by the relevant testing stations, shall be borne by the Supplier including those covered by the provisions of art. 12.2.

When testing is carried out, Client shall be provided with complete certifications both in the original and three copies confirming the conformity of the materials with the order (otherwise the material will not be deemed to have been accepted), to be handed to the Client's inspector.

If the Client's inspector is not present for the test, the certifications must be submitted to the Client by and no later than ten days from the date of certification.

All tests shall be carried out in accordance with the regulations and/or specifications as set out in the order.

With reference to legislative decrees 334/99 and 238/05, for all works relating to plant or system components at risk of major accident hazard (MAH), to be carried out at IGCC/SDA premises, the firms shall submit a quality control programme to the Client for approval.

12.2 Tests by Official Agencies

Supplier shall promptly carry out all formalities relating to statutorily required approval and/or tests, by the relevant government-appointed agencies (ISPESL-USL-ENPI, etc.) for all plant ordered and its installation: Supplier shall be liable for any delays whether at the approval stage, testing stage or upon issue of the necessary certification. Furthermore any delays by the Agencies in question shall not be considered as events of Force Majeure as provided by paragraph 10.0 above.

12.3 ISPESL-USL Booklet

In case of plant and/or material tested by the relevant Agencies (ISPESL-USL, E.N.P.I., etc.) the manufacturer shall submit the relevant booklet to the Client by insured registered letter.

## **13. WARRANTIES**

Supplier warrants that anything supplied in accordance with the order complies with the specifications, regulations and characteristics as set out in the order and that the materials used are free from defects, including hidden defects, and that the work has been carried out correctly and to the highest technical standards. Approval for shipment by the Client's inspectors following checks at the Supplier's premises shall not exempt Supplier from any responsibilities, including the warranties as referred to above.

Accordingly, if during assembly and/or operation any defects should become manifest which are attributable to the materials used and/or work-processes and/or non-compliance with specifications, regulations and characteristics, within 12 months of commissioning and in any case no later than 24 months from the date of delivery, Supplier shall bear all costs for any necessary replacements, in as short a time as possible.

In the event that Supplier believes that defects can be remedied by means of modification and/or repair (in lieu of replacement), Supplier shall promptly take all necessary measures, following approval by the Client.

Should the modifications and/or repairs fail to totally eliminate any defects found, Supplier shall, at own

expense and at the simple request of the Client, replace all non-compliant material within the terms jointly agreed.

In the event that Supplier fails to execute the modifications and/or repairs with all due speed and in any case within a time-frame acceptable to the Client, Client may remedy this directly, and debit to the Supplier any costs arising. It is understood that in such event Supplier shall not be released from any obligations under the warranty.

The warranty for the part replaced and/or modified and/or repaired shall have a duration of 12 months commencing from the commissioning date subsequent to completion of the work done.

All warranties provided remain valid irrespective of the tests

#### **14. JOINT LIABILITY**

Supplier will be jointly liable with the constructor of equipment to be used in conjunction with Supplier's own, for the purpose of ensuring perfect operation of the system, in relation to the technical and mechanical specifications, with particular regard to mechanical coupling, dynamic moment and starting torques.

Supplier shall accordingly make all necessary contact with any manufacturer indicated by the Client for the exchange of information and data necessary for the perfect operation of the system. In the event of processing goods Supplier shall submit a regular information to the Client.

#### **15. PRICES**

- 15.1 Prices are deemed to be accepted by Supplier to its benefit and risk and as such are absolutely invariable also in the event of variation in the costs of raw materials, labour, exchange rates and/or taxes of whatever nature (income, local government etc.), customs duties, work processes taking longer than anticipated and any other circumstances in general.

This shall be the expressed will of the parties notwithstanding the provisions of sections 1467 and 1664 of the Italian Civil Code.

#### **16. PACKAGING**

Instructions for packaging will be specified by the Supplier on the basis of transportation requirements by road or rail and the need for movement on the premises of the Client. Supplier shall be liable for any damage caused by inadequate packaging.

#### **17. SHIPMENT TERMS**

- 17.1 Notification of goods ready for shipment

Irrespective of the type of delivery specified in the order, Supplier shall advise the Client, only and exclusively by fax and/or email, of the exact date of preparation of the material for shipment with at least 5 days' notice, indicating: order status, quantity ready for shipment, dimensions and weight of the material, number of packages, and the value of the dispatched material. Following said notification Client will give approval for the shipment.

- 17.2 Shipment by train

In order to benefit from the special concessions offered by Italian Railways to encourage industrialization in Southern Italy and the Islands, cargoes of 20 cwt and over destined for productive factories must be shipped by rail, COMPLETE WAGON regular service using the waybill with a green stripe - Form CI/95D - addressed respectively to:

- ERG Power Srl – presso ISAB Impianti Nord - Priolo Gargallo (SR) PORTO FRANCO
- ISAB ENERGY Srl Stabilimento di Priolo Gargallo (SR) PORTO FRANCO

selecting the most economical railway tariff in relation to the nature and quality of the goods, and enclosing copy of the shipment note. The waybill shall further specify that the goods are "GOODS DESTINED FOR THE INDUSTRIALIZATION OF SOUTHERN ITALY AND THE ISLANDS".

The supplier must specify the wagon number on all invoices. Goods from abroad. Detailed instructions will be given by the Client at the time.

- 17.3 Labelling the packages

Each package must have the following labelling which shall be highly visible and indelible:

**Client ADDRESS**

Order No. ....  
Package No. ....  
Gross weight Kg. ....  
Net weight Kg. ....  
Dimensions ..... X ..... X ..... (in cm.)  
Contents .....

**17.4 Packing List**

Prior to shipment of the foreign goods 3 copies of the Packing List drawn up in Italian and with identical indications to those on the package shall be sent to the Client .

**17.5 Delivery note**

At the time of shipment, in addition to statutorily required documentation, Supplier shall issue the delivery note with attached Packing List in the original together with 4 copies. The documentation is to be distributed as follows:

- Original countersigned by shipping agent and 1 copy to the Client. no. 2 copies to accompany the items in question;
- no. 1 copy to the shipper when the material is collected.

The delivery notes must contain the following indications: Seller's regulations - date of shipment - order number - description of the material, whether it is "BALANCE" or "ON ACCOUNT", amount of packages, gross and net weight, dimensions. In case of processing goods sent to third parties the Supplier shall submit a fifth copy of the delivery note to the Client.

**18. INVOICING**

18.1 Invoices shall be submitted in the original plus one copy to the Client, *Direzione Amministrativa*. Invoices should include the following:

- number and date of the order and/or delivery arrangements and number and date of the shipment note;
- destination of the materials;
- quantity and description of the materials listed as per shipment note;
- number of order status/delivery arrangements and unit of measurement;
- unit price and total;
- railway wagon number and/or references to any other means of transport;
- number, weight and dimension of package;
- if the invoicing is on account or for the order balance.

18.2 As a condition of payment, copy of the shipment note countersigned by the carrier must be attached to each invoice,

18.3 For foreign goods supplied by foreign companies, 4 copies of the invoice on headed paper must be included with the original.

18.4 With respect to invoices for works carried out by technicians and for assembly, issued by foreign companies, relevant documentation relating to double taxation should be submitted, so as to avoid the application of tax as provided by art. 25 of D.P.R. 29-9-73 no. 600. Said documentation consists of: a declaration by the Supplier that they do not have a permanent establishment in Italy; a certificate issued by the Tax Authorities for the Supplier confirming the Supplier's address; any other specific documentation and/or declaration as required by the international Convention on double taxation.

18.5 Invoices for foreign goods sold on by Italian companies, before being released from Customs, exempt from VAT and stamp duty: 1 original and 6 copies on headed paper. The invoices must include the following wording: 'Goods of foreign origin sold before release by Customs, VAT exempt as per the provisions of art. 7 of D.P.R. 26-10-72, no. 633". 18.6 For invoices covered by paras 18.4 and 18.5 the Supplier shall submit the following documentation:

- a) Packing List issued in 5 copies on plain paper (extra strong).
- b) Certificate of origin plus 1 copy, or TL2 certificate for EU countries (only for material from abroad).
- c) Original "All risks" insurance certificate and 2 copies (only for material from abroad).

d) Waybill (3+6 N/N and/or bill of lading, when the delivery is carriage paid or free at Italian border).

## **19. PAYMENT TERMS**

Client will make payments in accordance with the procedures and due dates as set out in the order. Debit by bankers draft is not permitted. Client will not be liable for any delays in settlement of invoices in the event that one or more of the provisions under article 18 are disregarded.

Payments are permitted exclusively in countries where Contractor has registered/operating/commercial offices.

## **20. NON TRANSFERABILITY OF RECEIVABLES**

Receivable transfers, special mandates for payment or other forms of delegated payment will not be accepted

## **21. PATENTS OR TRADEMARKS AND RELATED LICENCES**

Supplier holds Client harmless from any responsibility, charge and/or recourse for the use or the infringement of patents and trademarks relating to the use of materials, machinery, or work processes adopted. Supplier shall be liable for the payment of any royalties and licensing rights.

## **22. TERMINATION**

Without prejudice to provisions on termination and/or early termination in the order, Client shall be entitled to terminate the order pursuant to section. 1456, in the following circumstances:

- 22.1 Failure by Supplier to deliver the material by the date specified in the order or the individual supply orders, where the Supplier is at fault.
- 22.2 Failure by Supplier to supply the materials in compliance with the conditions set out in the order and in particular the employment by Supplier of staff and/or equipment which do not meet the agreed prerequisites, or failure to promptly replace malfunctioning material or parts of material.
- 22.3 Transfer by Supplier of the order to third parties in the absence of written consent by Client or the subcontracting of any part of the work without the previous written agreement of the Client;
- 22.4 Modifications and/or variations to the material specifications by Supplier, at own initiative and without the approval and/or the written authorization of the Client;
- 22.5 Failure by Supplier to comply with current laws on insurance, salaries and employment contributions for personnel as well as accident prevention regulations;
- 22.6 Failure by Supplier to stipulate the insurance policies indicated in the order or to renew them;
- 22.7 Supplier insolvency vis à vis creditors or an obligation to transfer assets to creditors;
- 22.8 Supplier is subject to any insolvency proceedings as provided by law, or it may be presumed that such proceedings are imminent on the basis of clear indications; Supplier has or is about to be placed in receivership;
- 22.9 Events of Force Majeure persisting for more than thirty (30) days;
- 22.10 Certifications submitted or produced by Supplier, for the purposes of being awarded the order or its execution, are found to be irregular in any manner or form
- 22.11 Insufficiency of all necessary authorizations and licences for the purpose of carrying out activities the subject-matter of the order. In all of the above circumstances with the exception of those covered by paragraphs 22.8 and 22.9, Client shall also be entitled to make recourse to the procedure under section 1454 C.C., instructing Supplier, in writing, to remedy the circumstances in question within the time-frame specified by the Client, and in any event not less than 15 (fifteen) days following receipt of the

communication. If said period has expired without the situation being resolved, the order shall be deemed cancelled and the Client shall be entitled to damages to be paid by the Supplier within 60 (sixty days) of receipt of the relative debit note.

**23. RIGHT OF WITHDRAWAL**

Client may exercise the right of withdrawal at any time. Withdrawal will not apply to services already performed. Supplier shall not be entitled to any additional compensation and/or indemnity payment consequent to withdrawal.

**24. CONFLICT OF INTEREST**

No agent, or employee of the Supplier may give the Client or his agents or employees, nor may they receive from the Client or his agents or employees, any commission, recompense, gifts or special benefits of significant value, relating to the order. Likewise they may not have private business dealings with agents or employees of the Client or of companies belonging to the same Group. In the event of such relationships existing the Client must be promptly informed in writing. Personnel authorized by Client may audit the accounts of the Supplier for the sole purpose of determining compliance with this clause.

**25. ERG GROUP CODE OF ETHICS AND ORGANIZATION, MANAGEMENT AND CONTROL MODEL**

Supplier declares knowledge of the content of Legislative Decree 8 June 2001 nr. 231, as well as the Organization and Management Model and the Code of Ethics adopted by Client (published on the web site [www.erg.it](http://www.erg.it)) and undertakes to conduct itself in accordance with the provisions contained therein. Contractor further declares that it is aware of the fact that compliance with those provisions is an essential element of Client's corporate structure and represents the basis for Client's intention to enter into this contract.

Failure on the part of the Supplier to comply with any of the above provisions represents a serious breach of the obligations contained in this contract and, in addition to the provisions of paragraph 22.0, entitles Client to terminate this Contract with immediate effect, in accordance with the provisions of section 1456 of the Italian Civil Code, without prejudice to the right to compensation for any damage caused.

**26. JURISDICTION**

The Courts in whose jurisdiction the Client registered offices are located at the time of any dispute shall have exclusive jurisdiction over any dispute relating to the interpretation and execution of the Order.