

**GENERAL CONDITIONS OF PURCHASE****1. Formation and content of the Contract**

- 1.1.** The following terms shall have the meaning defined herein:
- ALSTOM: ALSTOM Power & Transport Canada Inc.
  - Seller: the person so described in the order
  - Party: ALSTOM or the Seller, together the Parties
  - Contract: the contract for the sale and purchase of the goods and/or the supply and acquisition of the services.
- 1.2.** The Contract shall consist of the following documents and the order of precedence shall be:
- the order
  - these General Conditions of Purchase
  - the specifications referred to on the order
  - other documents incorporated by reference into the Contract.
- 1.3.** Commencement of design, manufacture, shipment, delivery, invoicing or supply of the goods or services implies acceptance of the order by the Seller under these General Conditions of Purchase.
- 1.4.** No terms or conditions or exceptions or clarifications stated by Seller in its proposal or in accepting or acknowledging the Contract or the order shall be binding unless accepted by ALSTOM and expressly incorporated in the Contract in writing by ALSTOM.
- 1.5.** Where the Contract is for the supply of goods or the performance of a portion of the Work under a prime contract between ALSTOM and a customer, Seller understands that some of this prime contract's provisions could have to be incorporated and form part of the Contract. The related Contract amendment shall be negotiated in good faith between the Parties according the procedure defined in Article 16 hereafter.

**2. Scope of supply**

In strict accordance with the Contract, Seller shall furnish all labor, materials, equipment, tools, supplies, services, permits, certifications, documentation and all other things, free of liens or other adverse lien against title, and necessary to perform its scope of work for the Contract ("Work").

**3. Representations**

- 3.1.** Seller warrants and represents that it has examined the documents forming the Contract and the requirements of the various governmental agencies having jurisdiction, and is fully familiar with same and from its own investigations has satisfied itself as to the nature and location of the Work, the general and local conditions, and all matters which may in any way affect the Work or its performance.
- 3.2.** Seller acknowledges that no representations as to the Work have been made by ALSTOM or by any one on its behalf, except as are expressly set forth in the Contract.

**4. Contract price**

- 4.1.** ALSTOM shall pay Seller for the satisfactory performance and completion of the Contract, the price indicated in the order.
- 4.2.** Unless otherwise stated in writing in the Contract, the Contract price shall be fixed and firm for the duration of the Contract and shall include, without exception, all expenses related to the performance of the Work.
- 4.3.** Unless otherwise stated in writing in the Contract, the payment of sums due to Seller shall be made in Canadian Dollars. Payment of the invoices issued by Seller in conformity with the Contract shall be made by ALSTOM within forty five (45) days of the date of the receipt by ALSTOM of Seller's invoice.

**5. Seller personnel**

All Seller personnel performing the Work shall be qualified and capable of meeting industry standards of workmanship and performance to fulfill the requirements hereunder. ALSTOM may request the replacement of any of Seller's personnel at no additional cost to ALSTOM.

**6. Taxes**

Seller shall be responsible for the payment of all taxes, duties, levies and charges of whatsoever nature or kind in respect of the performance of the Work. Seller shall pay and hold ALSTOM harmless from any such taxes (including penalties and interest) of any taxing jurisdiction which Seller is required to pay.

**7. Insurance**

Seller shall procure in its name and maintain at its expense comprehensive general liability insurance and shall provide a certificate of insurance to ALSTOM specifying the amount, extent and validity period of the policy together with proof of payment of the insurance premiums. Seller shall not permit any policy furnished hereunder to expire or be cancelled before all obligations under the Contract have been completed. Seller shall add and maintain ALSTOM as an additional insured on each such policy.

**8. Proprietary and confidential data**

- 8.1.** Seller agrees to keep confidential all documents, patterns, plans, drawings, specifications, information, data and the like communicated to Seller by ALSTOM, and such other information as to the businesses of ALSTOM as may be supplied by ALSTOM to Seller that is not generally ascertainable from public or published information or trade sources, which Seller might become aware of in the course of the performance of the Contract or created by Seller in the performance of the Work.
- 8.2.** The provisions of this article shall remain effective during the performance of the Contract and until the expiry of five (5) years after completion (including the warranty period), cancellation or termination of the Contract.

**9. Intellectual property rights**

- 9.1.** The term "Intellectual Property Rights" include patents, trade marks, service marks, trade names, design rights (whether patentable or otherwise), copyright, know-how, and other similar rights or obligations, whether patentable or not in any country.
- 9.2.** Seller agrees that ALSTOM shall be the owner of all designs, technologies, creative ideas, discoveries, inventions, and improvements, whether or not patentable, conceived, developed and/or reduced to practice as a result or in connection with the performance of the Contract by or on behalf of the Seller, all of which shall be the property of ALSTOM as mutually agreed upon. The Seller warrants and represents to ALSTOM that the sale or use of the Work does not infringe any Intellectual Property Right of any third party.
- 9.3.** Seller hereby grants to ALSTOM' and ALSTOM's customers a non-exclusive paid-up license throughout the world to integrate, in ALSTOM's or ALSTOM's customers' product, any software or any Seller copyrighted or otherwise protected by Intellectual Property Rights material developed by Seller independently of the Contract.
- 9.4.** Seller agrees to indemnify and to save ALSTOM, its officers, agents, employees, and vendees (mediate and immediate) harmless from any and all loss, expense, damage, liability, claims or demands either at law or in equity for actual or alleged infringement of any patent invention, design, trademark, or copyright arising from the purchase, use or sale of materials or articles required by the Contract, except where such infringement or alleged infringement arises by reason of designs for such materials or articles originally furnished to Seller by ALSTOM.

**9.5.** In the event Seller's scope of work includes any proprietary software, design or other material protected by Intellectual Property Rights. (Proprietary Information) and if requested by ALSTOM, Seller agrees to execute, an escrow agreement with an established escrow agent and make a deposit of such Proprietary Information. Such escrow agreement shall allow ALSTOM and/or its customer to obtain the deposited Proprietary Information and grant ALSTOM and/or its customer a license to use such Proprietary Information to either produce or have produced or to maintain the goods procured from Seller, in the event Seller cannot complete the Work, is unable to fulfill the terms of the Contract, or is otherwise in default under the Contract.

#### **10. Liability for damages and personal injury**

**10.1.** Seller hereby assumes responsibility and liability for any and all bodily injury (including death) to all persons, whether employees of Seller or otherwise, and damage to all property, to the extent such damage or injury is caused by, results from, arises out of, or occurs in connection with Seller's execution of the Work.

**10.2.** Seller shall defend, indemnify and save harmless ALSTOM from and against any and all claims, damages, losses, liabilities, injuries, costs and expenses (including reasonable attorneys' fees and disbursements) arising out of or resulting from Seller's execution of or failure to execute the Work hereunder to the extent any such claim, damage, loss, liability, injury, cost and expense is caused by any act or omission, including negligence, of Seller or anyone directly or indirectly employed by Seller or anyone for whose acts Seller may be liable.

**10.3.** Notwithstanding any other provision in the Contract to the contrary, neither Party shall be liable to the other Party for any indirect, incidental, special or consequential damages (including, without limitation, any damages arising from loss of business, revenue, profits, data or goodwill) arising in connection with the Contract, whether in an action in contract, tort, strict liability or negligence, even if advised of the possibility of such damages.

#### **11. Compliance with law**

Seller shall, at its sole cost and expense, comply with all federal, provincial, municipal and local laws, ordinances, rules, regulations, orders, notices and requirements, and be responsible for and shall correct at its sole expense any violation of any law, ordinance, rule, regulation, order, notice or requirement resulting from or in connection with the performance of the Work.

#### **12. Schedule and time of performance**

**12.1.** Time is of the essence. Seller shall complete and perform the Work in accordance with the schedule described in the order. Seller shall, satisfactorily to ALSTOM, coordinate its Work with that of ALSTOM, its subcontractors and suppliers, other contractors and their subcontractors and suppliers.

**12.2.** Seller shall notify ALSTOM as soon as practicable of any circumstance that may affect the time and/or sequences of the schedule.

**12.3.** Seller shall achieve delivery and/or installation of the goods and/or completion of the services within the dates specified in the Contract, save for reasons exclusively attributable to ALSTOM or force majeure events as defined under Article 17.1 below.

#### **13. Delivery**

**13.1.** All deliveries are subject to ALSTOM's incoming inspection and acceptance. Goods furnished but not installed by Seller shall be delivered F.C.A. (Incoterms 2010), unless otherwise provided in the order. Title to the Work shall pass to ALSTOM on the date of delivery of the Work to ALSTOM. If Seller makes any material commitments or production arrangements in excess of the amount or in advance of the

time necessary to meet the Contractual delivery schedule, ALSTOM shall not be held responsible.

**13.2.** Seller shall immediately notify ALSTOM of any changes or conditions which may affect required delivery dates.

**13.3.** If any of the goods to be supplied under the Contract contain any hazardous substances or require any special precautions to be taken to ensure safety in handling, transportation, storage or use, Seller shall prior to their delivery furnish to ALSTOM written details of the nature of those substances and the precautions to be taken and shall ensure that, before dispatch appropriate instructions and warning are clearly and prominently marked on the goods or securely attached to them and on any containers into which they are packed.

#### **14. Inspection and quality**

**14.1.** ALSTOM shall have the right to visit and inspect any part of the Work. Seller shall perform in-process and final inspection and testing to ensure that the Work conforms to the specifications and quality standards required. ALSTOM reserves the right to witness any testing and Seller agrees to maintain and make available to ALSTOM upon request, adequate quality records. The Work will be deemed accepted by ALSTOM thirty (30) days after date of delivery, unless ALSTOM issues a rejection notice of the Work. In such case, Seller shall grant to ALSTOM a credit for the full value of any Work rejected.

**14.2.** Additional inspection may be required due to Seller technical modifications and/or modification to the location of the production site, production process, tools, materials and/or subcontracts. Seller shall submit proposed changes or modification to ALSTOM for approval a minimum of 45 days prior to implementation. Failure to timely submit such changes or modifications may delay acceptance of the Work and shall be deemed to be late delivery.

**14.3.** The Seller shall maintain a quality control system acceptable to ALSTOM.

**14.4.** Without waiving any of its rights under Articles 20 and 21 hereafter, ALSTOM shall be entitled to recover from Seller any and all costs incurred by ALSTOM, which shall include a minimum four hundred dollar (\$400) administrative fee, per occurrence, to (a) perform extended source inspection caused by Seller's quality issues, (b) perform corrective action on the Work, and/or (c) provide such services as are necessary to complete the Work in the event Seller is unable or unwilling to complete or fails to complete the Work in a timely manner. Extended source inspection includes, but is not limited to , any source inspection, any source inspection visit for more than two (2) consecutive days and more often than once for an order.

#### **15. Warranty**

**15.1.** Seller warrants that the goods shall be new, and of the specified quality, free from faults and defects in material, workmanship and design, and in conformity with the Contract requirements.

**15.2.** The Seller shall replace or repair, at ALSTOM's discretion, any goods or component part thereof found not to be in conformity with the preceding paragraph, provided that ALSTOM notifies the Seller of such non-conformity within eighteen (18) months after delivery. If Seller does not respond satisfactorily within a 24 hour notice, ALSTOM shall repair or replace the goods and debit Seller's account for the costs.

**15.3.** In addition and at any time within the expected lifetime of the goods, if the goods suffer from an excessive level of similar defects, Seller shall promptly and at its expenses (a) diagnose the source of the failures, (b) correct all defects or non-conformities which are the source of such failures, (c) provide ALSTOM with a summary of such diagnostic and correction activities, and (d) in accordance with ALSTOM's correction plan, repair or replace all affected goods with fully conforming goods

**15.4.** Seller shall warrant Work replaced or repaired under articles 15.2 and 15.3 for a minimum 12 month period from Alstom's receipt of the repaired or replacement good.

**15.5.** Seller shall defend, indemnify and hold ALSTOM harmless from the consequences of any breach of the warranty provided by this Article, which shall not be to the exclusion of any other remedy provided ALSTOM by the Contract or at law.

#### **16. Change orders, additions and deductions**

**16.1.** ALSTOM may, at any time during the performance of the Work, require any change to the Work, without obligation to give notice to any surety. Seller shall execute the change to the Work as directed in writing by ALSTOM. Seller shall be entitled to an equitable adjustment in the Contract price and/or schedule for the costs and/or time caused by the directed change, provided a request for an equitable adjustment by Seller was made within fourteen (14) days after the issuance of the directed change by ALSTOM.

**16.2.** The value of any change to the Work that will result in an addition or deletion to the Contract price shall be determined and applied in accordance with the Contract prices if pertinent. Otherwise, the value of the change to the Work shall be agreed in writing and in good faith by the Parties, based on actual costs incurred for which the Vendor shall provide a breakdown at ALSTOM's satisfaction.

#### **17. Delays**

**17.1.** If the performance of an obligation hereof is prevented, restricted or delayed by a case of force majeure, such as any act of God, or the public enemy, any act delay in acting, or failure to act of any governmental agency, or authority, or fire, flood, epidemic, quarantine, freight embargo, war, insurrection or riot, the time for such performance shall be amended accordingly, providing the Party affected by an event of force majeure shall promptly inform the other Party in writing and shall take all reasonable steps to mitigate the consequences of such situation, in particular to avoid or limit any delay in the delivery of the goods and the performance of the services.

**17.2.** Whenever any actual or potential labor dispute delays or threatens to delay the timely performance of the Contract, Seller shall immediately give notice to ALSTOM.

#### **18. Withholding and set-off of payment**

ALSTOM shall have the right at any time to set-off, and/or withhold against Seller from any payment then due or thereafter to become due an amount which it reasonably deems sufficient to compensate ALSTOM for and indemnify it against any damages, which may be sustained or incurred by it based on Seller's failure to meet the Contract requirements.

#### **19. Suspension of Work**

ALSTOM may at any time and for whatever cause order the temporary suspension of the Work to be performed hereunder for up to ninety (90) days. The Work shall be resumed by the Seller within ten (10) days after the date fixed in a written notice from ALSTOM to the Seller to do so.

#### **20. Termination for default**

**20.1.** ALSTOM may terminate the Contract in whole or in part at any time if (i) Seller is in default of its obligation under the Contract, and does not cure the default or submit a plan reasonably acceptable to ALSTOM to cure such default within ten (10) days from the receipt of the notice given to it by ALSTOM or (ii) Seller becomes insolvent or is adjudicated a bankrupt or goes into liquidation or dissolution, either voluntarily or involuntarily or under a court order, or makes a general assignment for the benefit of creditors, or otherwise demonstrate or acknowledges insolvency.

**20.2.** In the event of termination under Article 20.1, ALSTOM may (i) terminate the Contract for all or any portion of the Work, or (ii) perform the Work or subcontract the Work to a third party or third parties and deduct the cost thereof from any moneys due or to become due to Seller hereunder.

**20.3.** In the event ALSTOM wrongfully terminates the Seller for default, such termination shall be deemed a termination for convenience and Seller shall be compensated in accordance with Article 21 herein.

#### **21. Termination for convenience**

**21.1.** ALSTOM may terminate the Contract in whole or in part at any time for its convenience by giving written notice thereof to Seller. Upon receipt of such notice of termination, Seller shall immediately stop all Work on the affected portions of the Contract and order any affected suppliers to stop work, it being specifically understood that the Seller has an express duty to mitigate its costs associated with such termination. ALSTOM shall not be responsible for any work or costs after the notice of termination.

**21.2.** In the event of termination for convenience, provided Seller is in compliance with its obligations under the Contract, and provided that the total sum payable upon termination shall not exceed the Contract price reduced by payments previously made, ALSTOM shall:

(a) Reimburse Seller for all actual expenditures and costs incurred in the performance of the Contract and approved by ALSTOM;

(b) Reimburse Seller for reasonable termination costs, approved by ALSTOM. Termination costs shall not include profit on work not performed.

The Seller shall hold partially completed work or raw material included in the Seller's costs for disposition in accordance with ALSTOM's instructions.

#### **22. Disputes, claims and controversies**

**22.1.** In the event that the dispute is not resolved amicably by the Parties, it shall then be submitted to arbitration in accordance with the rules and procedures of the *Code of Civil Procedure* of the Province of Quebec in effect on the date that the Arbitration Notice is filed. The arbitration proceedings shall commence upon delivery of a written notice by one Party requesting arbitration, to the other (the "Arbitration Notice"). The Arbitration shall be submitted within five (5) business days of the issuance of the Arbitration Notice to a single arbitrator (the "Arbitrator") mutually selected by the Parties. If the Parties are unable to select an Arbitrator within such five (5) business day period, a single Arbitrator shall be appointed by the Superior Court of the Province of Quebec at the request of either Party.

**22.2.** The arbitration shall take place in Montreal, Quebec. The language of such arbitration shall be English. The award shall be final and binding upon the Parties hereto, and judgment on the award rendered by the arbitrator or arbitrators may be entered in any Court having jurisdiction thereof. Each Party shall bear its own costs in connection with the preparation and presentation of such arbitration. Costs of the proceedings shall be assessed against the non-prevailing Party as determined by the arbiter.

**22.3.** Seller shall proceed diligently with the performance of the Work during the pendency of any dispute and in accordance with any determinations by ALSTOM.

#### **23. Governing law**

The Contract shall be governed by and construed and enforced in accordance with the laws of the Province of Quebec, Canada without regard to choice of law or conflicts of law.

#### **24. Assignment**

Neither the Contract nor any rights or obligations hereunder shall be assignable or otherwise transferable by the Seller in whole or in part without receiving prior written consent of ALSTOM.

**25. Amendment**

Any amendment to the Contract shall only be valid and binding upon the Parties if concluded in writing and signed by an authorised representative of each of the Parties and formally expressed as constituting an amendment hereto.

**26. Waiver**

No failure of delay on the part of any Party to exercise, and no delay in exercising, any of its rights hereunder, shall be deemed a waiver thereof, nor shall any single or partial exercise by any Party of any right preclude any future exercise thereof or the exercise of any other right.

**27. Notices**

All notices under this Contract will be in writing and will be deemed given when:

- a. delivered personally;
- b. sent by confirmed telex or facsimile;
- c. sent by electronic mail that can be confirmed as having been received;
- d. five (5) days after having been sent by registered or certified mail, with proof of delivery requested; or
- e. 1 day after deposit with a commercial overnight carrier specifying next day delivery, with written proof of delivery.

All communications to a Party shall be sent to the address indicated in the order, or to such other address as may be designated by either Party by written notice to the other Party.

**28. Language**

**28.1.** In the event that these General Conditions or other parts of the Contract are drafted in bilingual French and English versions, the French language version shall take precedence.

28.2 The Supplier and the Purchaser hereby declare having required that the Order and all documents related directly or indirectly thereto be drawn up in the English language. ***Le Vendeur et l'Acheteur déclarent avoir requis que la Commande ainsi que tous les documents qui s'y rattachent directement ou indirectement soient rédigés en langue anglaise.***